

**THE NEED TO BALANCE RESPONSIBLE CORPORATE CONDUCT AND
STANDARDS OF GOOD GOVERNANCE IN CONFLICT AFFECTED AREAS; A CASE
FOR KAO AND POLIHALI VICTIMS OF HUMAN RIGHTS VIOLATIONS**



BY

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REQUIREMENTS FOR THE DEGREE OF BACHELOR OF LAWS (L.L.B.)**

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ROMA – LESOTHO

DECLARATION BY STUDENT

I, the undersigned, Kamohelo Khoboko do hereby declare that this dissertation submitted to the National University of Lesotho, Faculty of Law, for the degree of Bachelor of Laws, has not been previously submitted by me for a degree at this University or any other similar institution, that it is my own work in design and in execution and that all material contained herein has been fully acknowledged.

k.khoboko

KAMOHELO KHOBOKO

24th June 2019

DATE

DEDICATIONS,

This dissertation is dedicated to the lives, memories and times of my late father, T'seliso Khoboko, (1965-2019), who has been a constant part of my life, but who passed on in my presence in the early hours of 04th September 2019 after an excruciatingly painful illness. May his soul rest in everlasting peace and rise in glory.

I wish to dedicate this research to my mother, 'Manthabeleng Khoboko, who has been an anchor in my academic trajectory and my entire family. I dedicate this dissertation also to my high school matron; Nkhono 'Mamakhoa Nhlapho who ceaselessly played an immense role of a mother to me.

I wish to also dedicate this research to the lives and times of Mr & Mrs Sengoai who believed in my potential in high school and now, and always encouraged me to do well all the times.

To all victims of human rights violations and those who surrendered their lives in the fight for justice, this work is dedicated to you as well and continue to rest in power.

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LIST OF NATIONAL LEGISLATION

Land Act, 2010

Lesotho Constitution, 1993

LIST OF INTERNATIONAL INSTRUMENTS

Universal Declaration of Human Rights

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

United Nations Guiding Principles on Business and Human Rights, 2008

LIST OF ABBREVIATIONS

AOP= Association of the Poor

DPE= Development for Peace Education

ELSA= European Law Students Association

FDI= Foreign Direct Investment

ICCPR= International Covenant on Civil and Political Rights

ICESCR= International Covenant on Economic, Social Cultural Rights

ILO= International Labor Organization

LHDA= Lesotho Highlands Development Authority

LHWP= Lesotho Highlands Water Project

LSM= Large Scale Mining

NULLAC= National University of Lesotho Legal Aid Clinic

OHCHR= Office of the High Commissioner for Human Rights

OECD= Organization for Economic Cooperation and Development

TRC= Transformation Resource Centre

UN= United Nations

WTO= World Trade Organization

TABLE OF CASES

Allied Workers Union V Lesotho Highlands Development Authority and Others
LC/167/19

Lulongwe and Others V Vendata Resources PLC and Konkola Coppers Mines
2017 (EWCA) CIV 1526

Sobusa Molefi and 54 Others V Commissioner of Police and Attorney General
CIV/T/654/2019

1.0 CHAPTER ONE

1.1 INTRODUCTION

This chapter will explain the key concepts in this research namely; Responsible corporate conduct, good governance and the Conflict Affected Areas, it will further outline amongst others the statement of the problem, research question, aims and objectives, the literature review, the research approach and methodology and lastly, dwell on the chapters breakdown.

1.2 RESEARCH TITLE

The need to balance responsible corporate conduct and the standards of good governance; A case for Polihali and Kao victims of human rights violations.

1.3 DEFINITION OF KEY CONEPTS

1.31 Responsible corporate conduct: entails all compliance with laws, such as those on respecting human rights, environment protection, labour relations and financial accountability, even where these are poorly enforced. It also involves responding to societal expectations communicated by channels other than the law, e.g inter-governmental organizations, within the workplace, by local communities or via the press.¹ For the purpose of this thesis in this definition, focus shall be on compliance with laws on those respecting human rights.

1.32 Good governance: This concept has two aspects, first relating to the government and usually exemplified by the liberal democracies. The working conditions of liberal democracy include public participation, responsive, transparent and accountable government and the rule of law. The functioning of a liberal democracy is threatened by phenomena such as political corruption and the government arbitrariness.² The second which relates to the efficiency of government, requires that the process of governance be free from corruption, arbitrariness and caprice.³

1.33 Conflict affected areas: Conflict means armed aggression, widespread violence and or widespread human abuses. These can include amongst others, any forms of torture, cruel inhuman or degrading treatment and other gross violations of human rights and abuses such as sexual violence.⁴ As such, conflicted affected areas are areas where conflict, being some of the above factors is prevalent.⁵

1.4 BACKGROUND

For a longtime, violence has culminated in areas that have been expropriated for developmental purposes. Such acts of violence include amongst others brutal

¹ Chapter 7, Policy Framework for Investment on promoting responsible business conduct, OECD

² Carlos Santiso, *Governance conditionality and the Reform of Multilateral Development Finance: The Role of the Group of Eight*, available at http://www.g8/utambo.ca/governance_santiso2002-gov7.pdf(last visited Apr. 5 2004)[hereinafter santiso] note 9

killings of people, beating of people, their displacement without due compensation etc. The Kimberly Process Civil Society Coalition writes that up to today, brutal killings, torture and sexual violence; continue to occur in certain diamond mines in the African Continent. Moreover some corporate miners are alleged to be harming local community livelihoods as a result of unmitigated environmental damage coming from their operations, including water, air and noise pollution.⁶ There has been an outcry by the community representatives of the Kao village of human rights violations in their area which culminated in the deaths of two villagers and the displacement of some villagers.⁷ Due compensations also not been afforded to the affected people. Moreover, the Polihali project has also resulted in a land acquisition in that the land take has affected communities. The land take will also result in the physical and economic displacement of people.⁸ To this effect the Transformation Resource Centre supported by the Sisters of the Holy Names of Jesus and Mary facilitated a dialogue session in Mokhotlong for Polihali affected communities, the Lesotho Highlands Development Project officials, Natural resource cluster and the Government. This dialogue session interrogated the ceaseless concerns of the affected communities regarding compensation, resettlement, pastures, employment opportunities and with great focus on water and sanitation rights amongst others.⁹

