OPERA IN PRACTICE: THE RIGHT TO HEALTH OF MINERS AND EX-MINERS IN BOTSWANA

This brief case study examines the use of OPERA, CESR's monitoring framework, to assess the right to health of miners and ex-miners in Botswana. It is part of a series of case studies produced by CESR to share insights and learning from the use of OPERA in a variety of contexts and settings.

ECONOMIC AND SOCIAL RIGHTS MONITORING

Since the discovery of diamonds in the 1960s, mineral and resource extraction has made Botswana one of the wealthiest countries in Africa. Despite this, Botswana continues to be a deeply unequal country—with more than 16% of people living in poverty. Miners and ex-miners driving the economy of Botswana face occupational risks and poor living conditions.

CESR partnered with the Botswana Labour Migrants Association (BoLAMA) and Northwestern Pritzker School of Law Center for International Human Rights to research the critical health issues that miners and ex-miners face. The result of this two-year collaboration was a report, published in 2020, illuminating various health risks and consequences faced by miners and ex-miners. BoLAMA has used the research findings to promote legislative reforms and encourage policymakers to consider mine workers and ex-miners' right to health more consistently and proactively in their decisions and actions.

Guided by OPERA throughout the research, the project team adopted a mixed-method research approach. This included extensive desk research, as well as conducting interviews and focus group discussions with more than 50 miners, ex-miners, family and community members, doctors and nurses, and government and industry officials in Botswana. Drawing together personal stories and testimonies—accompanied by socioeconomic statistics and other relevant information—we identified several critical issues depriving miners and ex-miners of their right to health.

Assessing outcomes

The research aimed to put miners' and ex-miners' own voices and experiences at the centre of the analysis of the structural problems they face in realizing their rights. The right to health was regarded as a fundamental human rights issue that needed to be addressed in its various dimensions. This included occupational risks of injury, disease, and poor mental health.

What were we trying to measure? To get a clear picture of the health status of miners and ex-miners in Botswana, the project team focused on these human rights norms:

- **Minimum core obligations:** Are mine workers and ex-miners in Botswana able to enjoy basic levels of the right to health?
- **Non-discrimination:** Are health outcomes worse for miners and ex-miners compared to the general population?

How did we measure? To evaluate health rights outcomes, the project team analyzed indicators (tuberculosis prevalence rates; HIV prevalence rates; mental health rates;

wage rates). They compared data on overall levels rates in the country to determine whether there were significant differences between miners, ex-miners, and communities from the general population, and also looked at trends in the data over time.

What did we find? The data on the right to health for mine workers and ex-miners showed that overall levels of realization were deficient, that there were marked disparities in outcomes, and that health outcomes for miners and ex-miners in Botswana are deteriorating.

In 2013, the national HIV prevalence rate in Botswana was 18.55%. The rate in mining hospitals in some parts of the country was almost double that. For example, in Selebi-Phikwe and Francistown, it was 27.5% and 24.3%, respectively. By comparison, in 2016 the highest national HIV prevalence rate in the world was 27.3%. Tuberculosis prevalence in Botswana was 383 per 100,000 people in 2013. The rate in mining hospitals was almost double, at 741 per 100,000 people. This is higher than any country in the world during the same year. In 2016 and 2018 the number of people treated for tuberculosis in Botswana mining hospitals doubled to approximately 1,200 per 100,000 people. a prevalence rate of 42.3% for symptoms of depression. According to WHO estimates, 75 – 85% of individuals in need of mental health treatment fail to receive any in lower-middle income countries such as Kenya. From this, we estimated that approximately 8.5 million people in Kenya were not receiving the care they need.

Assessing policy efforts

The right to health is recognized in treaties of the United Nations and the African Union. Botswana ratified the African Charter on Human and People's Rights in 1986, thereby committing to create policies that ensure everyone in their population – including miners and ex-miners-receive adequate access to health services they needed. We scrutinized Botswana's constitution, enacted laws, and policies to determine whether or not they had taken sufficient steps to meet this obligation.

What were we trying to measure? To fully assess Botswana's compliance with its human rights obligations, we evaluated the legal and policy efforts taken by the government against three norms:

- **Obligation to take steps:** Has the government enacted legislative, administrative, and programmatic measures to ensure miners can realize their right to health? These steps must demonstrate deliberate, concrete, and targeted efforts.
- **AAAAQ criteria:** Have the steps taken led to health right access that meet standards of availability, accessibility, acceptability, and adequate quality?
- **Participation, transparency, accountability, and right to a remedy:** Have the steps taken been implemented with the active participation of the miners? Are they able to access the relevant information they need to exercise this right and seek remedy in cases of abuse or violation?

How did we measure? We looked at the international treaties, legal commitments, and government policies that Botswana made, as well as its economic and social rights programs. We then considered indicators on the kinds of goods and services made available through these policies and programs. We identified indicators that could show different healthcare services available for miners and ex-miners, as well as their quality. For example, we gathered data on the number and location of health care facilities, the staff, and services available at health care facilities.

What did we find? Although Botswana ratified the African Charter on Human and People's Rights, the country does not have clear and concrete legislation, policies, and programming to protect miners' and ex-miners' rights to health. These fail to meet mining and health industry best practices at the international, regional, and national levels. For example, the Botswana constitution does not include a provision on the right to health.

