

THE IMPACT AND ASSESSMENT OF IMPROPER MINE CLOSURES IN SOUTH AFRICA: COMMUNITY PERSPECTIVES ON HUMAN RIGHTS

By Lawyers for Human Rights
with support from Rosa Luxemburg Stiftung

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Cover Photo: Limpopo Province, on the way to Twickenham mine

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I. ACKNOWLEDGEMENTS

Lawyers for Human Rights ('LHR') is an independent, non-profit organisation with a 43-year track record of human rights activism and public interest litigation in South Africa. LHR uses the law as a positive instrument for change in order to deepen the democratisation of South African society. LHR's Environmental Rights Programme focuses on environmental justice for marginalised communities and individuals. It seeks to promote and enforce the constitutional environmental right, as well as a just distribution of environmental benefits and burdens in our society more generally. The programme seeks to counter the fundamental injustice that communities living in poverty frequently experience, in bearing the burdens associated with development: environmental degradation, negative socio-economic impacts, and limited ability to participate meaningfully in the decisions that affect their well-being.

This programme further aims to contribute to the realisation of rights through public interest litigation, policy advocacy, and education and support for community coalition-building to promote meaningful participation by disempowered parties in decisions related to development. The programme's strategic interventions reflect the close connection between environmental and other socio-economic rights, and is guided in this by the communities it serves.

The Rosa Luxemburg Stiftung (foundation) is one of the six major political foundations in the Federal Republic of Germany, tasked primarily with conducting political education both at home and abroad. Since its founding in 1990, the foundation's work has adhered to the legacy of its namesake, German socialist leader Rosa Luxemburg, and seeks to represent democratic socialism with an unwavering internationalist focus. Rosa Luxemburg Stiftung is an internationally operating, progressive non-profit institution for civic education and the representation of democratic socialism and has been active in Southern Africa since 2002.

The foundation is committed to radical perspectives, emphasising public awareness, enlightenment, and social critique. It stands in tradition of the workers' and women's movements, as well as anti-fascism and anti-racism. To this end, it facilitates platforms which promote civic participation, critical thinking, research, and dialogue.

REPORT AUTHORS AND CONTRIBUTORS

This report was researched, written, and produced by LHR's Environmental Rights Programme. The report was researched and written by Mametlwe Sebei and Zaki Mamdoo. Further contributions to this report were made by Charné Tracey, Jessica Lawrence, Madhavi Narayanan, and Arshi Salahuddin.

The early research team also included Robin Lenahan who co-facilitated and recorded most of the consultations with communities and Michael Clements who supervised the project, as the former manager of the Environmental Rights Programme.

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LHR remains committed to pursuing systematic remedies to rights violations through strategic litigation, research and advocacy, and policy and law reform efforts in South Africa, which together promote the values of an open and democratic society.

II. ACRONYMS

Atmospheric Pollution Prevention Act	Atmospheric Pollution Prevention Act 45 of 1965
DMRE	Department of Mineral Resources and Energy
EA	Environmental Assessment
EAP	Environmental Assessment Practitioner
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
HAD	Housing Development Agency
LHR	Lawyers for Human Rights
MACUA	Mining-affected Communities United in Action
MEJCON	Mining and Environmental Justice Community Network of South Africa
Minerals Act	Minerals Act 50 of 1991
Mines and Works Act	Mines and Works Act 27 of 1956
MPRDA	Mineral and Petroleum Resources Development Act 28 of 2002
MPRDA Amendment Act	Mineral and Petroleum Resources Development Amendment Act 49 of 2008
NEMA	National Environmental Management Act 107 of 1998
SLP	Social and Labour Plan
WAMUA	Women Affected by Mining United in Action
WENLA	Witwatersrand Native Labour Association

III. EXECUTIVE SUMMARY

For a century and half, the unique geological formation of the land that today makes up the Republic of South Africa has been a treasure trove for the country and the world. The rapid economic and political development of the country from precolonial farming societies to colonies to a modern industrial state was linked, and driven mainly, by the mining industry. Understanding South Africa's modern-day society is dependent on understanding the legacy of mining which has so profoundly shaped the country.

This legacy is intertwined with exploitation and extraction not just of the land, but of the labour of its people. Stories of colonial subjugation, mass community land dispossession, poverty wages of black migrant labourers, and racist segregation against the black majority have historically both stemmed from and contributed to the mining industry. These stories continue to have an impact on both the environmental and socio-economic rights of mining-affected communities. Specifically, the spatial planning and landscape set up by apartheid era policies ensure that the worst effects of mining and mine closure are felt by poor black communities across the country.

This report seeks to trace the evolution of this legacy 28 years after the dismantlement of apartheid. To answer two pertinent questions: 1) In what direction is South Africa travelling in redefining this relationship between mining and black communities? 2) And what stage of this journey are we passing through? To answer these questions, LHR travelled the length and breadth of the mining community landscape, to consult and engage with communities and their civic organisations on their experiences of mining today, with a focus on mine closures. The state and impacts of mine closures were chosen because they shed a light and insight into the nature of the relationship between mining industry and black communities in the post-apartheid period. To put it differently, the impacts of mine closures allows us to assess the true legacy of mining projects, and industry on community development, not in words of promises or glowing corporate reports, but lived reality and experiences of communities left behind, after mining corporations are long gone.

Stories of community members, of activists, of migrant workers in mining-affected communities today shed light on the massive corporate and state failures to provide development and justice. The report seeks to document these accounts and communities' concerns as well as to contribute to the discourse on just transitions for mining-affected communities.

Since the inception, the environmental and community impacts of mining, particularly to public health, safety, and employment have been one of the biggest concerns of the national discourse in South Africa. These concerns originated legally in the nuisance doctrine, which obligated mining companies to conduct operations with due diligence and allowed ordinary people to protect themselves from and seek remedies for actions of mining corporations.

Under public pressure, the British colonial governments in the Cape, Natal, and Boer Republics passed regulations to manage mining waste. In 1956, the South African government tightened regulations on tailing dams and for the first time mandated mine closure requirements through the Mines and Works Act. Minerals Act 50 of 1991 was a further milestone in the development of the legal framework on rehabilitation and mine closure. These legal developments culminated in the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA).

The MPRDA represented a historic turning point because it was the first comprehensive legislative intervention in mining regulation following the end of apartheid. Provisions for the closure of mines in the MPRDA Regulations, along with those provided for in the National Environmental

Management Act 107 of 1998 (NEMA) Regulations, were meant to give effect to section 24 of the Constitution, which affords everyone the right to an environment that is not harmful to their health or well-being. NEMA entrenched the polluters pay and perpetual liability principles. In the 21st century, the Mining Charter was passed, eventually mandating empowerment and participation of historically disadvantaged groups within the decisions of the mining companies.

Despite this long history of mining regulation, South Africa has an extremely high number of abandoned and derelict mines. As figures, and testimonies documented here shows, this disastrous situation is only getting worse. Mines that are not properly closed cause a whole spectrum of issues for communities living nearby. Although regulatory requirements such as EMPs (Environmental Management Programmes) and SLPs (Social and Labour Plans) are supposed to ensure that mining companies plan and implement mine closures properly, the historical power and influence of mining corporations has allowed them to abandon mines and commitments to mining communities on a large scale. Although companies claim that they are focused on building and meeting the needs of the community when they advocate for a mining development project, they have historically shown that they pursue profit before social good.

The continuation of mine abandonment by mining companies is mainly due to continuing state neglect and corporate impunity. Instead of formally closing the mine, many mining companies suspend operations under the guise of temporary care and maintenance and keep renewing the temporary suspension indefinitely. Other mines are sold to small companies who do not have the resources to ensure that mine closure is implemented responsibly.

Mine closure requires proper planning throughout the lifecycle of the mine, not just towards the end of a mine's lifespan. The failures of mine closures despite formal processes prescribing various legislative requirements creates environmental, economic, and social issues for mining-affected communities. Our engagements with activists, community organisations, and members of mining-affected communities in the process of creating this report have uncovered several clear reasons as to why ineffective mine closure has become a defining characteristic of the industry in South Africa: 1) lack of recognition of communities as stakeholders, 2) political power and influence of mining corporations, 3) lack of free, prior, and informed consent, and 4) poor planning and implementation of mine closures.

Closure plans should reflect how communities see themselves post-mining, both from an environmental and a socio-economic perspective. But lack of meaningful consultations makes this an elusive goal. Generally, these consultations occur only after protests by community members and supporting organisations. Even where they are done, the mining companies or government entities engage half-heartedly for the purpose of fulfilling the requirement, or bribe community and traditional leaders to speak on behalf of the community in their favour. This is in sharp contrast with the principle of free, prior, and informed consent that mining communities desire in order to decide freely on a project before it begins. Community members stated that mining companies do not possess the necessary prudence, concern, and foresight to design appropriate closure plans, and yet do not allow for community input.

*'People's consent is very important so that [even] when the mine closes down they can determine their own way of economic development.'*¹

Lack of effective community consultations continues during the implementation stage of mine closure. Communities are not given the opportunity to enforce closure obligations, and where they

¹ Online interview with Meshack Mbangula, MACUA, 15 April 2021.

take it upon themselves to monitor and report on these obligations, they are dismissed, and sometimes even violently suppressed, by government authorities.

However, the government's enforcement authority, the Department of Mineral Resources and Energy (DMRE), has ineffective monitoring and enforcement systems and fails to perform a necessary oversight and monitoring function. Citing capacity issues, DMRE effectively allows

*'[i]n theory some aspects of these things exist in parts of different legislation and policies and guides but none of it is really implemented. Fundamentally, mining communities are excluded from being able to shape any of these things and of course, women are mostly excluded.'*²

companies to not comply with environmental and socio-economic expectations and agreements. The ensuing environmental, social, and economic impacts are often interconnected, causing harm to majority black and poor communities.

When mines are abandoned, their tailing dumps are generally left full of chemically toxic and radioactive materials. Poor maintenance of these tailings leads to air and water pollution, severely impacting the safety and health of nearby communities. Local settlements become

hazardous areas for children to play in as there are polluted lakes, unguarded mine pits, sinkholes, and quicksand.

Non-compliance with SLPs and closure plans creates massive economic issues in mining-affected communities. The local economy, which is typically centred around mining, is rapidly dismantled and former mine workers face crippling unemployment. Where workers leave the area, sudden population decline negatively affects both businesses and services that were developed to cater for large numbers of migrant labourers. The impacts are especially harsh on women and migrant workers who have settled their family in the area, as they are stuck in a "ghost town" without infrastructure or investment opportunities. Community members cannot return to pre-mining livelihoods due to the environmental and economic impact of the mine in the area. Mining companies fail to properly reskill workers, leaving them hoping that the mines will reopen.

Social issues, too, are created or exacerbated by ineffective mine closure. Tensions between migrant workers and local communities intensify with economic pressure, and the resulting structural, physical, and psychological violence disproportionately impacts women. Activists and community members also point to increases in crime, substance abuse, interpersonal violence, and family separation after mine closures.

Specifically, the economic collapse from mine closure creates a vicious cycle of crime and underdevelopment. Mining-affected communities report widespread addiction to substances, particularly alcohol and nyaope, and in some cases a proliferation of taverns follows. Mine closure also often leads to suspension of public services such as clinics and preschools, as mining companies pay for or subsidize these services. This increases economic despair and encourages crime.

'They (the mine) took people's land, they gave them limited compensation for a few months instead of a farm that could sustain them for the rest of their lives.'

– Sepadi Thobejane – Limpopo – Twickenham Mine

Many impacted communities want to be included in the processes of rehabilitation and closure. In order to facilitate a just transition for the mining-affected community, it is necessary to establish

² Ibid.

alternate economies. The key example that activists and community members support is the legalisation of artisanal mining. Although unsafe if unregulated, artisanal mining can be a valuable tool for community growth, participation, and ownership with the help and support of the industry and government. Artisanal mining also presents an opportunity for women to be recognised in small-scale mining sector.

Beyond mining, communities call on the government and mining companies to create jobs in a diversified, and robust green local economies, to prepare and allow for just transitioning to sustainable and prosperous post-mining communities. While these economies grow, corporations should bear the costs of community education and skill-building. These companies have long been making promises to uplift mining communities in a socially and economically, meaningful ways; communities expect mining corporations to uphold these promises through effective mine closures and robust, sustainable post-mining communities.

RECOMMENDATIONS

To the Department of Mineral Resources and Energy (DMRE)

- Ensure the rehabilitation of closed mines and develop and implement a programme for the rehabilitation of derelict and ownerless mines in line with regulatory requirements.
- Pursue and hold companies liable that fail to comply with the MPRDA and NEMA Regulations or other applicable legislation in so far as it relates to improper mine closure.
- Finalise the Draft National Mine Closure Strategy.
- Amend the MPRDA or other applicable legislation to include communities' right to Free, Prior and Informed Consent.
- Enact the Artisanal and Small-Scale Mining Policy and/or implement Regulations pertaining to the regulation of Artisanal Mining.

To the South African Government

- As mining-affected communities disproportionately carry the socio-economic and environmental burdens of mine closures, the South African government ought to ensure the re-skilling of current or former mine workers so they can be employed in the rehabilitation of mines and/or work with government to ensure the monitoring and enforcement of EMPs and closure plans.

IV. INTRODUCTION

South Africa's varied geological landscape has created an unparalleled concentration of the world's most diverse mineral wealth. The Witwatersrand Basin alone is credited as the source of close to one-quarter of the world's stock of gold and the country possesses 80 per cent of the world's platinum group metal reserves.³ South Africa also produces diamond carats, tons of copper, iron ore, and other minerals. In many ways the history of South Africa is the history of the mining industry.

Even during the Iron Age, people in South Africa were mining copper, iron ore, gold, and other minerals.⁴ Rich collections of gold and other mineral artefacts of the ancient Kingdom of Mapungubwe were traded with China, India, and Egypt.⁵ Evidence of these found in ruins indicates a highly developed pre-colonial society with a sophisticated mining industry and metallurgical technology.

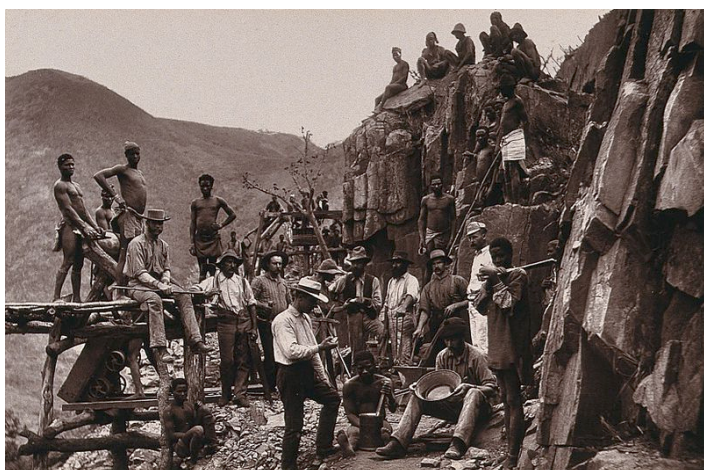


Figure 1: De Kaap Gold Fields, South Africa: miners of the Republic Go. This file comes from Wellcome Images, a website operated by Wellcome Trust, a global charitable foundation based in the United Kingdom. Credit: Wellcome Library, London. Wellcome Images.

Diamond mining in the Northern Cape in the 1860s and gold mining industry in the 1870s heralded a mineral revolution that fundamentally altered the social and economic landscape of South Africa. The country transformed from a peasant white settler and indigenous pastoral economy to a modern industrial mining economy.⁶ The historic origins of the modern South African economy in the mining industry shaped the course of the country's economic, social, and political development. Understanding South Africa's modern-day society is dependent on understanding this legacy.

Colonial Legacy of the Mining Industry

The introduction of colonialism in South Africa ushered in an era of massive mineral plundering. Extracting resources from South Africa's vast, mineral-rich landscape and deep underground mines required massive capital investment, land dispossession, and indigenous slavery. Indentured Asian slaves were brought to South Africa to supplement indigenous labour in mines and farms. The

³ RF Tucker, RP Viljoen & MJ Viljoen, 'A review of the Witwatersrand Basin – The World's Greatest Goldfield' 39 *Episodes IUGS* (2016), 105, 129-130; Department of Mineral Resources, *South Africa's Mineral Industry 2014/2015* (2016) 24 <<https://www.dmr.gov.za/LinkClick.aspx?fileticket=z2XyeVTH7RE%3D&portalid=0>>.

⁴ A Hammel, C White, S Pfeiffer & D Miller 'Pre-colonial mining in southern Africa' (2000) 100 *The Journal of the South African Institute of Mining and Metallurgy* 49, 50 <<https://www.saimm.co.za/Journal/v100n01p049.pdf>>.

⁵ The Kingdom of Mapungubwe was a medieval state in South Africa located at the confluence of the Shashe and Limpopo rivers, south of Great Zimbabwe, a medieval city in the south-eastern hills of Zimbabwe near Lake Mutirikwi and the town of Masvingo. Maphorogo Alusani Adzifheli Emmanuel, *A Remediation and Sustainable Rehabilitation Strategy for Manuel Street Park, Johannesburg Gauteng: Microbial Treatment, Landscaping and Public Needs Assessment* Dissertation (2015) <https://uir.unisa.ac.za/bitstream/handle/10500/19889/dissertation_maphorogo_aae.pdf?sequence=1&isAllowed=y>.

⁶ S Malherbe, 'A Perspective on the South African Mining Industry in the 21st Century' (2000) <<https://static.pmg.org.za/docs/segal.pdf>>.

historic foundations of the mining industry are intertwined with the legacy of colonial subjugation, mass community evictions, a cheap black migrant labour system, and racist segregation against the black majority.⁷

Deep underground mining practices required massive capital investment that created a highly concentrated, monopolistic South African economy. Large mining monopolies moulded the whole country to fit their economic and political requirements. Every sector of the economy developed around the needs of the mining industry. This created what Rumstomjee and Fine call a ‘mineral-energy complex,’ which continues to dominate the economy.⁸ Secondary industries such as the manufacturing of iron and steel, transportation, and power generation were developed primarily to serve the needs of the mining and finance industries.

Cheap Migrant Labour, Land Dispossession, and Apartheid Regime

Racism and the apartheid system were colonial tools to further conquest, land dispossession, and working-class black slavery. The oppressive colonial state apparatus enacted laws that dispossessed indigenous people of their land, created segregated labour reserves, and regulated the settlement and movement of the black majority. The laws were calculated to force the black majority off their land and enslave them as cheap migrants in the mines, thereby disenfranchising and depriving black communities of their basic human rights.⁹

For example, colonial authorities introduced dompass, an apartheid-era identification document used to regulate the settlement and movement of black people. Within and near mines, male-only labourers’ compounds and segregated black townships and homelands rendered it impossible for workers to settle permanently in urban areas and claim political rights. These practices also separated them from their families in order to pay them well below what it would cost to raise a family.¹⁰ Racism, apartheid segregation, and oppression of the black majority were essential strategies of big mining corporations aiming to develop highly lucrative and profitable deep-underground mining. Both the history and present reality of mining-affected communities across the country epitomise these cruel realities of the mining industry.

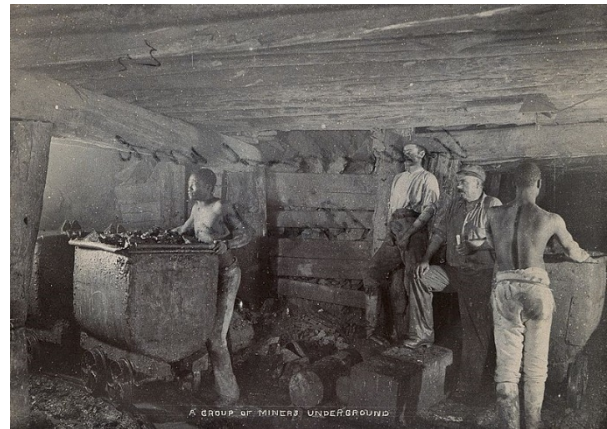


Figure 2: a group of miners working underground at De Beers diamond mine. Photograph by J.E.M., 1896. This file comes from Wellcome Images, a website operated by Wellcome Trust, a global charitable foundation based in the United Kingdom. Credit: Wellcome Library

For instance, the demographic landscape that evolved from apartheid spatial planning remains largely unchanged and has created crucial environmental and social challenges in mining-affected communities, especially during mine closures. Effective rehabilitation of mines is a question of life or death for many black working-class communities because they were historically deliberately located in the direction of the wind.¹¹ These communities are impacted by blowing toxic dust from

⁷ ZZR Rustomjee ‘The political economy of South African Industrialisation- The Role of the Minerals-Energy Complex’ (2017) 3–4, 34–43.

⁸ Ibid.

⁹ CH Feinstein, *An Economic History of South Africa: Conquest, Discrimination, and Development* (2005) 63–64.

¹⁰ Ibid, 64.