1.5 PROBLEM STATEMENT

The problem has been in this regard that the lands are expropriated for developmental purposes by the government, however, the basic human rights of communities in such areas are affected on a day to day basis by such activities.¹⁰ Then the controversial issue here is that the corporate activities in these places seem

³ Aditya Sudarshan, *Constitutional Perspective on Good Governance*. Student Bar Review, Vol. 17 (2005), pp. 15-37(23 pages). Published by Student Advocate Committee

⁴ Annex II, *OECD Due Diligence Guidance*

⁵ International alert, *Conflict-Sensitive Business Practice: Guidance for Extractive Industries* (2005)

www.international-alert.org/resources/publications/conflict-sensitive-business-practice-guidance-extractive-industries

⁶ Kimberly Process Civil Society Coalition, *An on the ground perspective on blood diamonds and the fifth C: Real Care is Rare*.

⁷ supra

⁸ African Bank Development Group: *The Environmental and Social Impact Assessment summary for Polihali Reservoir and Associated Infrastructure*

⁹ Likopo Mokhele, "TRC organizes Special Dialogue for Polihali Affected Communities and Stakeholders", Friday, 27th September 2019

¹⁰ Supra

to be given attention to the detriment of equal attention given to affected lives. If to date, dialogues are held nationwide to address the concerns of the affected areas, this stands to suggest that there is a reluctance on the part of the government or on the enterprises themselves as the primary actors in corporate conduct to offer protection and dignity to the right of the communities where they carry out these activities. Amongst others, the governments has international law obligations to ensure that Compensation is given to the members of the communities where it is due, due diligence processes should also be implemented to ensure the mitigation of harms that may accrue from the business conduct to the highest degree possible, etc.

This is a relevant phenomenon for discussion in light of the emerging United Nations guidelines on Human Rights and Business in that it places an obligation on governments to advance responsible corporate conduct and good governance standards¹¹ as a way to protect people from business related human rights violations¹² which today seems to be an escalating problem.

1.6 RESEARCH QUESTION

At the heart of this research, I shall endeavor to respond to the following question;

- a. Whether the Lesotho government and the business enterprise adhere to their international law obligations as entailed in International Human Rights Instruments, especially the 2008 United Nations Guiding Principles on Human Rights and Business?

1.7 AIMS AND OBJECTIVES

As business related human rights violations occur tremendously today, especially in areas that have been expropriated for the purposes of development such as Kao in the Buthat-Buthe district and Polihali Dam in Mokhotlong district, it is necessary that the interests of all stakeholders be taken into consideration, this is to say, while advancing economic benefits through the business conduct, the fundamental human rights of communities in such areas should be taken into utmost consideration. The aim of this paper shall be to discuss the need to balance responsible corporate

¹¹ The UN Guiding principles and Business and Human Rights and Conflict Affected Areas: State Obligation and Business Responsibilities

¹² Ni Ketut Supasti Dharmawan, "The Guiding Principles on Business and Human Rights: National Action Plans Toward Corporate Responsibility" *Hasanuddin Law Review*, Volume Issue 2, August 2018

conduct and standards of good governance in conflicted affected areas. It shall do so by;

1.71 Discussing the duties of states to protect human rights abuses by third parties including businesses through appropriate policies and regulations.

1.72 Discussing the corporate responsibility to respect human rights, which means to avoid infringing on the rights of others and to address adverse impacts with which a business operation is involved.

1.73 Discussing the need for greater access by victims to effective remedies, judicial and non-judicial and the latter relating to alternative dispute/conflict resolution mechanisms.

1.74 Exploring harms that inevitably accrue out of the business conduct, which consequently disturb peace and attainment of stability in Lesotho

1.75 Suggesting how states could achieve a worthwhile balance between the responsible corporate conduct and standards of good governance in light of its obligations under both International Law and International Human Rights Law.

1.8 LITERATURE REVIEW

The states and companies obligations to protect the dignity of human rights of communities where business conduct takes place are enshrined in the 2008 United Nations Guiding Principle on Business and Human Rights, and International Human rights Instruments, amongst, the 1948 Universal Declaration of Human Rights.

The significance of these obligations is to amongst others ensure accountability, dispute resolution and management, due diligence and democratic identity in decision making. “We are at a formative- and very uncertain- juncture. When something really foundational, like the Guiding Principles, comes in to play, governments tend to adopt a ‘wait and see’ approach before formalizing the soft requirements into hard law or regulations, in this case companies have been extremely proactive about taking the Guiding Principles on board and voluntarily implementing them”¹³.

¹³ Jacquelyn MacLennan, White and Case

1.81 The importance of ‘respect, protect and remedy’ principles as outlined by the UN Guiding Principles on Business and Human Rights and why human rights of people in conflicted affected areas should be respected and protect and conflicts remedied.

Respect, protect and remedy are three pillars that form the gist of the guiding principles and they each define the concrete steps for governments and companies to meet their respective duties and responsibilities to prevent human rights abuses in company operations and provide remedies if such abuses take place.¹⁴ The importance of these pillars, in my view is to ensure that rights of the vulnerable people are not jettisoned in urge to pursue business or corporate interests; ensures that all stakeholders are equally protected, or at least there is effort to offer protection where it is due. The notion that, in addition to its pursuits of profits, business should be responsible workers, communities and other stakeholders is increasingly widespread.¹⁵ In the matter between *Lulongwe and Ors V Vedanta Resources Plc and Konkola Copper Mines*¹⁶ in this case the Appeal Court held that a parent company will not automatically owe a duty of care to someone affected by the actions of its subsidiary, but a duty of care could arise where a parent company has taken direct responsibility for devising the relevant health and safety policy, or controls the operations giving rise to the claim. In this decision, the Zambian nationals sought jurisdiction in the English courts alleging personal injury, damage to property and loss of income, amenity and enjoyment of land, due to alleged pollution, environmental damage caused by discharges from the Nchanga Copper mine.