Prevalence of occupational health risks due to the absence of clear and concrete national legislation, policy and guidelines undermines miners' and ex-miners' ability to enjoy their right to health as they are exposed to physical and mental health risks and malfunctioning safety mechanisms, resulting in multiple respiratory diseases. At the same time, it can also harm miners' ability to promptly collect their rightful compensation for workplace injuries, accidents, and illness.
The failure of the government of Botswana to implement, regulate and enforce legislations and policies meant that mining companies could interfere in miners' health care. For example, mine companies' can pressure doctors to change their medical assessments of miners, either to limit corporate liability for worker's compensation or to deem unhealthy miners "fit for duty" to keep production rates up. Cooperate interference and inadequate implementation of legislatives significantly reduces the quality of health care miners receive in mine hospitals and leads to poor health among miners and ex-miners.

Healthcare services are scarce both in the mining hospitals and in public hospitals in Botswana. Only three hospitals operated by mine companies existed in 2016. Necessary healthcare services (including mental healthcare) were inaccessible or unavailable. In particular, there is a shortage of mental health professionals. Botswana only has 18 mental health practitioners per 100,000 people, with 0.29 psychiatrists and 0.37 psychologists per 100,000 people in Botswana.

Further, there was a significant lack of meaningful

opportunities for mine workers and ex-miners to participate in decision-making about their right to health. At the same time, miners are unable to access the relevant information they need to exercise their health right and to seek remedy in cases of abuse or violation in the mines and in mining hospitals.

Assessing resources

The government of Botswana has an obligation to equitably generate, allocate and spend revenue to finance the infrastructure, goods and services required to realize the right to health. In assessing this obligation, it was crucial to examine how resources were generated and allocated and the mechanisms that drove those processes.

What were we trying to measure? To determine whether Botswana had moved to progressively realize the health rights of miners and ex-miners in the country according to its 'maximum available resources', we measured:

- Planned and actual resource allocation for relevant health programs: How much budget does Botswana allocate to health?
- The methods by which Botswana generated its resources: What have been the government's main sources of revenue?
- Levels of transparency, participation by civil society, and accountability: Are budgetary processes open to public scrutiny and input?

How did we measure? To understand allocation patterns, we examined budgetary data and calculated spending ratios on public health services. We also used the government's Abuja Declaration commitment as a benchmark for judging its allocations over time.

What did we find? Although Botswana has experienced a slow increase in its health expenditure over the years, it is ranked below the average health expenditure among upper-middle-income countries. Its public expenditure is below the Abuja Declaration target of 15% of general government expenditures for health.

A key source of revenue for the government of Botswana is taxation on the extractive industry. However, taxation on mine companies has not been collected in the most progressive manner possible, due to poor enforcement of existing corporate tax laws. As a result, mine companies are able to avoid taxation. Other minerals are not priced based on independent benchmarks, hence some mining companies make sales without regulation or oversight.

The government of Botswana fails to allocate its funds equitably, leaves the government unable to implement its statutory and regulatory duties, including conducting health and safety inspections of mining operations. Concerning budget transparency and participation, Botswana receives low marks for both. For example, a lack of publicly available and accessible information about the budget's process and content make it difficult to determine whether adequate allocations have been made to serve miners and their communities.

Assessment

We analyzed other contextual issues impacting miners', ex-miners', and communities' ability to claim and enjoy their right to health and the Botswana government's capacity to meet it.

What were we trying to measure? In assessing the social, economic, and political context in Botswana, we considered:

- **Contextual factors that limit the enjoyment of the right:** What other factors may be inhibiting miners from enjoying their rights?
- **Constraints placed on the government:** How do the acts or omissions of third parties or structural dysfunctions impact the state's ability to fulfill the right to health?

How did we measure? We relied on focus group discussions and key informant interviews with stakeholders, including-miners, ex-miners, their family members, government officials, health care workers and others. This was supplemented by extensive desk-based legal and social science research, including reviewing existing scholarship.

What did we find? In Botswana the environmental laws and regulations for mining operations are too narrow in scope, and inconsistent with best practices at international, regional and national levels and fail to meet industry standards. It does not account for the impact mines have on occupational and community health since mine companies are not legally required to assess and account for the ways their operations affect the health of miners and ex-miners including respiratory illness.
Notably, housing insecurity among miners and ex-miners increases respiratory illness, mental health and spreading of infectious diseases when sheltering with others. The disruptions of indigenous lifestyles, traditions, and culture caused by mining also increased mental health problems for miners, ex-miners and their communities.

Conclusions and lessons learned

Drawing on OPERA, the report pinpointed key areas that need to be strengthened by the government to fulfil the right to health of miners and ex-miners. We observed that although the government of Botswana has taken many steps to mobilize resources to improve the health of citizens,

numerous deficiencies remain. These include corporate tax evasion and abuse, as well as lack of transparency concerning budgeting. In line with this, increased participation of mine workers and ex-miners in decision-making and policy formulation is a necessity and should be prioritized by the government and mining companies.

Our OPERA framework indicated that the government should increase the health budget, including allocating additional health funds towards mental health. This can be done by raising revenue through progressive taxation.

Our overall assessment concluded that the actions of the Botswana government might amount to a retrogression in the enjoyment of fundamental health rights for mine workers and ex-miners. Both the government of Botswana and the mining industry are failing to generate, allocate and spend sufficient resources to realize the right to health of miners, ex-miners, and their communities. OPERA revealed that significant legislative and operational deficiencies can harm miners' ability to promptly collect their rightful compensation for workplace injuries, accidents, and illness. The government should reform its constitution, laws and policies which are either outdated, inconsistent or too narrow to meet the industrial standards of the mining industry regulated internationally, regionally, and nationally regarding miners' and ex-miners' right to health.

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