¹¹ Bench Marks Foundation, Soweto Report “‘Waiting to Inhale” A survey of household health in four mine-affected communities’ (2021), xvii <https://www.bench-marks.org.za/wp-content/uploads/2021/02/policy_gap_12.pdf>.

the mine dumps onto the black settlements, children playing in the abandoned mine dumps, contaminated water, unsealed pits, and organised criminality and violence associated with illicit trading on minerals among other harms.¹² On the other hand, many white counterparts were shielded against many of these harms. The racial disparity in harm from mining is blatantly clear in the country's oldest mining towns like Johannesburg, where black communities are disproportionately affected by mine closures, derelictions, and abandonment.¹³

Though the end of the apartheid regime brought about substantial changes in the legislative framework and lives of the ordinary people, the mining industry has nonetheless retained some disturbing features of the past. 28 years into democracy, the exploitation of migrant labour through poverty wages, poor health and safety standards, and denial of mineworkers' rights unfortunately continues to underlie the foundation of the mining industry.

These brutal realities found their sharpest expression in the present economic crisis which has accelerated the decline of gold mining. Gold mining reached its peak in the 1970s with the output from Witwatersrand's 53 operating mines reaching a phenomenal 1 147 tons per year. In 1981, demand for gold began to decline following the oil, currency, and commodity price crises. The decline continued and accelerated dramatically in the late 1980s.¹⁴ By January 2015, the gold index was 48,4, well below 359,0 in 1980. To put that into perspective, gold mining in January 2015 was 87 per cent less than 1980.¹⁵

Whereas initially this decline was compensated for by increased platinum group metal mining, over time this industry proved to be extremely volatile.¹⁶ Volatility in the market and falling commodities prices due to oversupply in recent past led to over 80 per cent of the industry reporting losses a few years ago.¹⁷ Following this, many companies scaled down their operations, closed mines, and fired massive numbers of employees while completely neglecting Environmental Management Plan (EMP) and Social and Labour Plan (SLP) obligations to communities.

The 'abandonment' of approximately 6 100 mines without proper closing plans to ensure rehabilitation of the environment and of mining-affected communities mirrors the colonial attitude.¹⁸ Corporate indifference and state neglect have failed to uphold corporate responsibilities, leading to increasing social anger by mining-affected communities.

This report seeks to document these corporate and state failures and communities' concerns as well as to contribute to the discourse on building alternative solutions. We therefore aim to:

- Highlight the scope of the problem of improper mine closure by exposing the pattern of improper mine closure and documenting the impacts of these closures on mining-affected communities

¹² Ibid.

¹³ O Balch, 'Radioactive city: how Johannesburg's townships are paying for its mining past' *The Guardian* (6 July 2015) <<https://www.theguardian.com/cities/2015/jul/06/radioactive-city-how-johannesburgs-townships-are-paying-for-its-mining-past>>.

¹⁴ Rustumjee (note 7 above) 22–28.

¹⁵ Editor, 'The stunning collapse of gold production in south Africa' *MiningDotCom* (12 March 2015) <<https://www.mining.com/the-stunning-collapse-of-gold-production-in-south-africa/>>.

¹⁶ 'PGM sales surge due to higher prices' *Statistics South Africa* (13 April 2021) <<https://www.statssa.gov.za/?p=14225>>.

¹⁷ 'South Africa's platinum industry 'extremely ill' - Lonmin CEO' *Reuters* (27 August 2015) <<https://www.reuters.com/article/uk-safrica-mining-lonmin-idUKKCN0QW2FE20150827>>.

¹⁸ Auditor-General South Africa 'Follow-up Performance Audit at the department of Mineral Resources and Energy on the rehabilitation of derelict and ownerless mines' (2021) 17 <<https://www.agsa.co.za/Portals/0/Reports/Special%20Reports/2021/Follow-up%20performance%20audit%20at%20the%20Department%20of%20Mineral%20Resources%20and%20Energy.pdf?ver=2022-03-31-100727-587>>.

- Explain and analyse the domestic legal and policy frameworks on mine closures
- Provide a platform for community voices, experiences, and perspectives on mine closures and related topics such as environmental degradation, socio-economic impacts, and just social transitions
- Develop a set of human rights-based principles to guide mine closures based on the experiences of mining-affected communities
- Bolster environmental justice advocacy supporting communities who face past, ongoing, and future mine closures
- Offer research-based policy recommendations to support civil society engagements with the state and mining corporations, both within and beyond South Africa

V. METHOD

This report is based on qualitative research on the reality of communities' struggles for mining justice in South Africa. Qualitative research allows a holistic study of community experiences, struggles, and movements without resorting to statistical procedures or other means of quantification.¹⁹ As a point of departure, this report will detail human rights violations as experienced by communities in the context of mine closures, as well as their perspectives on and alternatives to these violations.

The main source of data for this report comes from consultations on the lived realities of communities and their civics at local and national levels such as Mining Affected Communities United in Action (MACUA), Sekhukhune Combined Mining Affected Communities (SCMAC), and the Mining and Environmental Justice Community Network of South Africa (MEJCON) with community members and supporting organisations. More than 300 consultations were conducted between March 2020 and July 2021 in Limpopo, Mpumalanga, Gauteng, Free State, North West, and Northern Cape provinces. During consultation meetings, answering questionnaires were also circulated. To supplement these experiences, we rely on existing literature and research reports as well as experiences of own previous research and legal work on the subjects covered in the report.

The design of the research is both descriptive and explanatory in nature. We seek to illustrate the issues facing mining communities affected by closures as well as to provide human rights-based legal and social analyses on the causes of and potential solutions to these issues.

This report is ethnographic in nature and comprises of participatory research by Lawyers for Human Rights that actively engages in the struggles of the research participants.



Figure 3: Consultation with Twickenham mine-affected community in Limpopo

¹⁹ A Strauss & JM Corbin, *Basics of qualitative research: Grounded theory procedures and techniques* (1990).

VI. LITERATURE REVIEW: STATE OF MINE CLOSURES

Despite its long history of regulation on mining waste and mine closure, South Africa has an extremely high number of abandoned and derelict mines. Only a few closed mines have been granted closure certificates certifying compliance with regulations such as land rehabilitation and adequate waste management.²⁰ The continuation of mine abandonment by mining companies is mainly due to the long history of state neglect and corporate impunity that unfortunately continues to this day.²¹ Mining companies suspend the operation of the mine by placing them under care and maintenance.²² However, this 'temporary' suspension often drags on for years without end before the mine is formally abandoned. In most instances of care and maintenance, the companies formally still owning these mines simply stop adhering to their EMP as a step towards a complete abandonment of the mine.

Closed Mines

The mining industry's accumulating legacy of environmental disaster has forced the legislature to adopt clear measures to enforce proper closure of mines. According to Wits University School of Law Professor Tracy Humby:

*'Mine closure was defined as the process of transforming an active mine into a safe and stable landform that was non-polluting but still providing various economic support activities to new land users. Mine closure occurred at the end of the mining process — the process started with exploration, followed by development, mine operations and finally mine closure. Mine closure included three key steps, namely, decommissioning and rehabilitation, relinquishment (issuing of a mine closure certificate) followed by the management of residual and latent risks.'*²³

The legislative requirements in place to ensure proper mine closure include 1) an integrated closure plan at the start of the mine, 2) regular and progressive rehabilitation throughout the operational phase of the mine, 3) a closure certificate at the end, and 4) adjusted financial provisioning to support the closure and rehabilitation plans.²⁴

Clarification of the legally binding requirements to rehabilitate and close the mines does not seem to have improved the situation as the number of officially closed mines is negligible. This is in sharp contrast to the reality of the vast numbers of abandoned mines due to the current economic crisis and progressive decline of the mining industry.

According to the Department of Mineral Resources and Energy (DMRE), the number of closure certificates issued between 2011 and 2016 amounts to 803.²⁵ 81 per cent of these closure certificates are for small scale mining permits and prospecting rights. Only 27 (three per cent) are

²⁰ I Watson & M Olalde 'State of Mine Closure: What Numbers Say' 119 *Journal of Southern African Institute of Mining and Metallurgy* (2019) 639, 642–643.

²¹ The current regulatory framework that requires closure certificates only came into effect in 2002. Therefore, any mine that closed before 2002 would not have been certified as closed by the DMRE. However, since the introduction of the MPRDA and provisions regulating mine closure, a significant percentage of recently closed mines have not been issued closure certificates due to lack of compliance and regulatory enforcement.

²² See section on Care and Maintenance below.

²³ 'Mine Closure and Rehabilitation: Centre for Environmental Rights briefing' *Parliamentary Monitoring Group* (25 October 2017) <<https://pmg.org.za/committee-meeting/25316/>>.

²⁴ Ibid.

²⁵ Watson & Olalde (note 20 above).

for mining rights.²⁶ This data is telling of only part of this on-going disaster; the number of certificates issued per region is much more instructive.

Although the Western Cape does not host any of the core minerals (gold, coal, diamond, chrome, platinum group metals, etc) and contributes less than one per cent of the national mining GDP, it was issued with 20 of the 27 closure certificates for mining rights. On the other hand, Limpopo and Mpumalanga, which host coal and platinum group metal (PGM) minerals and contribute seven per cent of the national mining GDP were not issued with a single certificate in this period. The Northern Cape, Free State, and Gauteng provinces, which host the oldest operations and mining industries in their twilight years, were issued three, one and zero closure certificates, respectfully.²⁷

Care & Maintenance

The above figures on mine closures clearly show that most of the mining operations that are effectively shutting down end up derelict, undergo insolvency procedures, or are under care and maintenance.

According to the DMRE, a mining operation is placed under care and maintenance when 'it has stopped production for various technical, environmental, financial or labour related reasons, but the holder has not declared their intent to finally close the mine.'²⁸ Under Regulation 16(4) of the NEMA Regulations, an operation cannot be under care and maintenance for a period exceeding five years.²⁹ Following the five-year period, the approval of care and maintenance must be reviewed by the Minister of DMRE.³⁰ Many mining operations are, however, under care and maintenance for a period much longer than 5 years. The mines in Limpopo and the Northwest provinces where a part of our community consultations took place had mostly been under care and maintenance for a period exceeding five years.³¹

A prolonged care and maintenance process is generally used by a mining corporation when it wishes to abandon the mine. During care and maintenance processes, most of the companies start to gradually scale back on the maintenance of the mine facilities, including management of waste facilities and security of the mines. These often lead to explosions, harming informal or artisanal miners known as Zama-Zamas, who typically strip the mine's infrastructure of metals of any remaining value. Mining companies often use this as an excuse to completely abdicate their responsibilities despite not having formally closed the mine.³²

Derelict & Ownerless Mines

Although the term is widely used in both academic and legal literature, a 'derelict and ownerless mine' is not defined in law. The term is used to describe the vast swathe of mines that are no longer operated by any holder of the mining right. Former owners have abandoned them and are not

²⁶ The remainder are for road works and unlisted activities. Ibid.

²⁷ Watson & Olalde (note 20 above) 643.

²⁸ E Swart 'The South African Legislative Framework for Mine Closure' 103 *Journal of Southern African Institute of Mining and Metallurgy* (2003) 489, 490.

²⁹ National Environment Management Act 107 of 1998: Regulations Pertaining to the Financial Provision for the Rehabilitation, Closure, and Post closure of Prospecting, Exploration, Mining or Production Operations.

³⁰ Section 16(4)(a) of the National Environment Management Act Regulations.

³¹ Tafelkop community (Blueridge platinum mine), Sekhukhune Combined Mining Affected Communities (Twickenham Mine), Atok communities (Bokoni platinum mine), Limpopo and Rustenburg (Khomanani mine), Marikana shafts of Sibanye Still Water, Northwest.

³² Interviews with community members in Limpopo and Rustenburg (Khomanani mine), 17 October 2021.

involved in the maintenance of the mine or the mitigation of impacts on public safety, health, and environment.³³

By 2016, the DMRE was in possession of the list compiled by the Council of Geoscience of 6 000 mines that were 'derelict and ownerless'.³⁴ These included recently abandoned operations as well as those which had ceased to operate a long time ago. They also ranged from high to low-risk operations, in accordance with the classifications developed by the Council of Geoscience.³⁵ 2 568 of the mines which were identified as 'derelict and ownerless' have been classified as high risk, including 246 asbestos mines.³⁶ These mines pose serious hazards to society, especially to the most vulnerable communities in the immediate vicinity of the mine.

Public Safety Impacts

As mining brings with it an influx of migrant workers seeking fortunes, many mining-affected communities are settlements that mushroomed around and near the mining operations. Today, there still exists a 'correlation between the location of abandoned mines and high population densities'.³⁷ The abandonment of mines means that shafts and pits are often left open, filled out, and sometimes are not even fenced off. These become a source of many public safety issues in affected communities.³⁸

Abandoned mines attract 'Zama-Zamas', who scrap out residue of the ore in the remaining rock. The term 'Zama-Zama' poses a challenge because it is used to refer to the whole spectrum of 'illegal' small-scale miners.³⁹ The term ranges from unemployed, former miners to desperate community members trying to earn an honest (although 'illegal') living from artisanal mining,⁴⁰ to criminal syndicates organising raids of closing and operating mines or who act as 'middlemen' for artisanal miners who lack access to formal markets.⁴¹

Although different, these activities share the fact that they are all 'illegal' according to the current regulatory framework for mining in South Africa, which makes no distinctions between those mining without a license and artisanal mining. The latter refers to rudimentary methods of mining that are labour intensive and use manual and basic tools to access the minerals, in contrast to the highly mechanised operations of industrial mining, which are capital intensive and use advanced technology.⁴²

LHR supports the decriminalisation and regularisation of artisanal mining because if unregulated, these activities pose a danger to the public, the workers involved, and the surrounding

³³ Department of Mineral Resources *National Strategy for the Management of Derelict and Ownerless Mines* (2009) <<https://www.researchgate.net/publication/263067437>>.

³⁴ Ibid.

³⁵ The classifications are based on the potential impacts on public health, safety, and environment, which in turn are estimated on the nature of minerals, the chemical composition of the ore and host rock amongst others, the conditions of the mine, and other relevant considerations. Ibid.

³⁶ Auditor-General South Africa (note 18 above) 7.

³⁷ Auditor-General South Africa 'Report of the Auditor-General to Parliament on a performance audit of the rehabilitation of abandoned mines at the Department of Minerals and Energy' (2009) 3 <https://cer.org.za/wp-content/uploads/2011/10/AG_Report_on_abandoned_mines-Oct-2009.pdf>.

³⁸ Ibid.

³⁹ A Martin 'Solving South Africa's violent and costly Zama Zama problem' *ISS Today* (19 June 2019) <<https://issafrica.org/iss-today/solving-south-africas-violent-and-costly-zama-zama-problem>>.

⁴⁰ Bench Marks Foundation (note 11 above) 20.

⁴¹ Mineral Council of South Africa 'Artisanal and Small-Scale Mining: Position Paper' (2019) 4 <<https://www.mineralscouncil.org.za/industry-news/publications/position-papers/send/37-position-papers/768-artisanal-and-small-scale-mining>>.

⁴² Ibid, 2.

communities. The use of rudimentary methods without clear health and safety guidelines, measures, and equipment, is extremely dangerous.⁴³ Between 2012 and 2015, the English-speaking South African media reported on 312 deaths, around half of which could be attributed to collapsing tunnels, gas poisoning, suffocation, and explosives.⁴⁴

Mining activities in abandoned mines attract criminal syndicates operating 'black markets' which provide the only outlet for artisanal miners without mining licenses.⁴⁵ The syndicates are responsible for most of the violence and violent crimes associated with Zama-Zama activities in the surrounding settlements. These highly armed and extremely dangerous gangs pose a serious threat to local artisanal miners, communities, and state security, as they can sometimes even outgun the local police, like in the case of the Blyvooruitzicht Gold Mine.⁴⁶

Open and unsealed pits also pose threat to local communities, especially for children. In March 2021, the community of Galeshewe reported that a child fell into an open trench dug by the mine.⁴⁷ In February 2017, a 5-year-old from the Jerusalem informal settlement outside of Boksburg in Ekurhuleni fell into an open shaft.⁴⁸ The Snake Park community has also reported instances of children disappearing into quicksand in unsealed and abandoned mines over years.

Public Health Impacts

The abandonment of mines is invariably associated with the failure to maintain and mitigate the adverse impacts of mining waste especially tailing dams, waste rock dumps, and other mining waste. These pose serious threats to public health. The threats vary in accordance with the chemical composition of the ore, host rock, and residue. In South Africa, asbestos is responsible for 80 per cent of cases of mesothelioma, a highly lethal form of cancer.⁴⁹ Former asbestos mines that lay abandoned after the industry was shut in the 1980s contain an airborne fibre material which is considered the highest public health risk.⁵⁰

Similarly, residue in gold mine dumps is extremely dangerous because of the radioactivity of uranium, an element which commonly occurs within gold mining. According to Professor Frank Winde of North West University, Gauteng province alone is estimated to have '400 km of bright yellow mine dumps scattered around the province, laden with 600, 000 tons of the radioactive heavy metal, uranium.'⁵¹ In some of these areas, the level of radioactivity is measured to be higher than in nuclear disaster zones like Chernobyl in Ukraine.⁵²

⁴³ G Hoske 'We call it Zama-zama graveyard-4 brothers among more than 40 killed in blast' Times Live (19 May 2017) <<https://www.timeslive.co.za/news/south-africa/2017-05-19-we-call-it-the-zama-graveyard-4-brothers-among-more-than-40-killed-in-blast/>>.

⁴⁴ Human Rights Watch 'The Forever Mines: Perpetual Rights Risks from Unrehabilitated Coal Mines in South Africa' (July 2022) 20 <https://www.hrw.org/sites/default/files/media_2022/07/southafrica0722_web.pdf>.

⁴⁵ B Simelane & G Nicolson, 'Blood and gold – zama zamas dice with death in daily underground hell' *Daily Maverick* (13 November 2022) <<https://www.dailymaverick.co.za/article/2022-11-13-blood-and-gold-zama-zamas-dice-with-death-in-daily-underground-hell/>>.

⁴⁶ Lawyers for Human Rights 'Blyvooruitzicht Mine Village: The human toll of state and corporate abdication of responsibility in South Africa' (2017).

⁴⁷ Telephonic interview with Nomalanga Siwa, Artisanal Miners Forum, 26 November 2021.

⁴⁸ I Pijoo & N Nyoka 'Rescue operation for a 5-years old trapped in mineshaft is suspended' *News24* <<https://www.news24.com/news24/southafrica/news/rescue-operation-for-5-year-old-trapped-in-mineshaft-suspended-20170227>>.

⁴⁹ K Selby 'Mesothelioma Causes and Risk Factors' <<https://www.asbestos.com/mesothelioma/causes/>>.

⁵⁰ Auditor-General South Africa (note 18 above) 7.

⁵¹ W Stassen 'Gauteng's mine dumps brimming with radioactive Uranium' *Heath E News* (15 October 2015) <<https://health-e.org.za/2015/10/15/gautengs-mine-dumps-brimming-with-radioactive-uranium/>>.

⁵² Ibid.

In its 2017 study of four communities in Soweto,⁵³ the non-governmental research and advocacy organisation Bench Marks Foundation highlighted that due to large quantities of waste in mine dumps, communities are exposed to dangerous levels of heavy metals like silica, zinc, lead, and copper.⁵⁴ These metals are considered responsible for many of the health complications that affected communities experience, especially kidney, neurological, cardiovascular, and respiratory-related illnesses.⁵⁵ According to the Bench Marks Foundation's report, two-thirds of the residents in the Doornkop community of Snake Park complained about respiratory problems including persistent coughs, sinus issues, asthma, and TB.⁵⁶

Pollution

Beside asbestos, uranium, lead, zinc, and other well-known chemicals and heavy metals, there are also lesser-known toxic gases and materials from these mines that contaminate the air and water resources. Radon, which develops with the decay of uranium, is one such chemical that contaminates the water, air, and soil with 'invisible, tasteless, and scentless' gas that is linked to high prevalence of lung cancer, the leading cause of cancer-related deaths in South Africa.⁵⁷ The Bench Marks Foundation's study found that in mining-affected communities south of Johannesburg, there was a high risk of exposure to arsenic, a poisonous chemical produced in the course of mining, which leads to high incidences of eczema.⁵⁸

The Institute of Waste Management Southern Africa held that '[o]ver 42 million cubic metres of general waste is generated every year across the country, with the largest proportion coming from Gauteng province (42 per cent).'⁵⁹ In addition, more than '5 million cubic metres of hazardous waste is produced every year, mostly in Mpumalanga and KwaZulu-Natal (due to the concentration of mining activities and fertiliser production in these provinces). By far the biggest contributor to the solid waste stream is mining waste (77 per cent).'⁶⁰

Seepage of water and wind-blown dust from mine dumps are considered the main carriers of toxic chemicals, minerals, and metals into water streams, aquifers, air, and soil. The toxic metals and chemicals thereafter find their way into humans in various ways, including consumption of meat from animals or vegetables from contaminated gardens.

A study conducted by the University of Northwest in 2012 on the local animal stock made startling findings regarding



Figure 4: Dust gathers in the Snake Park mining-affected community, Gauteng

⁵³ Riverlea, Meadowlands, Diepkloof, and Doornkop.