Following from this decision, the ‘respect and protect’ pillars are important in that a company or a business enterprise should take measures that ensure its operations do not pose any danger to members of the communities in such areas. Companies should take upon themselves to ensure that they provide a safe environment that respects not only the rights of its workers, but equally those of communities that live nearby.¹⁷ As business increasingly permeates our society, one must also consider the

¹⁴ UN Working Group on Business and Human Rights

¹⁵ Dr Basak Baglayan, Ingrid Landau, Marisa McVey and Kebene Wadajo, December 2018, The Economic case for Protecting Human Rights.

¹⁶ 2017 (EWCA Civ 1528

¹⁷ Supra (above)

risk of negative impacts on human rights enjoyment.¹⁸ Conducting appropriate human rights due diligence should help a business enterprise to improve its management and mitigation of being involved or linked to human rights abuses; avoid disruptions of business operations and contribute to a company sustainability

Under the Protect, Respect and Remedy framework of the guiding principles, states have the duty to protect human rights, but sometimes are also expected to respect the ‘entire spectrum of internationally recognized human rights’ where they operate, to avoid infringing on the human rights of others and to address adverse human rights impacts.¹⁹ As a result, human rights look set to become an integral aspect of corporate compliance and risk management, although companies do not have binding legal obligations in rights-related international agreements, this aspect or corporate responsibility is becoming a standard of conduct expected by investors, regulators and other stakeholders.²⁰ In my view, the above strengthens the importance of respecting and promoting human rights where business conduct takes place in that, though by way of international agreements, there is no such obligations on companies, however, this is crucially and inescapably becoming a ‘minimum standard’ anticipated of investors and businesses.

The European Union has passed legislation requiring importers of certain raw materials and metal from conflict-affected and high risk areas to carry out supply chain human rights due diligence in accordance with the OECD Due Diligence guidance.²¹ This then stages the value in ensuring prior to businesses carrying out their interest, they undergo a due diligence process, this is in an urge to assess the possible ways to mitigate harms that communities may be subjected to. The European ensures that there should be no market for those who fail to comply with this international ceiling. I have no iota of doubt that this unavoidably speaks to the importance of protecting and preventing harms that spring from business conduct.

The Guiding principles are based on several international agreements on human rights, which have been adopted since the Universal Declaration of Human Rights in 1948. The principles provide the first global standard for preventing and addressing the risk of adverse human rights impacts linked to business activity. Their

¹⁸ supra

¹⁹ White and Case, “African Focus: Autumn 2018”

²⁰ Ibid

²¹ www.ohchr.org

mandate is to promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices.²²

1.9 RESEARCH APPROACH & METHODOLOGY

This study will use materials from the internet, which include international law and international human rights instruments, declarations, conventions, as well as case law, relevant articles, journals and the legal texts.

1.10 CHAPTERS BREAKDOWN

1.101 Chapter 1: this is the introductory chapter , amongst others it shall set forth a motivation for conducting this research study through a statement of the problem, literature review and introduce the methodology that I will use in this research.

1.102 Chapter 2: This chapter shall introduce the key concepts for this research which are; Responsible Corporate Conduct, Standards of Good governance by making reference to the United Nations Convention on Business and Human Rights and other corresponding literature.

1.103 Chapter 3: This chapter shall entail case studies of the places that I visited to conduct a research; those are different villages in Polihali and Kao. From observations gathered, I shall put forth a critical argument as to Business and Government align themselves with their obligations as enshrined in the Convention in an urge to respect human rights of communities that are at stake.

1.104 Chapter 4: Conclusions and Recommendations.

²² Mariete Van Huijstee, November 2012

2.0 CHAPTER 2

2.1 THE STATE' S OBLIGATIONS ON BUSINESS AND HUMAN RIGHTS

2.2 INTRODUCTION

This chapter will explore intensively the state's duties as entailed in the United Nations Guidelines on Business and Human Rights in Conflict affected areas. Amongst other duties it will entail that states have a duty to protect people from business related human rights harms and also ensure that victims have access to effective remedies, those that are judicial and non-judicial in nature. The contents of these obligations shall be divided into the foundational and operational principles.

2.3 THE STATE DUTY TO PROTECT PEOPLE FROM BUSINESS RELATED HUMAN RIGHTS HARMS.

2.4 FOUNDATIONAL PRINCIPLE

States must protect against human rights abuse within their territory and or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. State's international human rights obligation requires that they respect, protect and fulfill the human rights of individuals within their territory and or jurisdiction. This includes the state's duty to protect against human rights abuse by third parties, including business enterprises.

The state's duty to protect is a standard of conduct. Therefore, states are not per se responsible for human rights abuses by private actors. However states may breach their international human rights law obligations where such abuse can be attributable to them, or where they fail to take appropriate steps to prevent, investigate, punish

and redress private actor's abuse. While states generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and accountability, legal certainty, and procedural and legal transparency.

2. States should set out clearly the expectations that all business enterprises within their territory and or jurisdiction respect human rights through their operations.

At present, states are not generally required under international human rights law to regulate the extraterritorial activities of business domiciled in their territory. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis. Within the parameters some human rights treaty bodies recommend that states take steps to prevent abuse abroad by business enterprises within their jurisdiction.

There are strong policy reasons for home states to set out clearly the expectation that businesses respect human rights abroad, especially where the state itself is involved in or supports those businesses. The reasons include predictability for business enterprises by providing coherent and consistent messages and preserving state's own reputation.

States have adopted a range of approaches in this regard, some are domestic measures with extraterritorial implications. Examples include requirements on "parent" companies to report on the global operations of the entire enterprise: the multi-lateral soft-law instruments such as the guidelines for Multinational Enterprises of the Organization for Economic Cooperation and development; and performance standards required by institutions that support overseas investments. Other approaches amount to direct extraterritorial legislation and enforcement. This includes criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs. Various factors may contribute to the perceived and actual reasonableness of state actions, for example where they are grounded in multilateral agreements.

2.5 OPERATIONAL PRINCIPLES

2.6 GENERAL STATE REGULATORY AND POLICY FUNCTIONS

In meeting their obligation of the duty to protect, states must;

- (a) Enforce laws that are aimed at or have the effect of, requiring business enterprises to respect human rights, and periodically to assess adequacy of such laws and address any gaps.
- (b) Ensure that other laws and policies governing the creation and on-going operation of business enterprises, such as corporate, do not constrain but enable business respect human rights.
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations.
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

These principles mandate states not to assume that businesses invariably prefer, or benefit from, states in action, and they consider a smart mix of measures- national and international, mandatory and voluntary- foster business respect for human rights. The failure to enforce existing laws that directly or indirectly regulate business respect for human rights is often a significant legal gap in state practice. Such laws might range from non-discrimination and labor laws to environmental, property, privacy and anti- bribery laws. Therefore it is important for states to consider whether such laws are currently being enforced effectively, and if not, why this is the case and what measures may reasonable correct the situation.

It is equally important for states to review whether these laws provide the necessary coverage in light of evolving circumstances and whether, together with relevant policies, they provide an environment conducive to business respect for human rights. For example, greater clarity in some areas of law and policy, such as those governing access to land, including entitlements in relation to ownership or use of the land, is often necessary to protect both rights-holders and business enterprises.

The laws and policies that govern the creation and ongoing operation of business enterprises, such as corporate and security laws, directly shape business behavior.

Yet their implications for human rights remain poorly understood. For example, there is lack of clarity in corporate and securities law regarding what companies and their officers are permitted, let alone required, to do regarding human rights. Laws and policies in this area should provide sufficient guidance to enable enterprises to respect human rights, with due regard to the role of existing governance structures such as corporate boards.

3. States also have a duty to take additional steps to protect against human rights abuses by enterprises that are owned or controlled by the state, or that receive substantial support and services from state agencies such as export credit agencies and official investment insurance or guarantee agencies, including where appropriate, by respecting human rights due diligence.

States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence. ⁷ Commentary States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime. Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations.

Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights. Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented.

Senior management typically reports to State agencies, and associated government departments have greater scope for scrutiny and oversight, including ensuring that effective human rights due diligence is implemented. (These enterprises are also subject to the corporate responsibility to respect human rights, addressed in chapter

II.) A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions.

Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State. Given these risks, States should encourage and, where appropriate, require human rights due diligence by the agencies themselves and by those business enterprises or projects receiving their support.

A requirement for human rights due diligence is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights. 8 5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State's human rights obligations may entail both reputational and legal consequences for the State itself.

As a necessary step, the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States’ relevant obligations under national and international law.

Because the risk of gross human rights abuses is heightened in conflict affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by: (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships; 9 (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence; (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation; (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses. Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself – where the human rights regime cannot be expected to function as intended.

Responsible businesses increasingly seek guidance from States about how to avoid contributing to human rights harm in these difficult contexts. Innovative and practical approaches are needed. In particular, it is important to pay attention to the risk of sexual and gender-based violence, which is especially prevalent during times of conflict. It is important for all States to address issues early before situations on the ground deteriorate. In conflict-affected areas, the “host” State may be unable to protect human rights adequately due to a lack of effective control. Where transnational corporations are involved, their “home” States therefore have roles to play in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse, while neighboring States can provide important additional support.

To achieve greater policy coherence and assist business enterprises adequately in such situations, home States should foster closer cooperation among their development assistance agencies, foreign and trade ministries, and export finance institutions in their capitals and within their embassies, as well as between these agencies and host Government actors; develop early-warning indicators to alert government agencies and business enterprises to problems; and attach appropriate consequences to any failure by enterprises to cooperate in these contexts, including by denying or withdrawing existing public support or services, or where that is not possible, denying their future provision. 10 States should warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas.

They should review whether their policies, legislation, regulations and enforcement measures effectively address this heightened risk, including through provisions for human rights due diligence by business. Where they identify gaps, States should take appropriate steps to address them. This may include exploring civil, administrative or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses. Moreover, States should consider multilateral approaches to prevent and address such acts, as well as support effective collective initiatives. All these measures are in addition to States' obligations under international humanitarian law in situations of armed conflict, and under international criminal law.

3.0 CHAPTER THREE

3.1 A CRITICAL AND A COMPARATIVE ANALYSIS OF THE NEED TO BALANCE RESPONSIBLE CORPORATE CONDUCT AND THE STANDARDS OF GOOD GOVERNANCE

3.2 INTRODUCTION

This chapter shall discuss in detail harms that accrue out of business related conduct in that have been expropriated and declared for developmental purposes. The chapter will then discuss the case studies of two places in the Kingdom of Lesotho; The Polihali Dam Construction in Mokhotlong and Kao Mine Construction in the Butha Buthe district and finally discuss why it is necessary today to balance all interests at stake; that is the corporate conduct and the fundamental human rights of communities living in such areas. The comparative study between other countries and Lesotho shall be entailed in this chapter.

Information entailed in this chapter was collect through amongst others, public gatherings in areas earmarked as affected Polihali Communities and Kao Communities. The public gatherings were held in Mosakong and Tloha-Re-Bue villages. The information through the stories told by the people from affected areas is written in this chapter as they narrated. The identity of the people through which the information was received will be kept anonymous and shall be referred to as Villager 1, 2, or 3 etc. The grievances that emanate in the stories in this chapter are on the compensation policy by the Lesotho Highlands Water Project (LHWP), which the later seems not to honor as promised. Comparative studies will be undertaken in this chapter; a comparative analysis of Polihali Dam Construction and the Pak Mun Dam in Thailand, Kao Mine Construction and Abatovy Mine in Madagascar.