⁵⁴ Bench Marks Foundations (note 11 above) 26–31.

⁵⁵ Ibid.

⁵⁶ Ibid, 100–101.

⁵⁷ A Ismail 'Killer Gas: Why SA Homes are not tested for Radon?' *News24* (23 February 2016) <<https://www.news24.com/health24/lifestyle/environmental-health/environmental-disasters/killer-gas-why-homes-in-sa-are-not-tested-for-radon-20160223>>.

⁵⁸ Bench Marks Foundation (note 11 above) 95.

⁵⁹ Ibid, 20.

⁶⁰ Ibid.

the contamination of meat from cattle. In this study, David Hamman stated that:

*'[t]he uranium concentration in the cattle samples from the experimental group (in the Wonderfontein spruit catchment areas) was 126.7 times higher in the liver, 4350 times higher in the kidney, 47.75 times higher in the spleen, 31.6 times higher in the muscle tissue, 60 times higher in the bone, and 129 times higher in the hair than that of the cattle samples from the control group.'*⁶¹

Land Question

The legacies of indigenous land dispossession are often linked to the development of farming by 'Voortrekkers,' but they can also be traced to the discovery of diamond and gold fields. European colonial powers dispossessed African communities that owned the lands on which these minerals were located.⁶² Subsequent mineral discoveries and the development of commercial agriculture and industries only expanded and accelerated these land dispossessions, forcing many to migrate into mining towns in search of jobs and better fortunes.⁶³

The exclusion of the black majority from housing, jobs, and economic development of the country by colonial and apartheid regimes meant that many of those displaced settled into sprawling squatter camps.⁶⁴ The failures of the past 28 years of democracy in dismantling this legacy of colonial and apartheid planning is still a persistent feature of the urban spatial landscape. By 2020, there were 3,200 informal settlements that host more than 1,3 million landless households.⁶⁵

If access to land for housing, commercial, and recreational purposes, as well as the right to dignity of these households is to be realised, the vast swathe of land currently under heaps of mine waste and pollution must be freed. In the Witwatersrand region alone, it was estimated that there are 'more than 500 gold mining dumps of which 350 are in the Johannesburg region, covering about 320 000 hectares of surface area.'⁶⁶ These are homes to more than 1,6 million people living in squalor in nearby settlements.⁶⁷ This is only a tiny fraction of the surface area occupied by the 6 000 abandoned mines and surface mine infrastructure across the country.

The failure to rehabilitate and reclaim these mines for land distribution only perpetuates the legacy of colonial dispossessions and displacement of the landless, homeless, and hungry masses of the predominantly black working classes.

⁶¹ D Hamman *A holistic view on the impact of gold and uranium mining on the Wonderfontein spruit* Dissertation (2012) 76.

⁶² D Huizenga, *Customary Law and Indigenous Rights in South Africa: From transformative constitutionalism to living law in struggles for rural land rights* Dissertation (2019) <<https://core.ac.uk/download/pdf/240120192.pdf>>.

⁶³ I Turok, 'Urbanisation and Development in South Africa: Economic Imperatives, Spatial Distortions and Strategic Responses' (2012) 5 <<https://www.iiied.org/sites/default/files/pdfs/migrate/106211IED.pdf>>.

⁶⁴ C Vosloo, 'Extreme apartheid: the South African system of migrant labour and its hostels' 34 *University of Pretoria Journal* (2020) 20–21 <<http://www.scielo.org.za/pdf/it/n34/01.pdf>>.

⁶⁵ S Mbanga 'Policy exist but shack lands spring up' *Mail & Guardian* (25 June 2020) <<https://mg.co.za/analysis/2020-06-25-policy-exists-but-shacklands-spring-up/>>.

⁶⁶ S Janse Van Rensburg 'Guidelines for Retreatment of SA Gold Tailings: Mintek's learnings' (2016) <<https://iwmsa.co.za/sites/default/files/downloads/56.%20Janse%20van%20Rensburg%2C%20S.pdf>>.

⁶⁷ M Olalde, 'Gold rush's toxic legacy lingers' *Mail & Guardian* (23 October 2015) <<https://mg.co.za/article/2015-10-22-gold-rushs-toxic-legacy-lingers/>>.

Government Response

Mining companies have dumped the enormous costs of cleaning these mines onto the state. The cost has been estimated at R49 billion.⁶⁸ In the current state of the country and the worsening state of the economy, finding and allocating these funds is bound to be a major challenge for the fiscal and political leadership.

The government has adopted certain measures to mitigate the impacts of the mine closure crisis, including the National Strategy for the Management of Derelict and Ownerless Mines.⁶⁹ While part of this strategy involves instructing the Council for Geoscience to study and rehabilitate these mines, the end to this crisis is not in sight. On the current trajectory and allocated funds, the pace of rehabilitation fails to adequately tackle the environmental crisis of derelict and ownerless mines. The crisis is escalating because mines continue to simply be closed without certificates.

By 2019, the government was spending R120 million annually on average to rehabilitate 10 mines a year.⁷⁰ Asbestos mines, which have been prioritized due to the high risk and hazards they pose, were not fairing any better.⁷¹ At the end of 2019, only 27 asbestos mines had been rehabilitated, 9 of them in the past 5 years.⁷² In spite of commitments to expedite the project, authorities are targeting a modest goal of rehabilitating 10 more asbestos mines in the financial years 2019-20 and 2020-21, which is wholly inadequate by every measure.⁷³ Between 2019 and 2021, 27 asbestos mines out of close to 3 000 high-risk mines had been rehabilitated.⁷⁴

Beyond 'derelict and ownerless' and poorly rehabilitated mines, the most definitive and visible legacy of more than a century of industrial mining is the squalor of former mine hostels, informal settlements and communities, and the degradation of dilapidated infrastructure.⁷⁵ These provide testimony to the decades of abdication and corporate neglect towards their environmental responsibilities. This is not due to lack of a clear regulatory framework, but instead the protection of mining corporations by regulatory authorities that allows the industry to act with impunity. Unfortunately, poor communities are left bearing the brunt of these environmentally criminal consequences.

'State Capture' and Impunity of Mining Corporations

The oligarchic character of the mining industry invests it with enormous resources. The vast resources and domination of various industries in the mineral-energy complex gives mining so much power it is able to enlist political authorities in its service and subvert regulations. The British colonial conquest of the earlier 'Boer republics' marked an end of the era in which the state was

⁶⁸ Remarks by Minister Mr Gwede Mantashe at the Parliamentary Debate on Illegal Mining (8 September 2022) <<https://www.dmr.gov.za/news-room/post/1990>>.

⁶⁹ Department of Mineral Resources (note 33 above).

⁷⁰ M Olalde 'What is left in the wake of South Africa's abandoned gold mines' *GreenBiz* (15 January 2016) <<https://www.greenbiz.com/article/whats-left-wake-south-africas-abandoned-gold-mines>>.

⁷¹ Department of Mineral Resources and Energy 'Derelict and Ownerless Mine interventions' *Parliamentary Monitoring Group* (20 November 2019) <<https://pmg.org.za/committee-meeting/29381/>>.

⁷² W Gilliland 'R49 Billion to rehabilitate 6000 mines' *Mail & Guardian* (6 December 2019) <<https://mg.co.za/article/2019-12-06-00-r49bn-to-rehabilitate-6000-mines/>>.

⁷³ Auditor-General South Africa 'Follow-up performance auditing at the Department of Mineral Resources and Energy: On Rehabilitation of the Derelict and Ownerless Mines' <<https://www.agsa.co.za/Portals/0/Reports/Special%20Reports/2021/Follow-up%20performance%20audit%20at%20the%20Department%20of%20Mineral%20Resources%20and%20Energy.pdf?ver=2022-03-31-100727-587>>

⁷⁴ Human Rights Watch (note 44 above).

⁷⁵ Lawyers for Human Rights (note 46 above) 27.

solely an organised power of white farmers. Beginning with the Union in 1910, British imperialism remoulded the South African state into a mining capitalist state, in which, mining corporations have hegemony over direction of government policy in all the successor states.

Unfortunately, the advent of democracy has not changed much in this respect. Many community activists have argued that the chronic failure of the regulatory authorities to act on mining companies' flagrant disregard for environmental laws and obligations has roots in an unethical corrupt relationship between mining companies and politicians. The reality, however, is that the South African state was moulded from the onset to service the mineral-energy complex in the economy, at the core of which is mining industry. The massacres of the mineworkers, white and black, in Rand revolts of 1922 and Marikana strikes of 2012, respectively, as well as the daily brutalisation of mining community activists, are tragic but graphic reflections of the depth of this relationship.

VII. HISTORY OF THE LEGAL FRAMEWORK

South Africa's unique geological formation and vast mineral resources has sustained the colossal scale of industrial mining for over a century and half. This long mining history has tremendously shaped the socio-economic and environmental landscape of South Africa, perhaps more so than any other country. The result has been the development of a 'mineral-energy complex' which dominates South African industry and politics. The interactions between the environmental, socio-economic, and political legacies of industrial mining and oligarchic corporate monopolies have led to the development of a complicated body of mining laws, regulations, and policies. The outcome is a comprehensive body of knowledge, law, and regulations on mine closures and rehabilitation on the one hand, and wastelands of unrehabilitated mine dumps and abandoned mines on the other.

The Development of Regulations on Mine Closure

Contrary to popular narratives, the problem of regulating mining legacies is as old as industrial mining itself. Dry weather conditions in Kimberly, the Transvaal, and the Orange Free State Republics forced the successive colonial and white settler states to reckon with the problem from the onset of the mining industry. In the geological and climatic conditions of South Africa, it could not be any other way. Dry and windy weather generates dust in most parts of the country. Extensive digging of the soil and the massive influx of jobseekers emanating from industrial mining together aggravate the situation, rendering it an environmental crisis of unbearable nuisance of toxic dust for surrounding communities. In turn, the struggles and resistance of these communities render it a political crisis impossible for state authorities to ignore. By its own admission, the Witwatersrand Chamber of Mines was also compelled to pay attention to these issues due to public pressure and state regulations.⁷⁶

Common Law: Nuisance

South African common law is primarily based on Roman law as received and developed in the Dutch Republics. Part of the Roman-Dutch legal legacy is the highly developed concept of nuisance in South African law. Here, nuisance refers to the infringement of the right of a neighbouring owner's use and enjoyment of property and is recognised as an offense. Conduct of this nature which harms public health and well-being is prohibited.⁷⁷ This offense protects and safeguards ordinary people and the public from anyone engaging in conduct which endangers their well-being and health, including big corporations.

Nuisance formed the cornerstone of common law regulations of the mining industry during the colonial era and required 'mines to conduct their operational and closure activities with due diligence and care for the rights of others.'⁷⁸ The obligations of mining corporations to close mines and rehabilitate the tailing dams were therefore already part of the common law at the commencement of mining. Nuisance as a legal concept also allowed private citizens to protect themselves and seek remedies against the actions of mining corporations. As E Swart explains:

⁷⁶ M Reichardt *The Wasted Years: A history of mine waste rehabilitation methodology in the South African mining industry from its origins to 1991* Thesis (2013) 18.

⁷⁷ E Van der Schyf *South African mineral law: A historical overview of the State's regulatory power regarding the exploitation of minerals* (2012) <[http://dspace.nwu.ac.za/bitstream/handle/10394/7021/No_64\(2012\)_6_Van_der_Schyff.pdf?sequence=1](http://dspace.nwu.ac.za/bitstream/handle/10394/7021/No_64(2012)_6_Van_der_Schyff.pdf?sequence=1)>.

⁷⁸ E Swart 'The South African Legislative Framework For Mine Closure' *Department of Minerals and Energy* 2 <<https://www.saimm.co.za/Conferences/MineClosure/001-Swart.pdf>>.

*'a person suffering harm as a result of mining activities may still claim damages from a mine and or its directors and even the shareholders in terms of Company Law once the mine has closed. Any common law claims based on pollution emanating from a closed mine will have to be instituted by the plaintiff within three years of the incident which caused the pollution unless it is an ongoing source of pollution.'*⁷⁹

Common law also regulated corporate responsibilities to close the mines properly through the concept of nuisance. Over time, nuisance jurisprudence evolved and laid the foundation for the modern-day statutory legal framework. This is evident even from the formulation of section 24 of the Constitution:

*'Everyone has the right— (a) to an environment that is not harmful to their health or wellbeing; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that— (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.'*⁸⁰

More than a Century of Statutory Regulation

Although the discipline of restorative ecology was only recently developed, mining legacy issues such as management of mining waste and benefit-sharing between communities and companies have been studied and debated since the discovery of South Africa's mineral resources. These analyses have informed the current legal framework on mining operations and closures.

Affected communities, workers, and the mining industry began organizing to protect and defend their interests as soon as mining began in South Africa. They brought various mining-related issues such as mining waste to the political arena. The formation of the Witwatersrand Chamber of Mines in 1887 was part of this process of organizing on the part of the mining industry,⁸¹ just as the formation of the Transvaal Farmers Unions in 1897 was for the farming industry. Trade unions also began emerging to organize workers at the same time.⁸² The state had to regulate and manage the conflicting claims and interests of these various stakeholders.

The Colonial governments of the British colonies of the Cape, Natal, and Boer Republics passed regulations to manage mining waste in response to outcries from communities. These communities included white farmers who were the main social base and dominant political force of the Boer republics of Transvaal and Orange Free State. Like today, these regulations met resistance from the mining industry. The Boer Republics and subsequently, the Apartheid government, were subject to pressure from the white farmers and eventually enacted measures to protect agricultural communities from the environmental degradation and other impacts of the mining industry.

According to M Reichard, an industry insider with access to vast archives of the Chamber, these regulations were passed as early as 1898:

'The then Witwatersrand Chamber of Mines raised concerns over a regulation from the then Zuid Afrikaanse Republiek (Transvaal) that Article 10 of the Mining Regulations had been

⁷⁹ Ibid.

⁸⁰ The Constitution of the Republic of South Africa, 1996 s24.

⁸¹ 'The Mineral Revolution in South Africa' *South African History Online* < <https://www.sahistory.org.za/article/grade-8-term-2-mineral-revolution-south-africa>>.

⁸² Ibid.

*drafted with an 'impractical' requirement that tailings and slimes be covered so as to prevent dust and water pollution.'*⁸³

Under the constant pressure from the authorities and 'on going complaints about the nuisance' from the public, mining houses like Corner House began taking measures to find scientific solutions to the problems of dust from tailings dams.⁸⁴ Soon after, South Africa became a leader in the field of tailing dam rehabilitation. Despite these developments, the nuisance of tailings dams persisted due to poor investment in mine rehabilitation by many corporations.

Requirement of Mine Rehabilitation

The nuisance worsened when mines began to close and slime dams ceased to operate in the 1950s. As is true of many abandoned mines and slime dams today, once mines close without adequate rehabilitation and dust-suppressing sprayings cease, the shafts and tailing dams become a major nuisance. Open shafts become a major community hazard and a source of illegal mining, often attracting criminal groups. The tailing dams dry and become a major source of toxic dusts, particularly during windy seasons.

In the context of massive urban expansion and the industrial sprawl, many urban settlements were confronted by these realities at an increasing rate. In response, government tightened regulations on tailing dams for the first time and made mine closure a statutory requirement by the Mines and Works Act 27 of 1956 (the Mines and Works Act). Section 8 of the Mines and Works Act stipulates that:

'(1) Where in the opinion of the Government Mining Driving and use Engineer the use of a connecting tunnel, shaft incline or excavation through any land is necessary for the Improved incline; or ' working of a mine, and the making or use thereof will not hinder the working of such land or the minerals therein, he may, in his discretion, permit any person working such mine to drive through such land, and thereafter to use, such a tunnel, shaft or incline, or to make use of any such existing tunnel, shaft, incline or excavation which may have been driven or made in such land.

(2) The person to whom such permission has been granted shall- (a) make good any damage arising from the making or use of the tunnel, shaft, incline or excavation'.

Although this offers only limited protection in comparison to the comprehensive regulations which exist today, it does unequivocally require the rehabilitation of the mine in response to the common practice of dumping the mines at the end of their lifespan. Since then, there has been a growing body of environmental legislation reinforcing the requirements for proper mine closure. The Atmospheric Pollution Prevention Act 45 of 1965 (Atmospheric Pollution Prevention Act), for instance, regulates water resources and is amongst many other legislations that has made mine closure essential. The Minerals Act 50 of 1991 (Minerals Act) was a major milestone in the development of the legal framework on rehabilitation and mine closure.

⁸³ Ibid, 18.

⁸⁴ Ibid, 60.

VIII. CURRENT LEGAL FRAMEWORK

Since the days of the old Zuid Afrikaans Republiek (the former Transvaal), the proper closure of mines has been a requirement in one form or another. The incremental tightening of the regulatory framework stretches over a century, occurring alongside deepening understandings of the implications of mining as it has spread and developed across the country. By 1903, Transvaal laws required miners to backfill and fence old operations as part of mine closure. The Republiek of Oranje Vry Staat (a former Afrikaner republic in what is today, the Free State) and the two British Colonies of Cape and Natal also developed similar statutes.

The enactment of the Mines and Works Act in 1956 was a qualitative milestone in the development of the legal framework for mine closures. For the first time, mining companies were required to have a clear rehabilitation plan, including topsoil treatment and vegetation recovery.

Various other legislations were passed as a part of the dismantlement of the apartheid regime. In 1991, the Minerals Act was passed, laying the foundation for the post-1994 dispensation. The Minerals Act promulgated the most important principles underpinning the current legal framework, including the laws on mine closure. In addition, the Minerals Act required a closure plan and environmental management plans, including monitoring and performance assessments. Most importantly, it also introduced public consultations on closure and a provision to ensure that financial resources are set aside to support compliant and environmentally sound mine closure.



Figure 5: Abandoned rental units near Bokoni Mine, Limpopo

Mine Closure: The MPRDA and Regulations

The protracted development of the regulatory framework for the mining industry culminated in the MPRDA, which represented a historic turning point because it was the first comprehensive legislative intervention in mining regulation following the collapse of apartheid. Most importantly, it is the most elaborate statement of democratic principles and environmental and social justice in mining industry regulations. The MPRDA Regulations placed South Africa's legal framework on par with industrialised countries that underwent democratic transformations on environmental management over the course of decades.

Provisions for the closure of mines in the MPRDA Regulations, along with those provided for in the NEMA Regulations, were meant to give effect to section 24 of the Constitution, which affords everyone the right to an environment that is not harmful to their health or well-being. Whilst section 24(a) of the Constitution is widely cited in the commentary on the legislative framework on mine closure, the other provisions of section 24 are ignored. This limits the understanding of the scope of constitutional protections in the context of mine closures. Equally important in mine closures is the right to have the environment protected for the benefit of present and future generations through reasonable legislative measures. These measures must secure

ecologically sustainable development and the right to use natural resources while promoting just economic and social development as contained in section 24(b)(iii) of the Constitution.

These fundamental rights should be at the core of any analysis of the interpretation and effectiveness of laws meant to ensure the proper closure of mines. To focus narrowly on the protection of the natural environment to the exclusion of the need for ‘sustainable development and use of natural resources to promote justifiable economic and social development’ is to further marginalise communities which have historically suffered from exclusion and exploitation. The concern for many of communities aggrieved by the improper closure of mines is not only the pollution of the pristine natural environment they had before mining, but also being left worse off both socially and economically after mining.

Mine closure is regulated primarily by section 43 of the MPRDA, which stipulates that a holder of mining rights and permits ‘*remain[s] responsible for any environmental liability, pollution or ecological degradation, and the management thereof, until the Minister has issued a closure certificate to the holder concerned.*’

The MPRDA Regulations clearly outline the conditions under which the Minister may issue a closure certificate. Regulation 56 of the MPRDA Regulations, as amended, states that *inter alia*:

‘the holder of a mining right, and permit must ensure that - (a) the closure of a mining operation incorporates a process which must start at the commencement of the operation and continue throughout the life of the operation; (b) risks pertaining to environmental impacts must be quantified and managed proactively, which includes the gathering of relevant information throughout the life of a mining operation; (c) the safety and health requirements in terms of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996) are complied with; (d) environmental impacts are identified and quantified; (e) the land is rehabilitated to its natural state, or to a predetermined and agreed standard or land use’.

These principles for mine closure clearly place the responsibility and liability for environmental and social impacts on the rights or permits holders. Environmental and social justice principles lie at the core of the statutory framework for mine closure. This requires clearly identified and stated objectives in the EMPs regarding how the land will be restored or rehabilitated towards a predetermined state of land use. These objectives must be agreed upon by all stakeholders and carried out in the design and implementation of the project. The costs for implementation should also be provided, in accordance with NEMA, the Regulations on Environmental Impact Assessment (EIA), and the Financial Provision.⁸⁵

Mine Closures: The NEMA and Regulations

There has been a push to have a single regulatory framework for the management of the environmental impacts of mining in order to achieve cohesion in environmental management. Amendments to the MPRDA and its Regulations, including the latest March 2020 amendments, have now repealed many environmental regulations and assigned these to NEMA and its Regulations, especially the 2014 EIA Regulations and the 2015 Financial Provision Regulations.

NEMA entrenched the polluters pay and perpetual liability principles. Section 24R of the NEMA states that:

⁸⁵ Amendments to the Mineral and Petroleum Resources Development Regulations, reg 61.

‘(1) Every holder, holder of an old order right and owner of works remain responsible for any environmental liability, pollution or ecological degradation, the pumping and treatment of polluted or extraneous water, the management and sustainable closure thereof notwithstanding the issuing of a closure certificate by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002, to the holder or owner concerned’.

The NEMA and its Regulations further provide mechanisms during and post mine closure to ensure that mining rights holders rehabilitate the environment and provide for the management of the residual waste.

Towards Closure

Regulation 34 of EIA Regulations requires the mining right holder to ensure that there is regular auditing and submissions on compliance with the conditions set forth in the Environmental Assessment (EA), the EMP, and the closure plan. The environmental audit report must assess whether the EMPs and closure plans provide for adequate measures to avoid, manage, and mitigate the impacts of mining, as well as the level of compliance with these plans and EA by the mine. Where the audit indicates deficiencies in the plans or its implementation, the report must recommend remedial measures to amend the plans for their effective implementation. As these audits must be conducted on a regular and ongoing basis, if carried out diligently and competently, the reports can assist both the mining right holder and the regulator to determine deficiencies and carry out timely corrective measures.

Rehabilitation

Pursuant to the provisions of MPRDA and NEMA, Regulation 4 of the NEMA Regulations pertain to financial provisions and states that:

‘a holder must determine and make financial provision for the rehabilitation and management of negative environmental impacts from prospecting, exploration, mining or production operations to the satisfaction of the Minister responsible for mineral resources.’

NEMA Regulation 6 further provides for the determination of a financial provision based on the itemisation of the costs of activities required for annual rehabilitation, financial rehabilitation, decommissioning and closure, as well as the remediation of latent or residual impacts post closure. The holder of the mining right is required to regularly assess if the amount contained in the rehabilitation fund is sufficient for all rehabilitation requirements and to adjust it accordingly in terms of Regulations 9 and 7, respectively.

This rehabilitation fund is expected to be adequate for rehabilitation at the closure of the mine and for management of residual impacts thereafter. Where these funds are not sufficient, the mining company will be required to contribute towards the shortfall. If the mine anticipates residual impacts requiring management after closure of the mine, it can either continue to manage this or apply to the Minister at the closure of the mine to transfer liability to a competent person in terms of Regulation 58 of the MPRDA Regulations.

Care & Maintenance

Regulation 16(1) of the NEMA Regulations provides for mining right or permit holders to apply to the Minister for a mine to be placed under care and maintenance. The application must detail the

merits of the application and must include the care and maintenance plan.⁸⁶ Upon approval, the care and maintenance plan becomes part of the EMP, which is submitted in terms of section 24N of the NEMA. As the care and maintenance plan effectively amends the EMP and replaces its parts relating to operating the mine, it must be subjected to the same process of public review and consultations of interested and affected parties.⁸⁷

In terms of Appendix 6 of the NEMA Regulations, care and maintenance must include, *inter alia*:

‘(b) details of conditions leading to an application for care and maintenance or leading to a motivation to remain placed under care and maintenance and a forecast of when care and maintenance may no longer be required’. It must also outline ‘(d) a care and maintenance program detailing management of environmental risks associated with mining activities and its implementation thereof; and (e) appropriate detail on closure performance monitoring and maintenance framework during progressive rehabilitation and post closure, including the methodology, quality control system and remedial strategy’.

Regulation 16(4)(a) further stipulates that the care and maintenance plan cannot be approved for a period longer than 5 years. The Regulations do, however, provide that at the lapse of the time approved for care and maintenance, the approval must be reviewed. The holder is required to regularly audit the mine and submit the results thereof pertaining to the state of the mine and amended care and maintenance plan, including the merits to remaining under care and maintenance.⁸⁸

Regular periods of care and maintenance are unavoidable and necessary for safety in the mine. Most instances of mines under care and maintenance, however, have nothing to do with their regular maintenance or safety. Many of these mines have been placed under care and maintenance for years, as the current regulatory framework provides no clear limit as to how many times the approval of care and maintenance can be extended. Consequently, affected communities live with the negative impacts of mine closure, without any of the benefits of mining.

Consultations with Interested & Affected Parties

Regulation 62 of the MPRDA Regulations requires that the closure plan include a stated record of the interested and affected parties who were consulted in the formulation of the plan, as part of the EIA and EMP. Although there are many concerns being raised by communities regarding the Regulations, including the lack of requirement for consent and the extensive requirements of the process of public participation, these are nonetheless detailed in the EIA Regulations. Unfortunately, none of these require consultation with communities beyond the initial formulation of the EMP and closure plans.

Regulation 55 of the MPRDA has been repealed and the regulation of monitoring and performance assessment of the EMPs, including closure reports, has been reassigned to the NEMA which provides for the EIA Regulations pertaining to Financial Provision. The EIA Regulations address the content of environmental audits and closure plans which are tools for monitoring the implementation and performance of EMPs, including the closure of mines.⁸⁹

⁸⁶ National Environmental Management Act, reg 16(2).

⁸⁷ Ibid, append 6 reg 1.

⁸⁸ Ibid, reg 16(5)(b).

⁸⁹ Environmental Impact Assessment Regulations, append 5, append 7.

Appendix 5 of the EIA Regulations, like Regulation 52 of the MPRDA Regulations, requires a closure plan to include a report of comments from interested and affected parties, but goes no further than requiring that these should be submitted during EIA process.

Appendix 7 of the EIA Regulations, Regulations 3(1)(g) and (j) of the MPRDA Regulations provide for:

‘a description of any consultation process that was undertaken during the course of carrying out the environmental audit report; a summary and copies of any comments that were received during any consultation process.’

Unfortunately, the regulations here miss the opportunity to explicitly state the requirement for a public participation process that should include interested and affected communities. As Krause explains:

*‘There is no express requirement for reporting to the community and providing access to documents including the (up to date) closure plan, environmental risk report, final performance report and financial provision determination. In our experience engaging with mine-affected communities and with other stakeholders, it is rare that companies go beyond the letter of the law by proactively providing documents and explanations regarding the status of rehabilitation’.*⁹⁰

The only provision in the EIA Regulations pertaining to Financial Provision which may provide a mechanism for participation in the monitoring and assessment of EMPs is the access to information requirement contained in the environmental audit reports. The problem here is that *‘communities may have to resort to the protracted PAIA process to gain access to the information necessary for them to even begin participating in the closure process on an informed basis. Even where requests are successful, the information furnished is frequently incomplete.’*⁹¹

This is certainly an area where the regulatory framework must be improved to clearly provide for adequate consultation and participation with all relevant stakeholders, especially affected communities, in the monitoring and assessment of the closure of mines throughout the life of the mine.

Although the MPRDA and the NEMA provide for mechanisms which warn state authorities about possible closures during regular reporting mechanisms or in the event of unexpected financial troubles, lack of effective co-operation between state organs means that more often than not, local government authorities are left in the dark. This was confirmed by the interview with Ros Gordon from the Housing Development Agency (HDA), who revealed that the study on the mining legacy assets and local authorities demonstrated widespread lack of consultation.⁹²

Social and Labour Plan Obligations

Part of the mechanisms to promote transformation of the mineral industry into an inclusive and deracialised, post-apartheid industry is the mandatory Broad Based Socio-economic Empowerment Charter (the Mining Charter), which the Minister is required to publish in terms of section 100(2)

⁹⁰ RD Krause & LG Snyman ‘Rehabilitation and Mine Closure Liability: An Assessment of the Accountability of the System to Communities’ (2014) 6 <<https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/Rehabilitation%20and%20mine%20closure%20liability.pdf>>.

⁹¹ Ibid.

⁹² Telephonic interview with Ros Gordon, 16 April 2021.

of the MPRDA.⁹³ Commonly known as the Mining Charter, it is a statement of policy which the Minister develops in consultation with the industry, organised labour and, since 2017, mining-affected communities.⁹⁴ The Mining Charter is mandated to facilitate empowerment and participation of historically disadvantaged groups in the exploitation of the country's mineral heritage. Since the first iteration of the Mining Charter in 2004, a key focus has been on the development of communities affected by mining. Due to unprecedented participation of mining-affected communities, the current 2018 iteration of the Mining Charter further strengthens community development obligations.

Section 23(1)(e) of the MPRDA requires that any person applying for a mining right should submit a social and labour plan prescribed by the Minister. SLPs are the primary tools by which mining companies are supposed to articulate plans to implement their obligations under the Mining Charter and provisions of the MPRDA relevant to social development.

Job Losses

As sustainable development is now a central aspect of South Africa's post-1994 environmental and mining legislation, the approval of mining is predicated on trade-offs, which entails the use of limited natural resources for the promotion of justifiable economic objects, including social licensing and community upliftment. From the point of view of many communities, the Mining Charter is meant to increase jobs and benefit workers, which has always been the primary motivation for mining development. To this end, provision and protection of jobs in the mining industry is central to the licensing of the mines.

Regulation 41(a) of the MPRDA Regulations mandate the promotion of employment within SLPs. These obligations to create and maintain jobs does not cease at the closure of the mine. Regulations 46(d) and (e) requires that SLPs in relation to the –

'processes pertaining to management of downscaling and retrenchment must include – (i) the establishment of the future forum; (ii) mechanisms to save jobs and avoid job losses and a decline in employment; (iii) mechanisms to provide alternative solutions and procedures for creating job security where job losses cannot be avoided; and (iv) mechanisms to ameliorate the social and economic impact on individuals, regions and economies where retrenchment or closure of the mine is certain.

(e) to provide financially for the implementation of the social and labour plan in terms of the implementation of - (iii) the processes to manage downscaling and retrenchment'.

Land & Housing

South Africa's mining industry is still predicated on a cheap black migrant labour system which entails bringing in labour from far away labour sending areas, including South and Southern Africa. Consequently, migrant workers' housing needs are accommodated by the mine for which they work. Therefore, not only does the closure of a mine have a disastrous effect on the environment but also on mineworkers' ability to access adequate housing, if at all. As most of the migrant workers are dependent on the mine for accommodation, the closure of the mine invariably brings into question the status of workers and their families who are tenants on the mine property.

⁹³ Mineral and Petroleum Resources Development Act s100(2).

⁹⁴ In the matter of *Chamber of Mines of South Africa and Others v Minister of Minerals Resources and Others* 2018 (4) SA 581 (GP), the Pretoria High Court recognised mining affected communities as stakeholders that must be consulted.



Figure 6: Former accommodation for mine workers

The housing and living conditions of segregated black mine workers and communities was, and in many areas remains, one of the most visible legacies of the apartheid spatial landscape. The government promulgated various legislative and policy interventions to eradicate this pernicious legacy and ameliorate the horrendous housing conditions of black working-class people in mining areas. The MPRDA specifically speaks to the need to address housing and living conditions in the minerals industry. Section 100 of the MPRDA requires the Minister to publish the Housing and Living Condition Standards for the Minerals

Industry (the Housing Standards).⁹⁵ Section 2.1(a) of the Housing Standards state that current and future housing developments must be coordinated with the structure of the mining towns and settlements. Furthermore, the MPRDA Regulations also clearly articulate the obligations of the mining companies to take measures to eradicate the legacy of apartheid in the housing and living conditions of the mine workers, their families, and communities.

The Guidelines on Social and Labour Plans further requires that the SLPs outline the housing situation of the employees in the communities as well as the strategy of the municipality to address housing.⁹⁶ Mines are expected to contribute towards the resolution of local housing issues. The Standards and Guidelines prescribe that housing development must be undertaken as part of Integrated Development Plans of the Local Municipalities.⁹⁷

Additionally, living conditions for many mine workers and their families who rent backrooms, private hostels, or live in informal settlements is also precarious, particularly with the closure of the mine. Through LHR's work in its Environmental Rights Programme and Refugee and Migrant Rights Programme, LHR has received reports that local community members often target migrant mine workers in informal settlements as soon as the local economy collapses with the closure of the mine. Former migrant mine workers are often scapegoated for all social problems associated with distressed mining communities affected by mine closure, including elevated levels of crime, unemployment, and limited availability of basic services such as healthcare and education. It is for this reason, that addressing the question of land and security of tenure in many of these communities ought to be addressed as a priority. Providing secure housing, alongside integration of migrant workers into local communities through housing development schemes that are aligned to local town planning, is critical to building sustainable settlements that can survive inevitable mine closures.

In terms of the Housing Standards 2.2(A), mines are required to facilitate acquisition of land around the mine for the purposes of housing development.⁹⁸ The Housing Standards further raise the need

⁹⁵ Mineral and Petroleum Resources Development Act, s100. Department of Minerals Resources No. R. 1590 'Housing and Living Condition Standards for the Minerals Industry' *Government Gazette No. 42899* (11 December 2019)

⁹⁶ Mineral Resources Department, 'Guideline for the Submission of a Social and Labour Plan as required in terms of Regulation 46 of the Mineral and Petroleum Resources Development Act' (2010) <https://www.dmr.gov.za/Portals/0/social%20and%20labour%20plan_guideline.pdf>.

⁹⁷ Ibid.

⁹⁸ The Department of Minerals and Energy 'Housing and Living Conditions Standards for the South African Minerals Industry' (2009), https://www.sagc.org.za/pdf/legislation/28%20OF%202002%20MINERAL%20AND%20PETROLEUM%20RESOURCES%20DEVELOPMENT%20ACT_Regs%20GN%20445_2009.04.29%20-%20to%20date.pdf

for housing schemes to offer employees various forms of tenure, including permanent settlement for them and their families.

Water & Sanitation

Housing Standard 2.3(h) stipulates that –

‘housing provided by the employer shall be redeveloped or built to have access to electricity, facilities for hot water supply and running water, basic fixtures and fittings in rental stock and access to ablution facilities.’⁹⁹

Although this has been achieved in many mine-adjacent housing schemes across the country, the integration of these assets with local infrastructure remains a challenge. Integration of housing with local town planning will be meaningless if it does not include integration of the houses to the local infrastructure. This is clearly seen in mine villages of closed mines where the mine provided these services in terms of collective bargaining agreements with their employees. But, after the closure of the mine, the municipality has no capacity to operate the infrastructure, thus forcing them to abandon the mine village and allow it to collapse.

Development & Poverty

The goal of the MPRDA is to ensure that mining contributes towards the general development of the communities in areas where they operate.¹⁰⁰ To operationalise this goal, Regulation 46(C)(iii) of the MPRDA Regulations obliges mines to outline in the SLPs:

‘the infrastructure and poverty eradication projects that the mine would support in line with the Integrated Development Plan of the areas in which the mine operates and the major sending areas.’

The SLPs are part of the licensing conditions of the mine. Therefore, all SLP components must be implemented as per the terms approved by the regulator. This obligation is clearly stated in Clause 2.5.4 of the Mining Charter which states that:

‘a mining right holder must implement 100 per cent of Social and Labour Plan commitments in any given financial year of the mining right holder. Any amendments /variation of Social and Labour Plan commitments, including the budget, shall be approved in terms of section 102 of the MPRDA and consulted with mine communities.’

Mines must submit regular reports to the regulator on the implementation of the SLPs, which remain valid and binding until a closure certificate is issued.¹⁰¹ Until recently, the main limitation of the regulatory framework in this respect was mechanisms for accountability in the implementation of SLPs. Although mines were always required to regularly report to the Minister of the DMRE and sometimes organised labour, on matters relating to employment, housing, and skills development, there is no explicit requirement for mines to regularly consult and engage with host communities about SLP implementation, downscaling, and mine closure. For many years, there was also no requirement to disclose the SLPs to the communities who are meant to benefit from them.

⁹⁹ Ibid.

¹⁰⁰ Mineral and Petroleum Resources Development Act, s2(i).

¹⁰¹ Ibid, r43.

Prior to the 2020 Amendments to the MPRDA Regulations, a mine was not required to disclose a SLP to the host communities who are meant to benefit from it. However, since the Amendments came into effect, mines are now required to publish their SLP in a way that will make them accessible to the communities, such as publication on company's websites and/or public areas, etc. Regulation 46B of the Amended Regulations requires review of the SLPs every five years. This review should include input and comments from the community on the implementation of the SLPs. Although this represents progress, a say in the performance of the mine on SLPs once in five years will not address the core problem of community exclusion. Five years is too long an interval for accountability and correction of wrongs to communities.

IX. RESEARCH FINDINGS: REALITY OF MINE CLOSURE SITUATION

Components of Ineffective Mine Closure: Why is Closure not Happening Properly?

Mine closure is an ongoing process that requires proper planning throughout the lifecycle of the mine, not just towards the end of a mine's lifespan or the onset of bust cycles.¹⁰² There are various legislative requirements in the NEMA, MPRDA, and their regulations relating to proper mine closure. However, in reality, these formal processes are not adhered to. As Ntumiseng Selela observed in relation to mine closures in Welkom: *'[t]here is no mine that was closed properly, all of them were closed the same way [abandoned without meeting necessary closure requirements]'*.¹⁰³

As such, the objective reality of mine closure in South Africa is in stark contrast to what South Africa's legal framework envisions. Our engagements with activists, community organisations, and members of mining-affected communities have uncovered several clear reasons as to why ineffective mine closure has become a defining characteristic of the industry in South Africa: 1) lack of recognition of communities as stakeholders, 2) political power and influence of mining corporations, 3) lack of free, prior, and informed consent (FPIC), and 4) poor planning and implementation of mine closures.

The experience of communities confronting mine closures is bluntly summarised by Margaret Molomo from MEJCON in Mokopane: *'to tell the truth, where there is a mine, there is a hell.'* For these communities, this hell starts when mining companies undermine and displace existing local democratic structures through mining. Communities are eventually left worse off as the corporations abdicate their responsibility to uplift communities and avoid mitigating harmful environmental degradation.

Engagement, Consultation, & Participation

There is a clear lack of proper engagement and consultation with mining-affected communities. The activists and community members who participated in this research emphasised the need for meaningful engagement with impacted communities, including consultations on issues and plans surrounding mine closure. Most of the community activists bemoan what they consider to be a bureaucratic ritual of box-ticking, instead of a genuine intention to listen and absorb input and feedback from communities. According to Matthews Hlabane, most of the EMPs are actually 'fraudulent' and not legally compliant consultations.

*'If you look at most of these EMPs or EIAs, it will be said that communities must be consulted and that such a consultation must involve a range of stakeholders. But if this was happening, why do the EIAs and the EMPs, of the various mining projects, look very similar except for the change of the letterheads and headings? If you actually read them and compare them, you will basically see a copy paste situation'*¹⁰⁴

Closure plans should reflect how communities see themselves post-mining, both from an environmental and a socio-economic perspective. But lack of meaningful consultations makes this an elusive goal. Francina Nkosi from MACUA in Lephalale described how a gold mining community on the border near Botswana *'didn't get any information... [about] being included in the decision*

¹⁰² Boom and bust cycles is a process of economic expansion and contraction that are recurrent and repetitive feature of capitalist economy.

¹⁰³ Online interview with Ntumiseng Selela, Welkom Community Activist, 15 October 2020.

¹⁰⁴ Online interview with Matthews Hlabane, Green Revolutionary Council, 16 March 2021.

making as a community. For them, they just saw the moving cars, and at the end of the day there was no moving cars, it's quiet.'

Similarly, the closure of Bokoni Mine in Limpopo was done suddenly after the community members were told that it was only closed for a short care and maintenance period. Community member Philipine Rachidi lamented about how the mining company, far from consulting with the community, lied about how it would reopen the mine on 31 December 2019.¹⁰⁵ Another community member, Ali Mashupye, remembered how *'[t]he mine informed us [the workers] two months before the mine closed that the mine would be closing. The reason we were given is that the company did not have money. They never explained what will happen to people who were sick or injured.'*¹⁰⁶

LACK OF FORMAL RECOGNITION AS STAKEHOLDERS

'One of the biggest things related to mine closures... in a lot of the mining industry conversations and policy- what you see is that there's representation from the state, there's representation from organised labour and there's representation from the industry or the private sector. There is no representation of communities that are affected by mining. There is none.'

Communities who live next to mines are fundamentally changed when a mine opens. One, in terms of structure with more people coming in and the fabric of the community changing. Aspects of the traditional or more conventional way of life changing- having access to natural water sources may no longer be viable because their polluted, of being exposed to pollutants- all of these things change. The community that is impacted by that yet they have no say in how this industry is shaped. That is fundamentally flawed. Even in this idea of mine closure, the idea of the social impacts of mine closure are felt years after the mine has got its certificate and gone. Communities will still continue to feel the impacts of that mine closing'

- Fatima Vally, WAMUA/MACUA Advice Office¹⁰⁷

The MPRDA and the NEMA require consultations with communities in decision-making regarding mining developments. Until recently, these consultations were not considered to be required during the development of state mining law and policy. The ruling handed down by the High Court in Pretoria in the Mining Charter case, which recognised communities as a legitimate and interested party in the formulation and development of mining law and policy was a major victory for communities' struggles for recognition.¹⁰⁸



Figure 7: Consultation with Blueridge platinum mine affected community of Tafelkop, Limpopo

¹⁰⁵ *'The mine said that they would open on 31 December 2019. It is still not open. Lying to people is also a violation of their rights.'* Interview with Philipine Rachidi in Limpopo, 8 March 2020.