3.3 GRIEVANCES GATHERED FROM THE POLIHALI DAM PER VILLAGE.

3.4 MOSAKONG PUBLIC GATHERING

3.5 Villager 1: (an elderly community member) his concern was on the 90 years compensation that the LHDA had promised. He said that the affected communities would rather sue the LHDA and fight tooth and nail for their rights by taking the legal route if the LHDA would not keep the promise and continue to give the little compensation such as M10.00 to the suffering community members. He further suggested that the communal compensation should not be sent to the councils but be given directly to the affected communities. The affected communities, he added would decide the terms and conditions of funds utilization in supporting developments, such as supporting subsistence agricultural for their youth to especially engage in and for resettlement purposes either in or out of Mokhotlong.

In his emphasis that **the money should go directly to the affected communities**, he further highlighted that the affected communities had already agreed amongst themselves on developmental priorities and preferences on whether they should be resettled either within or outside Mokhotlong district. Moreover he indicated that as the affected communities, they had learned that in the previous projects similar to Polihali, **people who had decided to relocate outside their districts of origin were given money in lump sums. This is despite the fact that sometimes funds coming in lump sum get misused.**

3.6 Villager 2: he also supported the 90 years compensation, citing that he would love his great grandchildren to benefit from the compensation. He said if LHDA was not going to build a dam on their grazing land, the next generations would live to find the grazing lands still available. So the resettlement envisaged by the LHDA would disrupt their ways of life.

3.7 Villager 3 (Mosakong resident and the DPE officer stationed at Polihali), Mr Seate indicated that not only the grazing areas for the animals have been expropriated, however, also the fields of the residents have been taken and used for the roads leading to the Construction site. Normally in that case, one would anticipate a fairer and adequate compensation for the fields, however this cannot be said with the particular fields that have been taken.

3.8 TLOHA-RE-BUE PUBLIC GATHERING

3.9 Villager 1 (a community member) she indicated that the LHDA had made promises amongst that there would be an allowance for their fields that have been taken, however it has been two years without the LHDA honoring its promise. It was at this point where she emphasized that things are undeniably worse than before and the damage and prejudice seem really inevitable. Furthermore, she highlighted that dust is another problem that they face as villagers due to the construction because they don't have a tarred road and no one seems to really care about how vulnerable and susceptible they are to the air-borne diseases due to the dust. She also mentioned the unfortunate consequence of houses getting damaged due to the sound produced by the bulldozers as the Construction takes place.

She went on to highlight that the government has done absolutely nothing to address these injustices brought about by the construction taking place, and lack of transparency on compensation; to this she indicated that there are people who still get their compensation, albeit not fully and others getting nothing at all, and she doesn't know why that is happening. Moreover she mentioned that their youth have also not benefited from this project in that the fields that they ploughed have been taken and promised to hire them, but that has not seen the light of day.

3.10 Villager 3: (another community member) notwithstanding that the compensation issues have already been raised, he pointed out that whilst they were still concerned about their initial compensations, they also saw the LHDA drawing markings on some areas around their grazing lands. The markings were believed to be the Polihali demarcation and contended that they have to be informed about the processes before they kick start as affected communities. It emerged that the alleged markings were provided by the herd boys from the affected areas. He said that “if the LHDA does not talk to us, most of the information comes to us as street talk not formally communicated through the LHDA authorities.” He concluded his complaint by making demand for a clear and a meaningful engagement both at individual and community levels.

3.11 CRITICAL ANALYSIS OF THE CORPORATE CONDUCT TAKING PLACE AT THE POLIHALI AREA

It is the foundational principle that the business enterprises respect human rights.²³ This is to say that they should endeavor to avoid infringing on the human rights of others and should address adverse human rights impacts which they are involved in.²⁴ This is a global standard that is expected of all businesses wherever they operate; a business entity has these obligations independently of states abilities or willingness to fulfill their own human rights obligations and does not in any way diminish them.²⁵ Now the critical question is whether the LHDA through its contractors in the Polihali Dam Construction honor the above obligations?

As it arises from the community gatherings and direct interviews, the fields and the grazing lands of the communities have been expropriated without adequate compensation. The inevitable then here is that community members whose fields have been taken can no longer produce the food; precisely maize, sorghum, wheat and others to sustain them through these trying times. Their families are put through an excruciatingly painful starvation period while the LHDA continues with its

²³ Sobusa Molefi and 54 Others V Commissioner of Police and Attorney General CIV/APN/654/2019

²⁴ Sanders A, 2014, “The of the Ruggie Framework and the United Nations Principles on Business and Human Rights on Transitional Human Rights Litigation.

²⁵ McPhill, K Adams, C.A (2016). Corporate respect for human rights; meaning, scope and the shifting order of discourse. *Accounting, Auditing and Accountability Journal*, 29(4), 651

operations. The fact that the families of taken fields are put in this tribulation inevitably echo that their right to livelihood is contravened, as contained in the Lesotho Constitution²⁶ and the international human rights instruments amongst others the Universal Declaration on Human Rights.²⁷

The business enterprises may address the adverse human rights impacts by taking adequate measures for their prevention, mitigation, and where appropriate remediation.²⁸ This is to say that before the corporate conduct takes place, the enterprise must take it upon itself to mitigate the harms that are likely to accrue out of the conduct itself. This is to say, if the dam is to be built, people will be relocated and the enterprise should make proper preparations for such families to be relocated. At this point, the determination should be made whether people who were inescapably facing relocation have been prepared for this misfortune prior to the commencement of the corporate conduct? From the sentiments during the public gatherings and the interviews, the answer is a No.

There is a clear violation of the United Nations Guiding principles on Business and Human Rights here in that the LHDA has lamentably failed to arrange for such people, and even worse, fail even to prepare for the relocation when it commenced its operations. Houses are reported to have cracked due to the blasting as a result of operations. This is to say the right to proper housing of the people is also being contravened here. Equally important, the responsibility of business enterprises to respect human rights refers to internationally recognized human rights- understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International labor Organization's Declaration on fundamental principles and Rights of the Work.²⁹ The duty then placed on the business enterprises is that the rights of the migrant workers at stake here must be safeguarded at all costs. "Depending on the circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse

²⁶ Chapter 3, livelihood rights

²⁷ Ruggie, J.G (2014) Global Governance and "New governance theory": Lessons from business and Human rights. *Global Governance*, 20(1), 5-17

²⁸ Principle 11, The United Nations Guiding Principles on Business and Human Rights

²⁹ supra

human rights impacts on them. In this context, United Nations instruments have elaborated further on the rights of indigenous people; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities and migrant workers and their families.