¹⁰⁶ Interview with Ali Mashupye in Limpopo, 8 March 2020.

¹⁰⁷ Online interview with Fatima Vally, WAMUA/MACUA Advice Office 13 July 2021.

¹⁰⁸ *Chamber of Mines of South Africa and Others v Minister of Minerals Resources and Others* 2018 (4) SA 581 (GP).

Since then, the government has been engaging with communities, albeit reluctantly and inconsistently. Generally, these consultations occur only after protests by community members and supporting organisations. Ongoing mass campaigns and engagements in Twickenham's mining-affected communities is an example of these reluctant government interventions. The government's failure to fully include communities in the decision-making process undermines the position of communities as compared to other stakeholders such as management of the mining industry and trade unions. Echoing state attitude towards communities, mining companies treat consultations with communities as a voluntary bureaucratic ritual. Community members noted that if companies choose to go the extra-mile, they view consultations as a means to improve their public image.

Communities have clearly stated that they want a consistent, structured, and substantial engagements on all issues affecting mining and communities. Meaningful consultations must take place between all stakeholders, including communities, government, mining companies, and trade unions.

FREE, PRIOR, AND INFORMED CONSENT

According to the communities that were interviewed for this research report, mining companies do not take consultations with communities seriously because they are not required by law to obtain consent of the community. Communities argue that obtaining consent ought to be a legal requirement as it goes to the heart of a community's right to decide their own path of development, including whether to accept mining or not, and what happens to them post-mining.

Meshack Mbangula from MACUA explained why free, prior, and informed consent is so important for mining communities. *'People's consent is very important so that [even] when the mine closes down they can determine their own way of economic development.'*¹⁰⁹ Free, prior, and informed consent would require that the community have a right to decide freely on the mining development project including to reject it if they so feel, having been informed adequately of all the material facts and in advance of it being implemented.

CAPTURE AND SUBORDINATION OF ENVIRONMENTAL SCIENCE TO THE MINING CORPORATE INTEREST

Communities also connected the issue of improper public consultations with the lack of independence of environmental assessment practitioners. The main problem from the viewpoint of communities is that employment of Environmental Assessment Practitioners (EAPs) is the prerogative of the license applicants, who are big monopolies that dominate the industry and blacklisting by them can spell an end of the career for the EAP.

*'These EIAs and EMPs are drafted by technocrats who are contracted by the mining companies in the interest of mining companies. If the person who is contracted by the industry does not meet the requirement, then the industry will stop working with that person...[T]hese consultants...are forever in the good books of these companies.'*¹¹⁰

Besides transforming public participation processes into a meaningless bureaucratic ritual, the dependence of the EAPs on the mining corporations also subverts the purpose of EIAs.

¹⁰⁹ Online interview with Meshack Mbangula, MACUA, 15 April 2021.

¹¹⁰ Online interview with Matthews Hlabane, Green Revolutionary Council, 16 April 2021.

SUBVERSIONS OF COMMUNITY STRUCTURES AND DEMOCRACY

Many activists, community-based organisations, and community members have reported that when consultations and engagements do take place, they often happen in a manner that is corrupt and undemocratic. Numerous reports have highlighted the occurrence of deals that affect communities and are made behind closed doors where communities have no access and within which they have no voice.¹¹¹ For example, industry, government, and co-opted community representatives and traditional leaders who claim to speak on behalf of communities make decisions allegedly in the interests of the community while in reality they are in pursuit of their own interests. Nester Ndebele from Women Affected by Mining United in Action (WAMUA) highlighted:

‘They will go to the local municipality and have someone to bribe. If it’s in the village they go to the Chief where they will buy the Chief a 4x4 and the Chief will be speaking on behalf of the whole village whether you want it or you don’t... Looking at the Chiefs that we have in the villages- they are imposed Chiefs, not the born ones... When it comes to the townships, as I said, they go to the municipality. They will be having one mayor that they are going to work with. You can go to the LED; you won’t find most of what we want to know about the mine in your town.’¹¹²

Some of the mines do have community engagement forums to which representatives are democratically elected by community members. However, activists indicated that these forums are either marginalised or co-opted by the mining companies. Mining companies use the forums as a ‘shortcut’ instead of engaging in sustained, participatory, and democratic consultations with communities. Often, traditional leaders are consulted instead of true community representatives.¹¹³ This practice has led to an increasing number of protests in mining-affected communities.¹¹⁴

The lack of proper engagement and consultation with community stakeholders throughout the lifespan of a mine is reflective of the ways in which communities are barred from being active participants in the closure process. Unfortunately, this often creates a situation wherein mine closures end up having severe negative consequences for affected communities. Such impacts could be avoided through proper community consultations and engagements throughout the mine’s lifecycle.

IMPACT ON BENEFIT-SHARING MECHANISMS AND SLPS

Based on our findings, it is evident that many communities are not properly consulted on the design of benefit-sharing mechanisms and SLPs. Even if a mining company meets its environmental and socio-economic obligations during closure, precluding community participation will bar the creation of a successful benefit-sharing mechanism, thereby still having a negative impact on the mine’s effective closure. Without effective community participation rooted in the right to self-

¹¹¹ Krause & Snyman (note 90 above) 33-35; Lawyers for Human Rights (note 46 above); South African Human Rights Commission ‘National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa’ (2016) 52-63 <<https://www.sahrc.org.za/home/21/files/SAHRC%20Mining%20communities%20report%20FINAL.pdf>>.

¹¹² Online interview with Nester Ndebele, WAMUA, 16 April 2021.

¹¹³ Online interview with Elton Nkwane, MEJCON, 23 April 2021.

¹¹⁴ ‘Protesting in mining areas has gone up because mines don’t consider people. They will rather talk to traditional leaders who are corrupted by the mine, or they will talk to municipalities who are obviously not consulting the people either... People find themselves on their own and nothing happens.’ Online interview with Meshack Mbangula, MACUA, 15 April 2021.

determination, other mining stakeholders cannot know whether these mechanisms and SLPs will leave lasting positive impressions on the community.¹¹⁵

Not only do mining companies exclude communities from participation around policies intended to benefit them, so does the government. MACUA's Meshack Mbangula recalls that most of the post-1994 Social and Labour plan *'documents, which detail how people will have their lives improved, were not made public.'*¹¹⁶ Activists recognize that the government *'plays an important role in terms of determining what sort of local economic development there will be beyond mining.'*¹¹⁷ Still, the process of enacting effective legislative checks on mining companies excludes mining-impacted communities.

Lack of effective community consultations for SLPs continues during the implementation stage. This weakens enforcement and compliance mechanisms, despite the fact that *'there needs to be consistent monitoring throughout the life of the mine.'* Where the government has created community-sensitive policies around mining, lack of implementation ends up still hurting the communities. As Fatima from WAMUA/MACUA puts it, *'[i]n theory some aspects of these things exist in parts of different legislation and policies and guides but none of it is really implemented. Fundamentally, mining communities are excluded from being able to shape any of these things and of course, women are mostly excluded.'*¹¹⁸

Even where SLPs and closure plans include some socio-economic considerations for local communities, they typically neglect women within mining-affected communities. The voices of women are not heard by the industry, government, traditional authorities, or sometimes even by the community itself. There are no deliberate attempts made to engage women in order to conceptualise and implement a *'gendered perspective'* in SLPs and closure plans to account for the

*'We have to include women in very deliberate ways...putting up notices and assuming that people will come or even that women sitting in a group in a big hall is going to be conducive. This is...not substantive consultation in my mind. So, all those structures need to change. Both mining companies and the state need to take substantive consultation seriously and must stop using it as a tick-box exercise that allows for quick profiteering-which is what the reality is now.'*¹²¹

specific challenges that mining, and mine closure impose onto women. The patriarchal systems within traditional rural communities and mining companies render them unresponsive to concerns put forward by women.¹¹⁹ Therefore, benefit-sharing mechanisms fail to actualise any tangible benefits for women.

MEJCON and MACUA/WAMUA point out that merely observing the formalities of consultations is insufficient to include women in the decision-making process.¹²⁰

¹¹⁵ *'[P]eople should be consulted for them to be able to say what it is that they want and determine their own lives through the SLPs. That has not been done. Because people are not consulted, the SLPs and even the IDPs do not help with what people actually want.'* Online interview with Meshack Mbangula, MACUA, 15 April 2021.

¹¹⁶ Ibid.

¹¹⁷ Online interview with Fatima Vally, MACUA/WAMUA Advice Office, 13 July 2021.

¹¹⁸ Ibid.

¹¹⁹ Online interview with David van Wyk, Bench Marks Foundation, 7 July 2021.

¹²⁰ Online interview with Elton Nkwane, MEJCON, 23 April 2021, 01:20:15.

¹²¹ Online interview with Fatima Vally, MACUA/WAMUA Advice Office, 13 July 2021.

*'I know that they do consult with organised labour. They consult with the unions on behalf of their members... Maybe the question is: when they do consultation with labour, what is it they want to achieve? In the case of one mining operation in Sekhukhune, they did consultations with labour, but they did not do the consultation with them to try and influence them- but they did a consultation just for the purpose of making sure that they follow procedure... The union was not in support of the mines being closed or being placed under care and maintenance- they ended up offering the union leadership a project. So, there was this road reconstruction project of about 20km and it included some bridges and so on- so it was in the range of R260 million. So, they offered these union leaders a project to do some aggregates. They know that the whole 20km road will need sand and stones- they will need the field material and all those aggregates. So, they said, all the rocks that are now dun-rocks stacked outside the operation- they will buy the machines from India and then they will grind those and force the contractor to buy the stones from there. So, it happened like that. Bear in mind that the same project, because it was a project that was in the pipeline for some time- it was meant for the members of the doorstep community. They ended up taking that project from the community even though they had made the commitment to the community in writing- to say that this is the project and this is how you are going to benefit. So, they took that and gave it to the union leaders. That's why I'm raising this question to say- even though they consult with organised labour, it's not a meaningful consultation per se- because it's not aimed at trying to persuade them or convince them otherwise. It's just a mere process. But when it comes to communities that does not happen. They don't come to communities and say- we are placing the mine under care and maintenance or we are closing the mine because of a, b, and c- that doesn't happen.'*¹²²

— Elton Nkwane, MEJCON

Stories such as this are reflective of the power dynamics that exist within mining areas and between the different stakeholders. Within these dynamics, community members, be they organised into civil society formations or not, usually command the least amount of sway and influence. In fact, many communities are not even recognised as legitimate stakeholders and as such, tend to be on the receiving end of decisions taken by others.

Planning & Implementation

Proper planning and implementation are central to the task of ensuring effective mine operation and closure. The legal framework also makes clear provisions in acknowledgement of this fact. Despite this, the qualitative experiences of mining-affected communities across South Africa highlights the ways in which the inevitable closures of many mines have not been adequately planned for or properly implemented. Community members and activists who participated in this research indicated that mining companies do not possess the necessary prudence, concern, and foresight to design appropriate closure plans.

At the core of the problem is the fundamental fact that mining is first and foremost about profit. Although companies claim that they are focused on building and meeting the needs of the community when they advocate for a mining development project, their place in the current neo-liberal capitalist economy means that they pursue profit over social good. The sustainability and dignity of communities and labourers is secondary to ensuring maximum short-term returns on

¹²² Online interview with Elton Kwane, MEJCON, 23 April 2021, 01:20:15.

investments. A representative from a civil society organisation supporting the rights of mineworkers stated that:

'We've long been advocating that communities should actually have had a role within the different structures of the mining operations. For example, within the recruitment of labour, local communities should have been present to ensure that there is local employment. In the environmental committees of the mine, the environmental management plan and the oversight structures for the environmental management plan- local communities should have been involved in order to ensure that the impact on water, the impact of soil, the impact on the ability of the environment to carry a community beyond mining could have been retained...'

*Unfortunately, because the mining industry is geared towards maximizing profits and minimizing costs, none of these things ever happen and communities are basically fenced out. Unfortunately, the fence doesn't stop the pollution, it doesn't stop the impact...but it does keep the community out of the operation.'*¹²³

Unsuccessful and half-hearted implementation of closure plans is equally problematic to insufficient planning. Many participants indicated that community-oriented obligations within mine closure plans are either not implemented at all or are implemented only in part. This lack of implementation has led to practices of dumping highly toxic asbestos or radioactive-active uranium within mines, transferring the burden of mine closure to surrounding communities. The most vulnerable and marginalised people within those communities pay an enormous cost in terms of their health and livelihood because of this burden.

In other instances, plans are simply not ambitious enough to manifest any sort of widespread change or benefit for affected communities. Mining companies reduce closure to backfilling the holes and growing vegetation out of the dumps. Closure plans allow mining companies to escape their obligations towards the communities by understating the extent to which the mines change the communities' economies and environments. When a mine development project begins, many people in search of economic opportunities move into the community, thereby displacing the original community structures, shifting the demographic, and changing the traditional systems of socio-economic support. Therefore, simply closing the mine does not return the community to its post-mining state. Closure has far-reaching consequences which are often underestimated and underfunded.

*'When you do rehabilitation, you are not only dealing with the backfilling and the top soil or the revegetation of the area. You must actually rehabilitate the land but that must also involve a process of rehabilitating the very same community so that it can actually find ways in which it can venture into alternatives for the community. But such is not taking place.'*¹²⁴

SLPs typically require the creation of viable and diversified economies in mining communities so that the communities who host mining companies can benefit from the profits that are dug from their backyards. In this way, SLPs and other benefit-sharing mechanisms should serve as a means through which the socio-economic impacts of closure are actively combatted and mitigated against while any given mine is still in operation. Implementation of such well-designed SLP commitments

¹²³ Online interview with David van Wyk, Bench Marks Foundation, 7 July 2021.

¹²⁴ Online interview with Matthews Hlabane, Green Revolutionary Council, 16 April 2021.

throughout the mining lifecycle is a significant part of ensuring that communities have been markedly uplifted by the time mining comes to an end.

However, SLPs are often developed and designed in ways that do not account for the aspirations and experiences of communities nor do they propose counter measures that can adequately address the challenges that communities face. Such SLPs exacerbate the socio-economic impacts of closure on mining-affected communities. The activists and community members who participated in this research are consistent in reporting of partial to no implementation of SLP commitments and other plans aimed at benefitting mining-affected communities.

*'There's this community of Kutlwanong in Welkom- in the SLP the mine said they are going to build a taxi rank; they are going to build toilets and a school. But up to today, they didn't do it.'*¹²⁵

*'In KZN they promised to build a maternity ward for 17 million- they issued 22 million. When we went there to do the audit, you'll find that they've just built the walls... a lady who was pregnant went there and they told her that this is not a maternity ward, and she lost the child.'*¹²⁶

*'I remember one issue [in Marikana] where the mine and government were promising to build 5000 houses but they only built 3 houses...'*¹²⁷

*'I was in Marikana last week. Marikana is still the same as it was before the shooting, during the shooting and now, after the shooting. In fact, it seems to be getting worse. Each and every time they announce such projects or programmes [The Revitalisation of Distressed Mining Towns Programme] some money gets to be extracted- it gets to disappear somewhere without filtering down to the actual beneficiaries.'*¹²⁸

*'That programme [The Revitalisation of Distressed Mining Towns Programme] had a number of components to it and it was delegated out to a number of departments. From a human settlements' perspective- it was delegated to the HDA. The HDA have a dedicated department that focusses on the distressed mining towns... The HDA focussed on the towns that are specified in the booklet with an emphasis on addressing informal settlements in those towns and also developing plans for each town- a kind of human settlement economic development plan. All of those plans were developed and there was also a funding allocation made to the mining towns for the upgrading of informal settlements. But in recent years doras that funding allocation seems to have lapsed somehow. So, I think that the programme does seem to have lapsed. It doesn't seem to have gained the momentum that it was intended to have.'*¹²⁹

*'They [the HDA] were given an extra allocation of funding mostly for use in informal settlement upgrading [as per the Revitalisation of Distressed Mining Towns Programme] but none of those projects ever happened to the best of my knowledge.'*¹³⁰

*'The mine did not develop the community at all. There used to be upskilling happening but that has just stopped now.'*¹³¹

¹²⁵ Online interview with Nester Ndebele, WAMUA, 16 April 2021.

¹²⁶ Online interview with Meshack Mbangula, MACUA, 15 April 2021.

¹²⁷ Ibid.

¹²⁸ Online interview with Matthews Hlabane, Green Revolutionary Council, 16 April 2021.

¹²⁹ Interview with Ros Gordon, HDA Research Consultant, 16 April 2021

¹³⁰ Ibid.

¹³¹ Interview with Hans Nkgabene, Twickenham Mine at Limpopo, 9 March 2020.

*'There was never any implementation of the SLP. In terms of the 2010 – 2016 SLP, there was meant to be the establishment of a farm. This never happened.'*¹³²

*'The mine promised us water and built pipes and communal taps but then the water was never actually supplied. There is something that went wrong with that project. We want the mine to fulfil its promises to us. There has been nothing since 2012.'*¹³³

Insufficient resource allocation for the SLP implementation causes many conflicts in mining-affected communities. Residents often unfairly blame each other for uneven benefits when the issue is that access to resources is not widespread enough to filter down to everyone. By omission or commission, mining companies allow these divisions because they benefit from disunity in communities. Companies contribute to community divisions in several ways, such as not publishing SLPs, barring community involvement, not regularly reporting on implementation, and generally being elusive about corporate social investments for illiterate, poor, and marginalised community members. Fatima Vally from WAMUA/MACUA explains how mining leads to community disharmony:

*'When a mine comes to an area, it just sews so much division in community and so much suspicion. So, even if a group of about 20 people are going to the mine to complain about our water access for example, when you come back into the community- even though you'd give a report back- the community is often suspicious that you may have sold out. This sews division. In Phola in particular, we've asked the mines why they don't go into the community and report to the community as a whole. The reason that they won't come into communities is because they feel unsafe because often when there's a protest, mining equipment or vehicles or personal are threatened or vandalised. So, in order to protect their workers, they won't come into the community. That begs the question about what then happens to the 20 community members who come to you- what protects them when they go back into the community? That tends to happen a lot in terms of there being massive divisions...'*¹³⁴

Mining Legacy Assets

*'In Lebjeleputswa we have all these old mine infrastructure- hostels, halls, offices, and all of that which could be used for so many things in the community. They have been abandoned by the mines when they closed. Now many of these facilities are havens for criminals and all sorts of unacceptable activities. If the mines had discussed with the communities before closing, we could have planned and said- we need to use the mine offices as multipurpose community centres, to give office space to many youth groups here that are trying to help the youth and community here.'*¹³⁵

Mines often build many socially useful infrastructures for its employees, including houses, hostels, dining and meeting halls, office complexes, recreational facilities like stadiums, golf courses, tennis courts, and healthcare and education facilities such as clinics, hospitals, and schools. Mining companies build these to compensate for inadequate local public infrastructure and services to cater for its employees, who are mostly migrants to the area.

Despite the regulatory framework requiring mines to integrate this infrastructure into public infrastructure by coordinating with municipalities

¹³² Interview with Madike Mohlala, Twickenham Mine at Limpopo, 9 March 2020.

¹³³ Interview with Sepedi Mkgabang, Twickenham Mine at Mashabela/Limpopo, 9 March 2020.

¹³⁴ Online interview with Fatima Vally, MACUA/WAMUA Advice Office 13 July 2021.

¹³⁵ Online interview with Ntumiseng Selela, Welkom Community Activist, 15 October 2020.

and relevant state organs, many of these facilities and services end up useless or even harmful to the mine-affected community in the long-term.

Participants raised the issue of capacity of the municipalities to manage some of these facilities which require a lot of public funds just to maintain. They argue that mines are not planning and involving communities in the plans because they want to take shortcuts instead of dealing with complicated issues of building public capacity to take-over and manage these assets post-mining.

Due to the profit-based focus of the mine, it is preferred to simply hand over a facility which does not work to a relevant municipal department because any planning or inclusive discussions will entail additional costs for the mine. On the other hand, activists argue that with proper planning, some of these infrastructures could solve many public infrastructure backlogs in small but meaningful ways. Gaddafi Mdoda, an Anglo American Platinum mineworker, pointed out an example:

*'Look here on this abandoned hostel. Decent accommodation in a hostel which is electrified, having showers, fully-furnished kitchen facilities and everything- can literally fit the whole squatter camp next to it. Count the rooms and look at the size of the informal settlement, they'll fit. All the mine had to do is to say to the community in the informal settlement move across the road and occupy all the rooms. Instead the mine preferred to abandon them and now they are being stripped for scrap metals, yet people are staying in shacks just across the road.'*¹³⁶

In some instance, activists argue that the infrastructure could be used for far greater developments than just converting and repurposing existing facilities. They argue that these facilities can be part of a just transition from mining community to a sustainable and economically viable post-mining community.

'What we doing as Benchmarks at the moment for example in the Brits area and in Bagatla Bakafela area around Sun City is- we're doing an inventory of all mine infrastructure so that the infrastructure does not get plundered once the mine closes but that the infrastructure gets handed over to the community- the houses, the sports clubs, the clinics, the hospital facilities, the workshops and so on that are there, so that the community can use that infrastructure economically to advance the community in the future.

*So, for example, you have substations at every mine that supplied huge amounts of electricity to the mine- now the community can take that substation and put solar panels on the mine dump- which is useless to agriculture- and generate solar electricity and sell solar electricity back into the grid. Mantashe and these guys are not even thinking about that because they are once again thinking that renewable energy must be supplied by corporations and that it can't be supplied by ordinary people. The infrastructure that is there around mining can become very useful for communities and can become very useful for a just transition in terms of gender, the former workers, - if that infrastructure is made available to the community instead of allowing it to be plundered.'*¹³⁷

- David van Wyk, Benchmarks Foundation

¹³⁶ Interview with Gaddafi Mdoda, AMPLATS mineworker at Rustenburg, 17 October 2020.

¹³⁷ Online interview with David van Wyk, Bench Marks Foundation, 7 July 2021

Monitoring, Enforcement, Transparency, & Corruption

Closure plans, EMPs, and benefit-sharing plans such as SLPs are required by law. In most cases, mining companies outline the ways in which closure obligations will be met to lessen impacts of mine closure in these required documents. Although documents are binding according to the MPRDA, impacted communities paint a picture of vast non-compliance and failed implementation.

Activists and community members point to ineffective monitoring and enforcement systems and levy important criticisms against government for failing to perform a necessary oversight and monitoring function. This government failure allows companies to not comply with what is expected of them and with what they have agreed to on paper. One activist describes how mines ‘come up with the SLPs so that they can get their licence from the Department of Minerals but the department isn’t monitoring anything- they just give out the licenses. Even after giving the licenses, they don’t do a follow up to see whether what the mine said it is going to do for that community has been done.’¹³⁸

These frustrations have been verified by other researchers and state agencies such as the Housing Development Agency.¹³⁹ HDA Research Consultant Ros Gordon stated:

‘All the research is indicating that the DMR [Department of Minerals] is not fulfilling its responsibilities in respect to ensuring that mines close properly... The law requires that a closure plan gets developed, that the mine sets aside sufficient money to implement the closure plan, that it gets updated every five years, that DMR is meant to ensure that when closure happens it happens in the orderly way that is required- but none of that is happening. The evidence of that, as research shows, there are about 6000 mines in South Africa that have not been properly closed. That is a key issue. Closure law in South Africa and processes are not being effectively implemented.’¹⁴⁰

The DMRE often cites limited capacity as the reason why they fail to perform this essential oversight and monitoring function.¹⁴¹ Failure has forced activists and community-based organisations to do their own monitoring. Unfortunately, they do not have the formal authority to play such a role and as a result, their reports and audits are often disregarded. Meshack Mbangula from MACUA reflects,

‘the Department of Minerals and Energy, now, they always easily issue mining licenses and mining rights but, when we engage them to say ‘mines are not complying- can you make sure you do monitoring on that?’ they tell us that they don’t have capacity to monitor all these mines. But we said ‘you are easily issuing mining licenses without having capacity to monitor whether the mine is complying and adhering to the obligations in the SLPs and so on’...

We made this special audit around South African mining areas and we gave them that report to say ‘look, 99 per cent of the mines obligations that they have to do through the Social and Labour Plans are not done’ and there is a lot of money that is being lost because people failed to do their obligations according to their promises. There are no changes [since

¹³⁸ Online interview with Nester Ndebele, WAMUA, 16 April 2021.

¹³⁹ The Housing Development Agency has commissioned this study and is focused particularly on the mining legacy assets in the context of closure.

¹⁴⁰ Interview with Ros Gordon, HDA Research Consultant, 16 April 2021.

¹⁴¹ Online interview with Meshack Mbangula, MACUA, 15 April 2021.

new regulatory framework]. As long as mines know that the DMRE doesn't have capacity to monitor them and to regulate them then they do as they want.'

Communities are willing to work with and assist the government in monitoring and enforcing compliance. However, community activists have expressed concern that the government does not reciprocate this willingness or recognise the work that communities and non-governmental organisations (NGOs) do. Elton Nkwane from MEJCON flagged lack of political will and capacity to engage with community members to improve corporate mining accountability. *'[A]s long as government doesn't want to recognize the work that community groupings and community organisations do on the ground, then we will never get anywhere.'*¹⁴²

For many of the activists and community members who participated in this research, the lack of monitoring, oversight, and enforcement is reflective of the government's mining growth nexus. Moreover, it seems to reflect a disturbing trend within the sector. While difficult to prove, the allegations of corruption and unethical relationships between government officials, traditional authorities, and companies are unyielding.

The recent resignation of the Director-General of the DMRE amidst allegations of corruption involving bribery by a controversial ESKOM supplier suggests that these practices go to the highest echelons of the state bureaucracy.¹⁴³ This undermines the credibility of the state as the custodian and regulator of the country's minerals, entrusted with the responsibility to ensure that the mineral wealth of the country is exploited in a sustainable manner in line with the interests of its people.

*'Capital will always find ways to manipulate these laws and make sure it weakens every organ of state that is supposed to be doing monitoring. We have seen that in Emalahleni, where environmental affairs officials are getting paid about R2000 just to make sure that the mining license is granted.'*¹⁴⁴

Whether the DMRE and other government bodies are unethically aligned with the mining industry or not, it is clear that the government is not making significant efforts to distance itself from its historical and outdated perception of mining as central to the development of this country. The government continues to welcome harmful extractive mining practices despite the permanent damage done by mining and the innate unsustainability of the entire industry. The anecdotes below reflect this mindset and approach:

'We just learned from our members in Waterberg that the department has issued another permit to a company that wants to mine in an area that is declared a heritage area. We, as a network, are involved in a legal battle with the Atah Ventures, which is an Indian company that wants to mine in a water source area in Mabola, Mpumalanga. The government even goes as far as to issue permits for mining- especially coal- in areas where it is declared a protected area... Especially in water source areas because we are a water scarce country- the government goes further by allowing mining to happen in those areas. When we challenge them, and go as far as to get a court interdict to stop them from mining in those areas- in the interest of the public- they go ahead and proclaim a portion of those areas from the Mabola properties so that the mining can go ahead and take place there... The

¹⁴² Online interview with Elton Nkwane, MEJCON, 23 April 2021.

¹⁴³ E Stoddard, 'Director-general Thabo Mokoena steps down from the wreckage that is the DMRE' *Daily Maverick* (10 April 2022), <<https://www.dailymaverick.co.za/article/2022-04-10-director-general-thabo-mokoena-steps-down-from-the-wreckage-that-is-the-dmre/>>.

¹⁴⁴ Online interview with Matthews Hlabane, Green Revolutionary Council, 16 April 2021.

government, especially the responsible department is more interested in making sure that whatever is left underground is harvested by means of mining.'

– Elton Nkwane, MEJCON¹⁴⁵

'...it's only the civil society organisations who are trying to move away [from mining] but the government and corporations are stuck in this carbon economy and are not willing to do anything or at least not saying anything. You can see how the Department of Environmental Affairs is so silent- not even silent but supporting mining the wetlands in Mabula, in Mpumalanga where our rivers start. That is our source of water and that is the only source of water that South Africans actually have. It needs to be saved. Otherwise, we will continue depending on Lesotho. We are going to have a serious problem in the country because we have almost contaminated all of our water. We are only remaining with a bit from Mpumalanga.'

– Chris Molebatsi, Platinum Belt Community Alliance and Benchmarks Foundation¹⁴⁶

'If you look at it now [government's approach to mining], the person who comes out to speak is Gwede Mantashe and he doesn't touch this particular matter [The Revitalisation of Distressed Mining Towns Programme]. He talks about licensing. Whenever he opens his mouth it's all about mining and issuing out licenses to mining companies. He says very little about communities. There hasn't been any support to the communities at all.'

– Chris Molebatsi / Platinum Belt Community Alliance and Benchmarks Foundation¹⁴⁷

Notably, the practice of selling near-depleted or depleted mines to smaller companies is of great concern. This practice is often adopted by mining companies and in many cases, has been reported by communities as a way for companies to avoid their closure obligations and transfer the liability of closure to a different entity. Moreover, many of the smaller companies who take over ownership of near-depleted operations do not have the resources to meet closure requirements. Therefore, mines end up being placed on care and maintenance for many years, essentially abandoned without having been properly closed.¹⁴⁸ Fatima Vally at the WAMUA/MACUA Advice Office described how once-profitable mines are sold off and not properly rehabilitated:

*'You have mines like Anglo that were exceptionally profitable that start selling off as mines start downscaling. And they sell off to small players. These small players do not have the capability of rehabilitating, they just would not have generated sufficient profits and it wouldn't be profitable or viable for them to have- just if we're talking from an environmental aspect- just the environmental rehabilitation would be costly. Scientifically speaking, I don't think that full environmental rehabilitation of an area is possible. But I do think that they are able to make certain spaces- it will never be what it was- but they can make it to some extent productive whether that would be through some degree of maize farming or some form of economic opportunities.'*¹⁴⁹

¹⁴⁵ Online interview with Elton Nkwane, MEJCON at 23 April 2021.

¹⁴⁶ Online interview with Chris Molebatsi, Platinum Belt Community Alliance and Bench Marks Foundation, 23 April 2021.

¹⁴⁷ Ibid.

¹⁴⁸ These extended care and maintenance periods have also happened in instances where mines have not been sold off, such as when mining enters bust cycles that render certain operations 'unprofitable.'

¹⁴⁹ Online interview with Fatima Vally, MACUA/WAMUA Advice Office 13 July 2021.

Socio-Economic Consequences of Ineffective Closure

Many authors argue that historically, mining in South Africa has been left relatively unchecked and unregulated.¹⁵⁰ As we hope to have demonstrated in early chapters, this contention is not borne by evidence. We do, however, agree that development of mineral resources for the benefit of communities and people of this country is a relatively new legislative framework.

Most of the country's mines, particularly its largest, have been in operation for at least 50 years and, at the time of their establishment, did not have to engage with proactive contingency planning for the socio-economic impacts ahead of their inevitable closure.¹⁵¹ While successive legislations such as the Minerals Act made some provisions for rehabilitation, they focused predominantly on environmental remediation. The socio-economic obligations of mines to their host communities were only introduced into legislation with the MPRDA in 2002 and the Mining Charter of 2004. These obligations were reaffirmed by the MPRDA Amendment Act and amended versions of the Mining Charter in 2010 and 2017.

Despite the gradual strengthening and expansion of a regulated closure model over the last two decades, a number of legal flaws persist such as large corporations being allowed to decouple and using insolvency laws to abandon unprofitable mines, or trading on their outstanding financial provisioning.¹⁵² Together with the aforementioned issues surrounding planning, implementation, monitoring, and enforcement of closure strategies, these effectively allow mining corporations to evade closure obligations and remain elusive in terms of their commitments to host communities.¹⁵³

Issues surrounding mine closure have garnered a sizeable amount of attention across the globe, especially the environmental and spatial consequences.¹⁵⁴ While the body of scholarly knowledge that exists in this regard is of exceptional importance, so too is the seemingly less-emphasised study of the social consequences instigated by mine closure.¹⁵⁵ Of course, one should recognise that it would be inaccurate to generalise the findings of individual case studies on the social costs of mine closure as they are often characterised by context specific challenges.¹⁵⁶ With this in mind, the section below draws from a range of different case studies and reports that LHR has collected from various communities across the country. This has been done to describe some of the main socio-economic consequences of mine closure in South Africa, as well as in an attempt to identify noteworthy, shared experiences of mining-affected communities across the country.

The history and legacy of mining in South Africa is controversial to say the least. Marred by inadequate planning, failed implementation, corruption and unethical dealings, the improper closure of mines in the country has been a consistent area of contestation and catalyst for conflict and socio-economic dilapidation.

For example, Siyongwana and Shabalala's 2018 case study of Pilgrim's Rest in Mpumalanga provides a valuable account of the socio-economic issues that are either born of or exacerbated by

¹⁵⁰ M Ackerman, G van der Walddt & D Botha 'Mitigating the socio-economic consequences of mine closure' 118 *Journal of the Southern African Institute of Mining and Metallurgy* (2018) 439.

¹⁵¹ Ibid.

¹⁵² T Humby, 'Redressing Mining Legacies: The Case of the South African Mining Industry' 135 *Journal of Business Ethics* (2014) 653.

¹⁵³ Ibid.

¹⁵⁴ N Bainton & S Holcombe 'A critical review of the social aspects of mine closure' 59(C) *Resources Policy* (2018) 468.

¹⁵⁵ Ibid.

¹⁵⁶ P Siyongwana & A Shabalala 'The socio-economic impacts of mine closure on local communities: evidence from Mpumalanga Province in South Africa' 84 *GeoJournal* (2018).

ineffective mine closure and how improper planning and implementation imposes a variety of challenges onto adjacent and host communities. Home to a community that was established around mining in the area and which, for a long time, was largely dependent on the mine for employment, Pilgrim's Rest began an economic collapse during the late 1990s.¹⁵⁷ Mining activities in the area were scaled down over several years and all operations eventually closed in 2015.¹⁵⁸

Employment & Economic Consequences

Mining is often the sole industry, or at least the most dominant, in many regions across the country. Within most mining-affected communities, a significant portion of local economic activities are centred around or related to mining. As such, there are severe economic consequences when mines either close or are placed on care and maintenance without proper planning or implementation of closure plans, EMPs and SLPs. The activists and community members who participated in this study described the ways in which mine closure disrupts and dismantles the economies of impacted areas. Communities are left worse off post-closure, reeling from the immediate effect of being left jobless with limited to no access to alternate opportunities and burdened by the onset of a variety of related challenges.

As Nester Ndebele from WAMUA sharply puts it: *'when the mine closes down the town becomes a ghost town.'*¹⁵⁹ This sentiment is shared widely amongst activists.¹⁶⁰ Mine closure's disruption on communities' livelihoods is exacerbated within areas where mining and mining-related industries are the primary economic activities.

It is worth contrasting the level of unemployment in communities that have been affected by mine closure against the backdrop of national unemployment statistics. According to Stats SA's Quarterly Labour Force Survey (QLFS), the official unemployment rate for the first quarter of 2021 was 32.6%.¹⁶¹ In contrast, of the 130 questionnaires that LHR administered to members of mining-affected communities in the Northern Cape, only 7 reported formal employment (94.6 per cent unemployment).¹⁶² While LHR's questionnaire study is not reflective of the entire population in the province, it indicates the vastly different unemployment experiences of communities who are directly affected by mine closure.

Historically, mining in South Africa has been rooted in a system of migrant labour. While in recent decades the government has supported trade unionists' arguments against the use of migrant labour in South African mines, the system of migrant labour is still deeply entrenched in the mining industry. This system has developed over the years through the use of labour brokers and subcontractors who are often tasked with recruiting workers for South African mines.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Online interview with Nester Ndebele, WAMUA, 16 April 2021.

¹⁶⁰ See, for example, interview with Kleinboy Selepe, Bokoni Mine at Gaselepe Village, Limpopo: *'The community is starving. Since the mine closed, there is no way to make money here.'* See also Interview with Everiste from Witwatersrand research organisation: *'My concern is this, when those companies they close down this problem seriously affects the wellbeing of the communities. The communities depend on the mining activities. So, when these guys they close down, they leave the infrastructures, in terms of the job opportunities, in terms of the property, it goes down, they look like really abandoned... You will just see it's like a dead community, completely dead. It's a city, you can see it's a city but it's dead, dead in terms of activities.'*

¹⁶¹ Statistics South Africa 'Quarterly Labour Force Survey Quarter 1: 2021' <<https://www.statssa.gov.za/publications/P0211/P02111stQuarter2021.pdf>>.

¹⁶² The 130 questionnaire respondents were chosen through purposive sampling in the Northern Cape, from the communities of Samaria, Vergenoeg, Ipopeng, Galeshewe, and Mankurwane.

IMPACT ON THE LOCAL ECONOMY

The proliferation of the migrant labour system has had severe consequences in the context of mine closure. The sudden decline in the local population upon closure impacts both businesses and infrastructure that were developed to cater for large numbers of migrant labourers. This results in mine-affected communities becoming ‘ghost towns’¹⁶³ with deteriorating and wasted infrastructure as well as boarded-up shopfronts. Severe economic effects due to the dramatic loss of wealth circulation transforms communities into relics of economic activity and forgotten prospects of growth:

‘It’s [life in the community today] hard, everybody is broke, houses are empty, houses in the suburbs are being sold, it’s not good. People have left. The rate of unemployment among young people has gone up, its poverty all over.’¹⁶⁴

‘All the small businesses such as salons and small shops as well as people who rented rooms to workers have collapsed because of lack of income in the community.’¹⁶⁵



Figure 8: A man pushes a wheelbarrow to a squatter settlement in Rustenburg opposite abandoned miner hostels

The impacts of collapsing local economies in the context of closure are further exacerbated by the environmental destruction that is caused by mining. These environmental impacts often bar communities from transitioning to subsistence lifestyles and render people economically dependent on a sector that has closed down.

IMPACT ON WOMEN'S LIVELIHOODS

The economic impacts of mine closure within a migrant labour system especially impacts women. Because the mining industry requires physically demanding menial labour, it is dominated by men,

‘For most part, a lot of the women just hustle on a day-to-day basis. Hustling then means either some women will do catering in the community or will have small businesses like shebeens but one of the ways that a lot of the women we work with hustle is through transactional sex...In terms of transactional sex, what tends to happen is it becomes more precarious. I mean, it’s precarious to begin with, but as you have a scarcity of men- women then make more and more dangerous choices for less...but they will do what they need to.’¹⁶⁶

with only 14 per cent of mine employees being female. However, the economies of mining-affected communities centre around the mines and their workers and often, women are dependent on the income that mine workers circulate within communities.

Many women rely on alternative ways of earning an income in both the formal and informal local economy. They engage in economic activities that cater to migrant mine workers, such as renting out their backyard dwellings, sex-work, and selling alcohol in shebeens.¹⁶⁷ These industries are severely impacted by mine closure. Female landlords

¹⁶³ Online interview with Nester Ndebele, WAMUA, 16 April 2021.

¹⁶⁴ Online interview with Ntumiseng Selela, Welkom Community Activist, 15 October 2020.

¹⁶⁵ Unknown interviewee, Bokoni Mine at Limpopo.

¹⁶⁶ Online interview with Fatima Vally, MACUA/WAMUA Advice Office 13 July 2021.

¹⁶⁷ Online interview with Franscina Nkosi, WAMUA/MACUA at Lephalale, 6 July 2021.

suffer the loss of tenants and shebeen owners and sex-workers suffer from loss of clientele. As their economic situation becomes increasingly precarious, the labour of sex-workers also becomes more dangerous. Many women are reported to have been exposed to greater levels of harm for less pay.



Figure 9: Former De Beer's diamond mineworkers at Kimberly

IMPACT ON MIGRANT WORKERS

Migrant workers, too, can become stranded by mine closure. Due to the government's focus on establishing permanent settlements around mines, many migrant workers become fully integrated into mining towns. They establish meaningful family and community networks that are not easy to abandon after the mines close, even though they are left behind without prospects for employment. In some instances, mine workers are not paid when their employer closes down operations and as a result, they are unable to travel in search of work elsewhere.

Our analysis of the qualitative data provided by several respondents to the questionnaire suggests that many ex-miners were left destitute with little to no access to alternative income generating streams upon the closures of the De Beers/Ekapa mines in the Northern Cape. Of the 30 ex-miners from De Beers' Kimberly Mines, 21 noted '*poverty*' as the biggest impact on their lives after the mine's closure. Seven went further and wrote that unemployment after closure led to their financially impoverished state.

Interestingly, one respondent wrote that the '*loss of income lead to unbearable stress*' while another wrote that his '*dignity*' was impacted '*through loss of [his] job.*' This highlights some of the psychological factors within socio-economic impacts, a topic that is often overlooked in reports documenting the effects that poverty has on fundamental human rights.

Issues Related to Migrant Workers in Mining Communities

For decades, significant tensions have existed between migrant workers and local mining communities. These interactions have led to a variety of social issues in mining areas over time, specifically xenophobic violence, local unemployment, and gender-based violence. Participants shared that these tensions stem from an imbalance in income earning potential, employment opportunities, and numbers of men versus women, exacerbated by substance abuse. The lack of recreational facilities is also an obstacle to meaningful social participation and social cohesion.

Migrant workers are not necessarily from different countries. In fact, most economic migrants working in the mines are from other provinces within the country itself. Despite having a shared national identity, tensions flare up between local communities and migrant workers from other provinces due to mining companies' preferences in hiring migrants, thereby posing a major threat to social cohesion and stability.