Of focus to this writing will be women, children, migrant workers and their families. The issue here is that these groups stand out to be the most vulnerable and the enterprise must take it upon itself to elevate these groups, not only ensure but strengthen the enjoyment of their rights. For instance in the Mosakong Village at the Polihali area, the migrant workers there went two months without their pay, in an urge to demonstrate against this through a peaceful protest, the police was called upon to suppress their right to strike peacefully whereupon some employees were dismissed from their work. This is a clear violation of the guiding principles and the International Labor Organization declarations against exploitation of workers and their dismissal from work for protesting for their pay against the company. This is to say not only the workers are placed at a peril, but also their families stand to be prejudiced and affected adversely. All these issues that materialized at the Mosakong village of the joint protest between the villagers and the workers were reflected in the interim order in an application before the labour court in the case of *Allied Workers Union V LHDA and Others*³⁰ where the court indicated that pending the finalization of the matter, no one should engage in any protest or otherwise the Mokhotlong Police should be brought in to take care of the situation.

The problem here with this order is that it unfortunately makes the villagers and the workers seem inherently guilty for fighting for their rights as they are victims here. The court should have directed the first respondent to honor its obligations and give what is due to the applicants. It is also utter wrong that the police are always brought every time to arbitrarily deprive people of their right to engage in peaceful protest; what materialized further is that even the communities were directed by the Mokhotlong Police to not even hold gatherings to deliberate these issues pending the finalization of the above matter before the labour court.

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and

³⁰ ibid

circumstances including; (a) A policy commitment to meet their responsibility to respect human rights, (b) A human rights due-diligence process to identify, prevent, mitigate, and account for they address their impacts on human rights; (c) Processes to enable the remediation of any adverse human rights they cause or to which they contribute.³¹ Firstly, it is important here to then discuss whether there was a policy commitment by the LHDA, it is then submitted here that policy commitment by the LHDA is the 90 years Compensation policy which however has not been implemented to date, and where implemented it's a disgrace in that people are given M10.00 compensation.

This is to say there is a violation of the need to have a policy commitment to carry out obligations. Secondly it has to be ascertained whether there was a due-diligence process to identify and mitigate the impacts of human rights violations that would accrue, there was no clear due-diligence process carried out to ensure that their operations would not result in prejudices to the communities. If so, there would be no protests and strife's in Polihali and a whole lot of complaints about the injustices that they face from the corporate conducts taking place there. The third analysis is whether there were remediation processes to address the human rights impacts; there were no remediation processes to addresses the protests villagers are engaging in, the damaged houses, relocations of people who have to be removed. It is clear that there is a violation of enterprises obligations as entailed in the UN Guiding Principles on Business and Human Rights

3.12 GRIEVANCES GATHERED FROM THE KAO MINE CONSTRUCTION

Kao is a community of villages located in the Butha-Buthe district of Lesotho. This is a place famous for its notorious disputes between the Storm Mountain Diamonds and the neighboring communities. The long protracted conflicts have in the past simmered until the fatal shooting of some of the residents by police, loss of jobs by some community members and arrests of some members of the community leaders. Pertaining to the police brutalities and the shootings in this area, the NULLAC

³¹ ibid

lodged a case in the high court of Lesotho against the Commissioner of Police in an urge for justice for the affected families.³²

Amongst the key grievances by the community that fueled unrest in Kao seen in 2018 and 2019, resulting at the times with the mine operations closure is failure to provide jobs to unskilled locals, failure to repair a 27 kilometer road preferred by community from Kao to Ha Lejone. Other grievances include the issues of compensation, relocation of villagers and or households adversely affected by the blasting, earth thermos and mudslides that left their homes inhabitable and fearing for their lives

3.13 Villager 1 (a community member) he was an employee of the Storm Mountain Diamonds and also a villager and chairperson of the liaison committee. He said that he was dismissed from his employment from the Company, the latter citing that he incited violence and the unrest by the communities members against the company. He said that the company uses the police men to suppress villagers every time they fight for their rights, in turn the police resorts to violence as evidenced by the killing of one Terene Pitae and left some villagers badly injured. He also mentioned that the company seems to also be reluctant to compensate the villagers for the harms that they suffer accruing out of the operations.

3.14 CRITICAL ANALYSIS OF THE CORPORATE CONDUCT TAKING PLACE AT THE KAO MINE CONSTRUCTION

The Storm Diamonds in Kao is no stranger to also violating its obligations enshrined in the UN guiding principles and the ILO Declaration by dismissing its worker from his employment by citing that he incited violence against the company while in actual fact he fights for the rights of the communities against injustices instigated by the Storm Diamonds. This is silencing people who on behalf of the communities hold it accountable.

³² United Nations Human Rights Council. (2015) "United Nations Human Rights Office of the High Commissioner, Guiding Principles on Business and Human Rights Implementing the Protect, Respect and Remedy Framework"

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances including; (a) A policy commitment to meet their responsibility to respect human rights, (b) A human rights due-diligence process to identify, prevent, mitigate, and account for they address their impacts on human rights; (c) Processes to enable the remediation of any adverse human rights they cause or to which they contribute.³³ Firstly, it is important here to then discuss and ascertain whether there was a policy commitment by the Storm Diamonds, it is then submitted here that there is no policy commitment by the enterprise in issue.

This is to say there is a violation of the need to have a policy commitment to carry out obligations. Secondly it has to be ascertained whether there was a due-diligence process to identify and mitigate the impacts of human rights violations that would accrue, there was no clear due-diligence process carried out to ensure that their operations would not result in prejudices to the communities. If so, there would be no protests, strife's and fatalities and a whole lot of complaints about the injustices that they face from the corporate conducts taking place there. The guiding principles state that "Companies should integrate the findings of their human rights due diligence processes in to policies and procedures at the appropriate level, with resources and authority assigned accordingly...", there is a failure on the part of the company in issue to carry out its due-diligence obligation due to fatalities and none compensation of the harms that accrued during its operations, consequently a violation of duty under the UN Guiding Principles on Business and Human Rights. The third analysis is whether there were remediation processes to address the human rights impacts; there were no remediation processes to addresses the protests villagers are engaging in, the damaged houses, relocations of people who have to be removed.