XENOPHOBIA

In 2015, *The Sunday News* reported on the experiences of xenophobic violence between 2008 and 2014 of three Zimbabwean gold mine workers in South Africa. The men shared stories from their

time as migrant workers at Venterspost Gold Mine in Westonaria. All three of them reported having been subjected to violence and to being in a constant state of fear because of the tensions between non-national and South African mine workers in the hostels. However, these men were not passive victims of xenophobic violence. Instead, non-national mine workers banded together and armed themselves, resulting in protracted ‘skirmishes’ between South African and migrant workers.¹⁶⁸

A number of community members and activists report that significant tensions continue to exist between migrant workers and local communities. While this research lacks a comprehensive exploration of this issue, community members and activists do confirm its presence. Further, they elaborate on how tensions have spilled over into adjacent, host and near-mine communities:

‘[I]f you look at the demographics...there is an imbalance between men and women in these informal settlements as well. Because the mining companies, let’s say for example, Lonmin in the Marikana area or Sibanye now, they have moved out their single sex hostels and they’ve turned them into family units and where they had 34,000 workers in the past, they now have less than 5000. Now, the surplus workers the other 29,000 workers are now in informal settlements around the mine living in a situation where they pay rent to the local tribe to occupy a shack in the informal settlement... And very often there is xenophobic tension between mine workers who are from other countries and local men because the mine workers have money and local men don’t.’¹⁶⁹

LOCAL UNEMPLOYMENT

Franscina Nkosi of WAMUA/MACUA in Lephalale explained that there is animosity toward migrant workers who are seen to be benefitting from the mines while local communities are not. Franscina places blame on the mining companies and speculates that the industry purposefully denies the community access to employment opportunities because migrant workers are less likely to oppose the damage caused by mining and would not be as inclined to take actions against the company.¹⁷⁰ This logic surrounding the tactics of industry is not unheard of. If the company keeps its host and adjacent communities poor, ill-informed, and without access to the sway and influence of organised labour, it can maintain control and continue exploiting the land without being challenged by powerful opposition forces.

‘There’s a lot of tension. You know, when these mines were allocated in our communities, this government used to go abroad and fetch migrant workers to come and work in the mine. Today we call them ‘foreign people’ you know. So, for people in the community that causes a lot of tension between migrant workers and communities.’¹⁷¹

‘Even if you can come to my place, most of them, they don’t speak the local language. And they will say they have qualifications. But if you go and verify the qualifications, they will say they are not legitimate because they use money to be part of the employment so that they minimize locals to be part. Because if the locals are powerful and employed, they are going to have a challenge with meeting their targets. Because what the mines do, they only care about how they are going to meet the target. They don’t care what’s going to happen to the community. I think it’s very serious, because most they don’t understand that we are

¹⁶⁸ ‘Xenophobia nothing new: Wenela miners’ *The Sunday News* (22 November 2015) < <https://www.sundaynews.co.zw/xenophobia-nothing-new-wenela-miners/>>.

¹⁶⁹ Online interview with David van Wyk, Bench Marks Foundation, 7 July 2021.

¹⁷⁰ Online interview with Franscina Nkosi, WAMUA/MACUA, 6 July 2021.

¹⁷¹ Online interview with Tiny Dlamini, Bench Marks Foundation, 7 July 2021.

*not saying we don't want people to be hired, but how can I suffer when somebody from another province is benefiting, that's not fair.*¹⁷²

GENDER-BASED VIOLENCE

Tensions in mining communities breed structural, physical, and psychological violence, which disproportionately impacts women. In contexts where sex work is prevalent, tensions between migrant workers and local men are exacerbated by the fact that migrant workers possess the income which feeds the sex-work economy. These tensions also impact the relationships between local men and local women. Women often become the targets and victims of gender-based violence.¹⁷³

Social Impacts Related to Mine Closures

Heightened unemployment and poverty in communities that have been affected by mine closures has led to an array of other social impacts. The activists and community members who participated in this research have reported an explosion of numerous social issues that have either been caused or exacerbated by the closure of mines in communities with narrow mining-oriented economies. Specifically, this section deals with increases in crime, substance abuse, and interpersonal violence.

As is explained by Fatima Vally from the WAMUA/MACUA Advice Office, mine closures compromise the social fabric of the community. Households are put under immense pressure by the dramatic decline of household income. People's access to resources and even to recreational drugs dwindle, leading to a general uptick in crimes. Increased feelings of anxiety and stress can also heighten levels of substance abuse and interpersonal violence which, more often than not, is perpetrated against women and children.

*'In mining communities... people do enjoy having alcohol and smoking marijuana and taking other recreational drugs in general. When a mine closes it creates a very different situation in the community. Where funds used to be available through the miners- when a mine closes people still want access to these substances but there aren't enough resources to get access to it. There does tend to be a greater increase in crimes in the township especially when mines close because of nyaope and alcohol. These and other forms of recreational substance abuse is being limited and so crime in the township becomes more exorbitant where houses are broken into, people are robbed in the street and the fabric of the community becomes more and more eroded and put under a lot more pressure... What I have seen is that crime increases particularly in terms of break-ins, burglaries and robberies and so forth, but also domestic violence and gender-based violence tends to increase particularly in instances where households are put under more pressure. For instance, if you have a household of 8 and above and there was only one person working in the household and they worked for the mine and were then retrenched- this puts a lot of pressure on a family and that often manifests into different forms of violence which often becomes domestic violence.'*¹⁷⁴

- Fatima Vally, MACUA/WAMUA Advice Office

¹⁷² Ibid.

¹⁷³ SB Keetharuth 'What happens underground stays underground: Study of experiences of Gender-based violence and Sexual Harassment of women workers in South African mining industry' (2021) 13-24 <<https://lawyersforhumanrights.b-cdn.net/wp-content/uploads/2022/08/South-Africa.Publication.What-Happens-Underground-Stays-Underground.04.2021.pdf>>.

¹⁷⁴ Online interview with Fatima Vally, MACUA/WAMUA Advice Office 13 July 2021.

While the degrees and dynamics of social collapse that occur against the backdrop of ineffective mine closure are context-specific and differ across and between communities, the context set out by Fatima Vally ably show how many of the social impacts intertwine with each other. Although the sections that follow are separated to deal with certain thematic social issues, there are significant overlaps between each.

CRIME

For mining towns, a mine closure also means closure of avenues for lawful employment, halting the income stream of vast sections of the community. As community activists point out, these closures are always accompanied by surge in the levels of criminality. The crimes range from economically motivated crimes such as theft and robbery to vandalism, drugs, and domestic violence.

*'Society has become unsafe as a result of the failure of the mining industry to adhere to what it has promised.'*¹⁷⁵

*'What you have in Emalahleni and Secunda are high levels of drug and alcohol abuse, high levels of violence- including domestic violence- high levels of crime. In Emalahleni the majority of people are surviving through many forms of activities that are of a criminal nature... Either they will go to these abandoned mines to do illegal mining or to become Zamazamas or they will go out to steal the copper cables or demolish any steal fabricated material or vandalize any property that is not occupied. Community halls, community clinics that are under-utilized are being vandalized all over. The public infrastructure is being lost because people want to survive- they can steal even the railway tracks and go and sell them for recycling simply because they want to survive... they steal cars, there are break-ins into people's houses, there are robberies all over.'*¹⁷⁶

The economic collapse creates a vicious cycle of crime and underdevelopment. Like Hlabane, many participants bemoaned the fact that crime is as much a by-product of underdevelopment as a driving force perpetuating it. This happens in two ways. Firstly, crime destroys the public infrastructure essential to development. Secondly, crime discourages investment in the community. A former mine worker in Limpopo summed it up as follows:

*'The levels of crime have exploded. Development is impossible because people are stripping the homes for scrap metal. Eskom is protesting because people are stealing copper over and over again. They have stopped coming back to replace it. Now we don't have power. I don't blame them.'*¹⁷⁷

Women bear disproportional impacts of the surge in criminality. Women-headed households are targeted for economically motivated crimes because they are considered easy targets. A rise in criminality also consistently matches increases in gender-based violence by both strangers and family members.

'Women are not safe. You'll find that young girls are getting raped, and the older women also are getting raped, getting robbed, getting killed. Women who are staying alone are also experiencing the same thing. [...] Drug abuse, our children stressed, our teenager are stressed, they end up taking drugs, and then they end up stealing, raping, this and that, so this is the cause. [...] before [the mining industry] there was nothing like this. You didn't even

¹⁷⁵ Online interview with Matthews Hlabane, Green Revolutionary Council, 16 April 2021.

¹⁷⁶ Ibid.

¹⁷⁷ Comment by a former Bokoni mineworker during community consultation, Atok at Limpopo, 8 March 2020.

*fear to sit outside at night because you know that you are taking care of each other. So community members are distressed. There is no safety at all.*¹⁷⁸

SUBSTANCE ABUSE

Communities impacted by mine closures report widespread addiction to substances, particularly alcohol and nyaope. Mineworkers' leader Gaddafi Mdoda lamented that the only development happening in all the communities around Rustenburg is taverns, which are mushrooming everywhere. Tavern owners profit from and contribute to the increase in substance abuse:

*'...where I am staying a lot of the youth are not working, they are not working, they are not going to schools, they are just sitting around. Like Gadhafi has mentioned, the taverns are very full with young people; young people and middle-aged people as well, there's no jobs. Even the ones who are working, they end up using their money on the taverns, there is nothing beneficial for the community that they can participate in.'*¹⁷⁹

*'...around Klerksdorp there is a town called Sterkfontein, it is a disaster; it is also a mining town. Only drug addicts around, that is the only thing they know. Us people from mining areas, there is nothing for us.'*¹⁸⁰

A quick guided tour of Rustenburg township by Gadhafi Mdoda left LHR researchers with the impression that the area most probably has a higher number of taverns per capita than an average working-class township.

Drug-use is similarly widespread, including drugs such as Nyaope and Mandrax. Both drug and alcohol abuse has been linked with violence in many of these communities, especially directed against women.

'The only way to get the income redirected from migrant workers to women in the community is either through the issue of sex work or through shebeens and the operation and running of shebeens. But when you are serving men and its month end and people have a lot of money to splurge, you get incidents of violence and so on around shebeens and that very often do affect women. They do become the victims of that violence.'

*When we spoke to the police in Bafokeng in Freedom Park for example, they specifically told us that around pay day is when they have their spikes in gender violence and it is associated with increased consumption of alcohol in those communities. If you go to the Riverlea community on the other hand, it's not just alcohol- there it would be a variety of other drugs as well. Reiger Park also, you have a lot of gangs structured around Nyaope, Mandrax and other drugs in those particular communities as well.'*¹⁸¹

- David van Wyk, Benchmarks Foundation

¹⁷⁸ Online interview with Margaret Molomo, MEJCON at Mokopane, 6 July 2021.

¹⁷⁹ Comment by a participant during consultation with Communities in Rustenburg, 17 October 2020.

¹⁸⁰ Ibid.

¹⁸¹ Online interview with David van Wyk, Bench Marks Foundation, 7 July 2021.

FAMILY SEPARATION AND BURDENS ON WOMEN

Many community members linked mine closures to increase in domestic violence and abuse. Such forms of interpersonal violence tears both families and communities apart.

*'Many of our children were at private schools and universities but now they have had to come home because we can't afford it anymore. Some of the people who came here for work have had to leave to find work somewhere else but they have left their children behind. Our families are broken. People cannot stay here and that has caused a massive social crisis.'*¹⁸²

*'I would say seventy percent are single mothers, whom, they got pregnant thinking if she gives birth then the man would stay. Now she's faced with raising a fatherless child, not knowing what to do. We've got a lot of women who are on that situation. There's a lot of them because most of the men who are here, they were from Eastern Cape, KZN, Northern Cape, and some were from Lesotho and Swaziland, and you can imagine, if a person, they say now we move you, will the guy say, no I have a child here? No. Then they change their sim cards. Now you don't know how you will trace the guy. We have a situation like that where a lady said, I've got a baby, and I'm trying to call this guy, and the number doesn't exist anymore. Now she doesn't know how she will locate the father. Nowhere to be found'*¹⁸³

Because the mining sector is typically dominated by men, mine closures have severe impacts on households. As men are most likely to find employment in other mining areas, they often move whilst women remain stuck in post-mining communities. Due to patriarchal expectations in society in general, especially in villages, men are not expected to physically care for the children. Women are left with the burden of caring for children, often without the support of the father.

*'Most of the divorces that we have in the village are caused by the mine... There is no balance here. Most women are the ones who are left behind, are the ones who bear all these problems at these villages. As you know, some other families, they say the father is working in Jo-Burg and he's not coming back home. Some say we don't have parents, my brother is working in Cape Town, but is not coming home. Demographically, there is no balance.'*¹⁸⁴

Additionally, mine closure often leads to suspension of public services such as clinics and preschools, as mining companies pay for or subsidize these services. As a result, in post-mining communities, women also carry the burden of tending to their reproductive health and childcare.

'There's a close relationship in Africa between women and land and agriculture and water. These elements are severely affected by mining and therefore severely affects the social relations that women and the roles that women have in society. It renders women almost redundant to the reality in which they find themselves. With that redundancy then comes the perception of women as having less value to society and to the community that they find themselves in and therefore they are more vulnerable to violence from society and from the communities themselves. I think that mining is a penetrative industrial activity- it penetrates and extracts. In many ways, I would picture it as the rape of the land, the rape of the environment, the destruction of nature, and if we look at that in feminine terms- of mother

¹⁸² Comment by a former Bokoni mineworker during community consultation, Atok at Limpopo, 8 March 2020.

¹⁸³ Online interview with Franscina Nkosi, WAMUA/MACUA, 6 July 2021.

¹⁸⁴ Online interview with Margaret Molomo, MEJCON at Mokopane, 6 July 2021.

nature, so to speak. It also results in women being treated in a very similar fashion- we can see this in Canada for example, in mining areas where indigenous women are often killed and are frequently killed by long-distance truckers a long mining supply routes. We see it in Botswana where the HIV virus spread a long the supply routes to the mines and the mining areas in South Africa and in Botswana have double the levels of HIV infections than the rest of the country. In places like Rustenburg, it's completely out of control. That is a reflection of the degradation of women in society and the roles of women in society as a consequence and as a result of mining. In Katanga, where we do a lot of work, in the DRC, the life expectancy of a woman is 16 years. In the interviews we did there- this is what we were told. A girl child cannot expect to live longer than 16 years in those communities- those very degraded communities. That degradation took place after the mines were privatised and Jecamin- the national mining company- collapsed as a result of the pressure of the world bank and the IMF and so on and the entire well-regulated industry also collapsed in the process. Now, the situation of women in that area is absolutely untenable. This is what my fear is for South Africa now that we are moving towards mine closure and mine abandonment. The abandonment of the poor- who never actually benefitted much from mining in the first place- in their relationship to mining they had to somehow make a living out of mining through renting out backyard dwellings, through renting out their bodies, through selling alcohol and so on. Now with the total collapse of mining I don't know where we are going to go at all- unless we plan for a post mining society in South Africa. That requires that we begin to think what the appropriate laws are for a post mining society, what are the appropriate economic activities for a post mining society, what are the appropriate roles for workers and the working class and women in a post mining society, you know. Unless we think about these things seriously, we are going to move into a very chaotic reality- which we are already doing in South Africa.'

– David van Wyk, Benchmarks Foundation¹⁸⁵

Issues surrounding Compensation, Ownership, & Accountability

'They (the mine) took people's land, they gave them limited compensation for a few months instead of a farm that could sustain them for the rest of their lives.'

– Sepadi Thobejane – Limpopo – Twickenham Mine

'According to the municipality, the land no longer belongs to the community. They are saying its government owned. It belongs to public works so we cannot raise issues about the land.'

– Unknown Tafelburg – Blue Ridge MAC

'When the mine came, they resettled people to different villages. Naledi was representing the mine. The main road to the mine that they built used to be a soccer pitch and the road was just built over it. When the mine resettled people they paid them something. We used to host tournaments on that soccer pitch – it was our only income. When we spoke to the mine, they gave us R5000 to hire a temporary field. When this ran out, we wrote them letters but nothing has come of it. We still don't have a field and now the mine is closed.'

¹⁸⁵ Online interview with David van Wyk, Bench Marks Foundation, 7 July 2021.

– Unknown – Limpopo – Twickenham Mine

‘Most of our houses are cracked from blasting from the mine. The mine came and did investigations, took photographs and everything, and we were promised compensation but after the mine closed, nothing happened to compensate the families whose homes are damaged.’

– Rachel Rachidi – Limpopo – Bokoni Mine

Many impacted communities want to be included in the processes of rehabilitation post-closure. There have been numerous calls for skills development and training during the closure process itself in order to establish alternate economies. Despite this, mines seem to actively exclude communities from the rehabilitation process. Undoubtedly, this contributes to the communities’ feelings of neglect and disregard, as they are not recognised as legitimate partners and stakeholders in the mining sector despite them having to carry the burden of the damage it causes. Simultaneously, this practice denies them access to the few economic opportunities that may be presented by closure.

‘Nothing is being done about [mining companies contributing to post-mining economies]. The communities are left worse off and no one is taking the initiative towards post-mining development. For instance, you get a company like DRD- at least now we have pushed with DRD- but I will tell you, at times- back when we were doing the study, waiting to inhale around Soweto and so-forth- the company would contract one or two people who have a CC and give them the jobs. Those people then go and get their own people- sometimes people who are not even directly impacted. That is a problem for us. For instance, when it came to the grazing of the tailings and putting up the sprinklers for dust suppression- they were still using people from Norway- people who are not directly impacted. We could not get any one from Diepkloof working on the dump next to Diepkloof, we could not get any one from Riverlea working on the dump by Riverlea, and from Snakepark the same situation applied. It is not helpful... When mining companies are responding to these issues they will always say- ya, people are burning- when we question them as to why they are not using the dust suppression method like a watering and grazing the tailings. They will always say- oh but we put up sprinklers and people go there and they burn the grass afterwards. We say, look the problem is that there is no sense of ownership with regard to this. Because they come with people and then leave communities out- bringing in people from elsewhere. Communities don’t necessarily think that they own anything in that- that is why at the end of the day they are going to destroy the infrastructure- because to them it doesn’t provide any benefit. That is the situation.’¹⁸⁶

– Chris Molebatsi / Platinum Belt Community Alliance and Benchmarks Foundation

Environmental Hazards

A significant requirement of mine closure obligations is that mining-affected land must be rehabilitated to a state that is pre-determined and appropriate for safe land usage. However, proper rehabilitation rarely happens. As already discussed, participants decried lack of enforcement of the EMPs and closure plans. They attribute this to the unwillingness of the government to empower and work actively with mining communities. Instead, the government

¹⁸⁶ Online interview with Chris Molebatsi, Platinum Belt Community Alliance and Bench Marks Foundation, 23 April 2021.

reinforces corporate arrogance, unaccountability, and impunity by allowing for abdication of environmental responsibility and legal obligations. Elton Nkwane from MEJCON remembers:

‘During the time of Minister Zwane, it was even worse... it was during a time when the community networks and organisations were really dissatisfied with the state of mining in the country. Lots of permits were issued and then the land left unrehabilitated. I must say, government has said that- especially in Gauteng- where the water underground is approaching the surface level- I remember when Mokonyane was the Minister of Water and Sanitation- said that they have a plan to deal with acid mine drainage.

The lack of rehabilitation permanently etches mining’s environmental damage into the community’s landscape, especially with poorly maintained acid mine drainage, tailing dams, and acidic underground water. These pose notable and immediate threats to the safety and well-being of community members.

The mine drainage is happening as a result of the mining that is taking place sometime ago in that region. Also, it is happening because those mines were not closed properly. If they were closed properly then it means that the water that is approaching surface level would have been a filtered water. That water could then be used for domestic purposes if the mine was closed properly. Generally, that is what is happening nationally in relation to that.’¹⁸⁷

The tailing dumps are generally full of chemically toxic and radioactive materials. Poor maintenance of the tailings post-mining leads to air and water pollution, especially when it is windy as the dust blows the exposed tops. Even those that are supposedly rehabilitated often become a major source of the pollution due to lack of maintenance. As the industry has not been able to secure a vegetation that can organically develop deeper roots and successfully reproduce on the tailings, empowering local communities to maintain them long after mining is the only clear solution.

According to reports, the amount of uranium in some of these tailings has heightened the levels of radioactivity to levels higher than nuclear disaster areas like Chernobyl.¹⁸⁸ Many abandoned and old mines are also flooded with underground mine water, which is toxic and acidic.¹⁸⁹ The mine water pollutes soil and other water resources alongside the tailings. The water in the old mines of Johannesburg is almost at the surface, despite promises of rehabilitation.

Improper closure of mining pits is a public safety hazard itself, especially where informal settlements are built in abandoned mine areas. The mining areas were never transformed for post-mining land use, creating hazards for the residents. In many of these impoverished settlements, children play on the mining dumps, swim in polluted lakes, and play around unguarded and poorly secured mine pits at great danger to themselves.