Understanding remediation to be finding a solution to the problems at hand, there were series of meetings held at the mine aimed at addressing the villagers' grievances. The mine even offered the employment of the widow of Terene Pitae who was shot dead by the police in February and even offered compensation to the family of the deceased.³⁴ I should mention at this point that the NULLAC took a

³³ ibid

³⁴ Kabi Pascalina, Lesotho Times, 22 June 2018

case on behalf of the Kao Villagers against the Compol and the Attorney General.³⁵ However the Kao mine officials refused to entertain the Natural Resources Portfolio committee which had visited the mine in an urge to resolve the dispute between the locals and the mine, upon arriving at the mine, they were given a cold shoulder as they were told that that issue was not their concern since the mine was not a state entity. The parliamentary committee chairperson said that the committee was yet to pronounce itself on the matter following “a misunderstanding that took place between the committee and the mine during our meeting on Wednesday 96 June 2018)” “A lot of arrogance from people with misguided beliefs that this parliament cannot control them was displayed during an official meeting and we could not do what we went there to do. We will put them under control and they will be governed by the laws of this country” It is clear that there is a reluctance on the part of this mine to follow the remediation process so as to find an amicable solution to the quagmire that staged itself at the Kao mine, thus a violation of its obligations under the UN Guiding Principles on Business and human rights. The government also has obligations³⁶ under this instrument to ensure that the rights of the people are protected, it is quite impressive that the government tried to take a stand against the Mine through its Parliamentary committee to mediate the dispute between the mine and locals. Here the Lesotho government fulfilled its obligation to ensure compliance of companies with its obligations under the international human rights instruments.

3.15 THE COMPARATIVE STUDY OF THE THAILAND PAK MUN DAM

The Pak Mun Dam is situated on the Mun River, 5.5 kilometres upstream from the Mekong River in Northeast Thailand. This was a project by the government of Thailand for the local community in the Kong Jean district, Ubon Ratchthani Province, and was approved by the Thailand cabinet in May 1990. Ever since, the project has faced opposition from the local populace. More than 3080 families have been directly affected due to loss of houses, farmlands and fishing areas. The Pak Mun Dam conflict became a dilemma for the Thai government in its effort to reconcile economic and environmental protection policies. It emerged that the Thai government prepared the package of economic and industrial development policies,

³⁵ CIV/APN/156/19

³⁶ State Duty to Protect

however in crafting of the policies, there was a clear absence of public participation. The escalation of opposition due to compensation and resettlement problems further complicated the situation.³⁷ Compensation for people affected by the dam construction did not come from a comprehensive initial assessment. The Association of the Poor (AOP), Environmentalists and academics had protested against the Dam project by urging the government to form a committee to review and assess the costs and benefits, economic impacts and ecological changes. In May 1990, the government set up a 'Committee for the Compensation of Land Rights and Properties and a committee for resettlement'. The cash compensation of 24 million USD was paid for 'loss and damage to properties'. After 6 years of protest, the affected fishing families received a onetime package of 3600 USD per family as compensation for 'social costs' and 'job opportunity lost' during three years of construction. Although the affected villagers demanded a halt to the dam building at an early stage, the authorities did not take public demand seriously. According to the World Commission on Dams (WCD) report, "the authorities of Thailand did not consult affected villagers in the early stages of the decision making process, nor attempting to include them in the project conflict mitigation and preventative measures. The villagers were apprehensive that the dam would affect their livelihood and the well-being of local fishermen; species became extinct, blockage of the fish migrations from the nearby Mekong River causing a significant decline in fish catch which resulted in serious consequences for the local people of that area."³⁸

Comparing and contrasting the above Thailand scenario with the Lesotho situation in Kao is that there is a worrying Compensation policy by the LHDA which has not been implemented and where implemented, there is no transparency since other affected communities receive a certain amount of compensation while other receive nothing. There has not been a fully implemented due diligence process that seeks to identify, prevent and address the violations that would accrue prior to commencing the construction with the involvement of the communities in Polihali, lands were only earmarked to demarcate areas that would be expropriated, this was not the case in Thailand as well, the team that was to carry out amongst others the due diligence process was only formed after the protests by the environmentalists and lawyers in

³⁷ Ang Ming Chee, Researcher and Project Coordinator, Institute for Dispute Resolution, Khon Kaen University, Khon Kaen, Thailand, 'Political Structure and Conflict Resolution.

³⁸ Ashok Swain, Associate Professor, Department of Peace and Conflict Research, Uppsala University, 'Political Structure and 'Dam' Conflict: Comparing Cases in Southeast Asia

Thailand. The state by failing to carry out due diligence processes prior to constructions commencing violate their international obligations to ensure that people are given the adequate and human standards of living, as enshrined in the United Nations Declaration on Human Rights³⁹ and later echoed in the UN Guiding Principles on Human Rights and Business. Moreover it has been identified that people could no longer survive on their lands in Thai as the lands were taken for the dam construction, this is tantamount to the events as they unfold in the Polihali area where the fields and the grazing areas are taken, as a result people cannot grow their subsistence food therefore made vulnerable to poverty and starvation. This is in violation of the already mentioned Universal Declaration on Human Rights, precisely the right to not be arbitrarily deprived of property,⁴⁰ it was indicated through the public gatherings in Polihali that fields of some villagers were taken without their consent and being informed, this also stood to be out the case with the government of Thailand, this goes against the duties of states and corporate responsibility to respect all internationally recognized human rights,⁴¹ freedom from arbitrary deprivation of property is echoed in the 1948 UDHR, as such an international recognized rights that both Lesotho, Thailand and the respective companies operating in their jurisdictions violated.

3.16 COMPARATIVE STUDY OF MADAGASCAR AND THE CASE OF THE AMBATOVOY PROJECTS.

Ambatovy is comprised of the mining facility, a processing plant, a 200km pipeline for transporting ore slurry from mine to plant, and port infrastructure, all located in the north-eastern Madagascar. The mine's construction began in 2007 and a completion in 2014, due to the political instability and the popular protests that were happening at the time, conflict also ensued at the mine with the local people. People observed that then regime lacked the capacity, stability and political will to work effectively with the company and to protect the interests of the population on several issues arising from the mine's construction. These included inadequate consultation with communities, loss of culturally significant livelihoods, resettlement issues and the land ownership disputes. While maneuvering for power, the government did not take up measures to protect public interests. Lack of preparation for the arrival of

³⁹ Article 4, Universal Declaration of Human Rights, 1948

⁴⁰ Article 17, Universal Declaration of Human Rights, 1948

⁴¹ United Nations Guiding Principles on Human Rights and Business

the Large Scale Mining (LSM) to ensure that the nearby communities are not prejudiced by its operations once they kick start.

The events at the Kao mine are quite similar with those that materialized at the Ambatovy Mine, where for instance, there is no due diligence process to assess, identify and prevent the likely harms that may accrue when the Construction takes place. It has been shown above that ‘there was no preparation for the large scale mining’, here preparation speaks to the fact that proper assessments have not been done to ensure that prejudices that may be at the doorstep of communities are mitigated to the highest magnitude. The guiding principles speak to the fact Companies should integrate the findings of their human rights due diligence processes into policies and procedures at the appropriate level, with resources and authority assigned accordingly, this then begs the question as to whether the Kao mine comparatively with the Ambatovy mine integrated its findings of their human rights due diligence into policies, here the answer is in the negative since no such diligence process has taken place, that is to say there can be no integration of findings into policies when such findings were not undertaken and, just like at the Ambatovy, no preparations were done. The rights of the people to adequate standards of living have also been compromised if no assessment mechanisms were implemented prior to the operations taking place.

CHAPTER 4

4.1 CONCLUSIONS AND RECOMMENDATIONS.

4.2 Introduction

This is the concluding chapter of this dissertation. It will entail the conclusions in this research and recommendations will follow.

4.3 Conclusion

This dissertation is endeavored to research on the need to balance the responsible corporate conduct and the standards of good governance in an urge to harmonise maximizing businesses and also respecting the rights of the people who are immediately affected by such conduct. This research was done in light of the human rights violations that continue to emerge at the two places in Lesotho that have been declared for developmental purposes; The Polihali Dam Construction, Mokhotlong and the Kao Mine, Butha-Buthe. It stands as a tribute to all those people who had to lose their lives in the struggle to fight for their rights as communities in light of the recent United Nations Guiding Principles on Business and Human Rights. It is this instrument that reminds us of the obligations of business enterprises that engage in investments to also endeavor to protect human rights.

Chapter one dealt with the research introduction and stood as the background chapter laying down the foundation, the problem statement, the literature review of this research work as well as the research methodology to be used through out the research, as well as the chapters breakdown.

Chapter two explored the state's obligations in Business and Human Rights and the intensive the state's duties as per the guidelines on Business and Human Rights in conflict affected areas. The major key concepts that were used in aiding the submissions in this research work were discussed in this chapter.

Chapter three discussed data collected and gathered from the field researches that I carried out at places that are case studies for this research work. Amongst others, I collected the data or information rather, through the public gatherings from some of the affected villages in Polihali and Kao, direct interviews with some villagers and the community officer Liaison for the projects. From this collection, I then embarked on a general critical analysis of the business conduct against their obligations and duties as entailed in the Guiding principles of the United Nations on Business and Human Rights.

Chapter four is the present chapter that seeks to focus solely on conclusions from the study as well as making recommendations. Having conducted a study out of the above mentioned research topic, I now come to the following conclusion;

Generally, the Guiding Principles on Business and Human Rights haven't really been ingrained for knowledge by both the business enterprises carrying this corporate conduct in Lesotho and the members of the community as well. This came to light in a direct question as to whether they are aware of this particular legislation of the United Nations. Consequently, the three most primary and the ground breaking rights entailed therein; "Respect, Remedy" principles remain unknown to both stakeholders, this therefore means an inevitable violation of the rights of community members while advancing the corporate conduct.

Equally important, there is at least a little understanding of the human rights and the labour laws amongst the members of communities. This is important because the violations that happen in these places directly and indirectly affect the human rights of communities and the labour laws come into play when the workers of the construction companies in these places go months without pay and silenced upon protests through court orders, and some dismissed from their employment for "allegedly" inciting violence against the companies, this attracts labour issues on substantial unfairness for these unwarranted dismissals. Another critical conclusion from this study is the issue of compensation policies and their implementation, the compensation rates are painfully low in the sense that fields of certain people have been taken and in turn given M10.00 compensation. The distribution of the compensation is also not transparent in that some people get compensated, which is not the case with other affected people.

The issue of police brutality is also at stake here. There is a practice of those in power of authority to silence the people who fight for their rights through deploying of the police, who then use excessive force to ironically bring "peaceful protesters" to order. This brutality has even led fatalities, notably in the Kao Area and some members of the community sustaining really serious injuries.

4.4 RECOMMENDATIONS,

For a transparent balance between the corporate conduct that is responsible and the good governance standards, I therefore make the following recommendations;

-The government of Lesotho through the relevant ministry, ought to endorse in its domestic law, the United Nations Guiding principles on Human Rights and

Business, this will in turn hold business enterprises accountable in case of violation of the people's rights that are vulnerable to such violations.

-The government of Lesotho should also provide dispute resolution mechanisms such that, in case of disputes and conflicts between the business enterprises and communities, there is a harmonious resolution of the conflict, this would ensure that there are no fatalities or injuries sustained by the communities.

- There is a needed strong advocacy by the Government, and the Non-Governmental Organisations on Human Rights and the labour laws information disseminated to communities. This would ensure that people are well equipped with knowledge and their rights that are at stake whenever such business endeavours are carried out in their communities.

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