‘There are no efforts done [to rehabilitate the mines]. There’s this one here in Waterdaal and another in Snake Park- where they have left their acidic water and the children are swimming in that acidic water. Some of the people have died in that water... The one where Richard is at in Springs- a five-year old fell in. Up to today nobody knows the grave of Richard... even the government didn’t take care to go and exhume Richard from that shaft.’¹⁹⁰

¹⁸⁷ Online interview with Elton Nkwane, MEJCON, 23 April 2021.

¹⁸⁸ This is especially true in old gold mining towns along the Witwatersrand basin. W Stassen ‘Gauteng’s mine dumps brimming with radioactive Uranium’ *Health-E News* (15 October 2015) <<https://health-e.org.za/2015/10/15/gautengs-mine-dumps-brimming-with-radioactive-uranium/>>.

¹⁸⁹ Human Rights Watch (note 44 above) 23-29.

¹⁹⁰ Online interview with Nester Ndebele, WAMUA, 16 April 2021.

People are also exposed to sinkholes and quicksand. Communities reported several people, especially children, who disappeared into quicksand and were never recovered.

‘Living in Snake Park where there are no facilities for our children to amuse themselves when they come back from school- our children will go straight to the tailings and explore. So, when it rains- because there are ponds in the tailing dam- then our children will go straight to the tailings and swim. And most of our children that went to go and went to swim in the tailing was swallowed by the tailing dam. Remember that place was a mine so there is quicksand there and some of them of our children were found and some of them were never retrieved up and up until today.’¹⁹¹

‘Some other mine, they left some big holes [from prospecting]. During rainy seasons, those holes, they fill up with water. Our children are getting drowned in that. And when you go to them, it is not their problem...They [the government] don’t intervene. If a child dies at home, with such accidents, you are on your own.’¹⁹²

Communities are also frustrated that government is failing to assist those who have lost family members to these environmental hazards from claiming compensation from mining corporations or their directors.

The government’s failure to support criminal and civil claims against corporations is an obvious injustice to affected families who are too poor to seek any recourse on their own. This failure also reinforces a sense of corporate impunity. If the government held corporations or their directors accountable, mining companies may be

incentivised to take rehabilitation and such environmental hazards more seriously.

Destruction of Livelihoods

When mining is introduced within rural communities, pre-mining lifestyles and livelihoods are irreversibly disrupted. Not only do mining operations initiate communities into the formal economy, the environmental damage that they cause also makes a return to pre-mining, rural, and/or subsistence lifestyles incredibly difficult, especially where mining-affected land has not been properly rehabilitated. Once a mine opens, the local community becomes dependant on employment in the mine or on other related economic activities for their sustenance. Therefore, when mines close or are put onto care and maintenance, there are monumental impacts on the livelihoods of mining communities.

‘The mine never benefitted us but it has caused environmental disaster for the community. Many of our cows have died. The mine has taken our land. The mine has fenced-off all of the former grazing land. They have also taken more land to create their own farming project. Their cattle are well fed but ours are dying.’¹⁹³

‘So, the process of proletarianisation of formerly farming tribal communities combining land dispossession, pollution and transformation of farmers into mineworkers and industrial working class means closure plans limited to rehabilitation of the physical environment can never be not adequate. Instead, the closure plans must speak to rehabilitation of the whole communities- to reorient the economic development in a way that can provide sustainable livelihoods post-mining. The mining industry is destroying everything that we have. Our

¹⁹¹ Online interview with Tiny Dlamini, Bench Marks Foundation, 7 July 2021.

¹⁹² Online interview with Margaret Molomo, MEJCON, 6 July 2021.

¹⁹³ Interview with unknown mineworker, Twickenham Mine at Limpopo, 9 March 2020.

*lifestyle is changing, and we are getting nothing from it. Everything is becoming destroyed.*¹⁹⁴

Again, the livelihood impacts of unrehabilitated mines disproportionately impacts women. The dust consumes the most hours in household labour as it requires non-stop cleaning, a burden which is mostly borne by women. This undermines their ability to perform other roles as providers or caregivers. The additional household labour is not compensated. The amount of time spent cleaning impacts the ability to access other economic opportunities as well as the ability to participate meaningfully in the community. There is also an additional burden of caring for the sick and many other countless implications of improper mine closures which makes lives difficult for communities especially women in those communities post-mining.

*'Another environmental effect would be dust. In all of the communities that we work with, what the dust does is... it is obviously very irritating to constantly have dust in your house. So, women are constantly having to clean because the dust just keeps coming. It is very annoying and creates an additional labour requirement in the house that is obviously uncompensated for and goes unrecognised.'*¹⁹⁵

Health

There are significant health risks that are associated with the pollution caused by mining operations. These have lasting impacts on communities, especially when the mine is not properly rehabilitated.

*'The white dust is dangerous. I grew up here in Soweto in Meadowlands next to the mine. You know, maybe four of my family members- we have asthma because of this. You know, this substance is so dangerous for the community. Something must be done, if possible, about this. Because it's not even going to be us- even our children and our children's children are going to have the same problem. So, I don't know if there's something that can be done about this... This dust is so frustrating really.'*¹⁹⁶

Like Bessie, most participants complained about the high prevalence of respiratory illness caused by the dust.

*'There are a lot of health issues. Luckily because I was on the clinic committee I could see the stats, each and everyday day, whoever comes to the clinic, I would see that there are a lot of cases of respiratory illnesses that are caused due to the air pollution, those who worked in the coal mine, and in the power station, even the communities just by breathing the polluted air.'*¹⁹⁷

Abandoned or poorly maintained tailings and pits have equally devastating health impacts. The community activists and researchers noted that the dust carries toxic chemicals, radioactive materials, and heavy metals from the tailings. These cause respiratory illness and other unusually prevalent health conditions in the affected communities, especially in the oldest mining areas south of Johannesburg.

¹⁹⁴ Online interview with Margaret Molomo, MEJCON, 6 July 2021.

¹⁹⁵ Online interview with Fatima Vally, MACUA/WAMUA Advice Office 13 July 2021.

¹⁹⁶ Online interview with Bessie, Community Activist at Snake Park, 7 July 2021.

¹⁹⁷ Online interview with Franscina Nkosi, WAMUA/MACUA, 6 July 2021.

*'Vlakfontein closed down many years ago and left behind this very big radioactive mine dump that contains arsenic, it contains silica, it contains led. We did a variety of tests there and we even did a documentary with Aljazeera around the impact of all these heavy metals and so on...'*¹⁹⁸

*'[S]ince living in Snake Park I've come across a lot of children with cerebral palsy in each and every street...I've also come across a lot of children with severe eczema... A study that was done by Benchmarks revealed that the chemicals used by the mines were found in the bodies of these children with cerebral palsy. Chemicals that were used by the mine were also found in the animals of these people who are farming adjacent to the mine. There is a hell of a link.'*¹⁹⁹

Bench Marks Foundation's leading researcher David Van Wyk connects the health issues with apartheid-era spatial planning. During that time, black working-class communities were located exactly in the direction of the wind blowing the dust. Many residents were living in shacks and poorly constructed RDP houses without access to portable water supply. As these conditions continue today, they aggravate the health hazards that the mines present. As Van Wyk put it:

'When it's the windy season, the dominant wind comes from the North West and blows across Soweto- which is in a basin basically- and right in front of that basin is Snake Park. In August/September the dust that blows into Snake Park is so bad that sometimes when you drive you can't even see 5 meters ahead of you. The dust gets into the informal settlements, it goes right through those zinc shelters that people are living in. Even the RDP houses, people say that when they get into bed the sheets are full of dust, the pots when they're cooking are full of dust, and the dust contains very serious poisons and so on. So, people are slowly being poisoned.'

*There's a lot of cerebral palsy amongst the children that are born in that community. Part of that also had to do with the fact that Tiny and them had to struggle to get piped water and for a long-time people actually used water from the mine dump itself and from the tailings ponds that are there. That water is highly toxic. Traditional healers still go and collect that water and mix it with their medicines and so people end up consuming that water when they go and get medicines from their traditional healers.'*²⁰⁰

The health impacts of mining further prejudice communities when mines close due to lack of employment opportunities and therefore, money to spend on health services. Where health infrastructure is also shut down with the mines, communities bear the burden of caring for the sick themselves.

*'I remember a guy said he was going for a medical check-up because I've been hired. And I said, okay, come and tell me the results. Then he comes and tells me he has failed. I say, how did you fail because you were not sick? And he said that his lungs were not fit to work. He's not smoking, but because of the air that he breathes, that he can't be fit to work. You become the victim while you've never worked, and you won't have the opportunity to work again. Those who are living far away, they got an opportunity because their lungs are not affected by the pollution.'*²⁰¹

¹⁹⁸ Online interview with David van Wyk, Bench Marks Foundation, 7 July 2021.

¹⁹⁹ Online interview with Tiny Dlamini, Bench Marks Foundation, 7 July 2021.

²⁰⁰ Online interview with David van Wyk, Bench Marks Foundation, 7 July 2021.

²⁰¹ Online interview with Franscina Nkosi, WAMUA/MACUA, 6 July 2021.

Participants emphasized the fact that the mines affect the health of the entire community, but mining companies only consider themselves responsible for the health of mineworkers, and in best case scenarios, their families as well. The broader community is not considered and even the best

*'The mine industry is very dangerous. Many of us [the workers] are ill or injured from our work on the mine. The mine said that we had medical aid but that medical aid only covered us for three months after closure and after that we were on our own.'*²⁰²

of the health services benefits covering workers and their families against injury and illnesses are strictly limited to the duration of the workers' employment.

Beside physical health impacts, participants also raised a whole range of psychological and emotional impacts of living in the mining-affected communities. These impacts are generally understudied. These impacts include high levels of depression, miscarriages, stress of caring for deformed children or children playing in dangerous areas, and the mental burden of living in overcrowded and poorly serviced communities with constant blasting noises and seismic activities. The activists pointed out that mine closures aggravates these mental health crises by adding the stress of heightened levels of unemployment, poverty, and gender-based violence.

*'In terms of children with cerebral palsy, most of the fathers of these kids... are gone. After seeing the conditions of their children, they have left these women. So, what happens at the end of the day is that that becomes a gender-based [issue]. These women became mentally abused. So, these mines have caused a very big problem and a very big tension amongst our communities. When we talk gender-based [issues], we are talking about people- men that have left these women. And when women are left with these kids, you see a child that cannot walk, that cannot talk- and the men, seriously, most of them have run away. So, as a woman you must make it a sure case that you take care of this child. You cannot work, you cannot do anything- You must be there 24/7. Remember that we are talking about children that require a lot of money...when we talk gender-based, who gets physically and mentally abused- it's women. So, who is the causer of all these problems? It's these mines.'*²⁰³

The environmental, social, and economic impacts of mine closure are often intertwined and interconnected. The quotes below highlight how improper closure, constituted by inadequate planning and the lack of implementation, causes a range of different yet intricately connected issues in specific mining-affected communities and more broadly, for entire regions and even the country at large.

'When you are looking at mine closure- one will always argue that, in terms of what is stated in the laws, it says that there must be rehabilitation and that rehabilitation is not supposed to be a one-day act or a one-month act. It is the rehabilitation of the quality of your soil, it is the reclamation of the ecosystem- your water systems. So, the industry that we are talking about is not doing rehabilitation. What that means is that, after mine closure, the opportunity for employment is very slim or it is not there. This is the reason why in most of these coal mining towns we now have high levels of community violence, we have vigilante groups or rather- economic gangsters- in our communities operating in the form of business forums. The situation is gradually getting worse. What is worrisome is that the land has been rendered sterile. If mining companies committed resources that are sitting in the rehabilitation bond- to create employment- we will not be having this situation

²⁰² Interview with Rachidi, former Bokoni Mine worker, at Atok, 8 March 2020.

²⁰³ Online interview with Tiny Dlamini, Bench Marks Foundation, 7 July 2021.

because the land would not be sterile it would be rehabilitated and can be used to create work for people to be able to produce food or create other alternatives that will enable them to sustain themselves. But rehabilitation is not taking place- when you have lost the soil quality and there is no rehabilitation, the prospect of having a future is very slim. When you have lost your water sources and there's no reclamation of your water systems, then the ecosystem itself will forever be damaged by acid mine drainage... there is no chance of using that water for your survival.²⁰⁴

'The old Environmental Management Act required the mined area to be rehabilitated to its original state. So, the old environmental laws were saying something about rehabilitation... today we hear from government about the new environmental laws. Let me tell you, the damage that we see today in Emalahleni and in Johannesburg, in the Vaal and everywhere, happened under the guide and the advice of the so-called experts. So, how can we sit today and say that the experts are advising that the new environmental laws are going to ensure effective rehabilitation and the land will be restored to its original state and therefore we will have clean water? No! Mining destroys the water sources. Mining will destroy the water table- which is not manmade. Are we going to dig deep and create underground reservoirs? What will be the quality of that water because we have exposed a substance called pyrite- which is reacting with oxygen and water to form sulfuric acid. So, 20 years after mine closure you'll still be sitting with acid mine drainage. This will be a problem for the quality of your soil, your ecosystem and of your water and therefore the quality of your food and the quality of your health.'²⁰⁵

- Matthews Hlabane, Green Revolutionary Council

Community Aspirations

CONTEXTUAL NEEDS AND WANTS OF INDIVIDUAL COMMUNITIES

Mine closure is inevitable. Although minerals may be abundant, they are a definite quantity and non-renewable. Even where minerals objectively still occur, the commercial viability of mining, changes in technology, and decreasing demand for raw materials like coal due to climate change means many mines will close sooner than later. Community activists are aware of these realities. They are not protesting mine closures per se, but the process of mine closures wherein progress is swept away by the polluted winds of neglect.

The rhetoric of permanence around which mines are established leave many people hopeful that their communities will see a return to mining and economic prosperity. This unrealistic vision of a future of abundant mining is a product of the failures of industry and government to properly reskill or upskill ex-miners. Ex-miners are often left wanting to use their skills and participate actively in the sector that they know best.

²⁰⁴ Online interview with Matthews Hlabane, Green Revolutionary Council, 16 April 2021.

²⁰⁵ Ibid.

PARTICIPATION AND OWNERSHIP

For an increasing number of activists, visions of mining justice based on shared prosperity will only be possible through community participation and ownership of the mines. The sentiment behind this growing demand is the disillusionment of many black working-class people in the country with their exclusion from participation in the ownership and management of the economy, even after 28 years of black majority rule. Understandably, mining and land ownership have taken the centre stage in this public discourse.

The national focus on the mining industry is also due to the struggles of the mine workers and affected communities. The historic 2012 mineworkers strikes, which culminated in the infamous Marikana Massacre, brought about seismic shifts across the political landscape and in the trade union movement. Consequently, the struggles of mining workers and communities have forced national dialogue on how the economy is not working for the majority and debates on the alternatives to the current macro-economic framework. These debates have raised questions of ownership and participation in the mining industry.

*'[The] Freedom charter said the minerals shall be transferred to the ownership of all the people. Now that the ANC is in power, why can't government implement that? Why can't we take and own these mines? We are already mining on our own here. What we need is the government to help sell our diamonds, to support us financially so that we can grow our artisanal mining and to create many jobs and business opportunities for many unemployed youth here in Northern Cape'*²⁰⁶

While participants expressed different opinions on public or social ownership of the mines, almost all of them demanded community co-ownership of the mines on their land. A community leader in Rustenburg explained how communities' supposed co-ownership has disappeared:



Figure 10: Former Bokoni Mine Worker speaking at a community consultation

*'...we want the look at the accounts, or the rightful owners to have their share in the mines. As far as I know, all the Bafokeng people, each village had an account, trust fund account for each village and they were 19. But when you check, zero, zero, there is nothing in the account. So, if they say we are going to open 22 shafts for example, and if there are people there who have a paper and say no this is our land, they must be given shares in that mine.'*²⁰⁷

Some participants reason that as their land and labour which are exploited for the mine, it is only fair that they are compensated with the stake in the mines. Others argue that if communities are represented in the boards, they can participate in the decision-making to ensure that mining is conducted and closed ethically and that communities are prepared for a sustainable post-mining economy.

²⁰⁶ Interview with Noma Siwa, SA Artisanal Miners Forum at Galeshewe, Kimberly, 26 November 2020.

²⁰⁷ Comment from a participant, community consultation at Rustenburg, 17 October 2020.

A RETURN TO MINING & ARTISANAL MINING

Many towns and communities that are now reeling from the socio-economic and environmental impacts of mine closure did experience 'glory days' at some point in time. During its initial boom and sporadic moments of prosperity, mining was able to spur rapid development and was often the catalyst of increased economic activity and participation. Many people are understandably nostalgic and are hopeful that mining will return to their communities. One participant requested that LHR *'help by establishing whether gold is finished indeed in the mines, if gold is not finished the mines must be reopened and operate to assist the community.'*²⁰⁸

A return to large-scale mining is generally unfeasible in most cases. Even if it was feasible for the industry, some community members and artisanal miners feel it is unlikely that a return to large-scale mining would yield substantial benefits for them. The shift towards mine modernisation along with the unchanging exploitation that has always characterised the sector has alienated certain sections of the mining communities. These sections want to carry on with artisanal mining as long as they can get support in procuring capital for more effective and efficient equipment, ensuring safe and better working conditions, and securing the formal markets.

*'If people want to go back to mining, they must accept the fact that now technology is going to be used and only very few of them are going to be employed...Many of them [retrenched miners in communities affected by closure] are experienced miners and we have shafts that are not properly closed- So, these people, to sustain themselves, we believe that it is time for them- artisanal miners- to be legalised. Today it is illegal but, if we could allow...this sector, then these people who are coming from the community, obviously whatever they get they will spend within the communities that they are living in and support the local businesses in such areas and that will immensely reduce poverty.'*²⁰⁹

Although mining is a damaging and dying industry, some notable benefits and opportunities that arise from small-scale artisanal mining. For many of the activists and community members who participated in this research, artisanal mining is a valuable tool through which community aspirations for growth, participation, and ownership can be realised. They are determined that artisanal mining should be legalised and encouraged as they believe it can mend broken local economies and circulate wealth within communities that have been devastated by mine closure with a significantly lower environmental impact than large-scale mining.

Moreover, artisanal mining seems to present noteworthy opportunities through rehabilitation of mining-affected land. With the help and support of the industry and government, artisanal miners can be equipped with the knowhow to drive the much-needed process of rehabilitation. Matthews Hlabane of the Green Revolutionary Council states:

*'If we have got over 6000 abandoned mines in this country that have not been rehabilitated, then we should look at Zamazamas as having potential to help the country to do rehabilitation. We cannot continue to reduce Zamazamas to scavengers...'*²¹⁰

The call for artisanal mining to be encouraged and formalised has been sounded by many of the community members and activists who partook in this research. This would clearly form part of an

²⁰⁸ Online interview with Ntumiseng, Lejweleputsa/Welkom, 15 October 2020.

²⁰⁹ Online interview with Chris Molebatsi, Platinum Belt Community Alliance and Bench Marks Foundation, 23 April 2021.

²¹⁰ Online interview with Matthews Hlabane, Green Revolutionary Council, 16 April 2021.

important and logical first step in addressing some of the socio-economic and environmental issues that communities are confronted with post-closure.

Regulating the work of artisanal miners must be done properly, with the input of all major stakeholders, if it is to serve the true interests and aspirations of communities. This purposeful regulation should be implemented to provide direct and immediate benefits to mining-affected communities, not in a way that excludes communities from having ownership over the process and its potentials. One commentator warned about how cannabis legalisation, meant to benefit poor black farmers, ending up hurting them:

*'Look at the issue of marijuana... the battle was fought from the ground up until the highest court and eventually it was decided that it must be legalised. Now we are having a problem there- do you know the cost of getting a licence to farm marijuana, to grow marijuana legally? It is very expensive...We need to be careful as we try and push the government to regulate the artisanal mining sector so that at the end of the day, we don't have the syndicates- kingpins of the syndicates- taking over what is actually meant for poor people.'*²¹¹

Artisanal mining has a reputation for being dangerous. Whether it is because of the syndicates who have seized the opportunity, or because of the lack of proper equipment and safety measures, there have been a number of tragic incidents surrounding artisanal mining. Regulations must take these incidents into account and put forward reasonable frameworks to ensure that the safety concerns that communities express about artisanal mining are taken seriously.

*'[T]he issue of explosions, remember those people when mining illegally they also use the very same instruments used by the mines. So, one of the first things is that the safety measures used by those people is not right we cannot rely on them...there was that explosion here which killed many zama-zamas in Harmony gold mine'*²¹²

Artisanal mining also presents an opportunity for women to be recognised in small-scale mining sector.

Therefore, artisanal mining sector regulations should make deliberate attempts to empower and protect the aspirations of women who occupy that space. Of course, the only way to do this is to actively engage and consult with female artisanal miners and ensure that their voices and aspirations are reflected in any policies or regulations that may be adopted.

DIVERSIFIED ECONOMIES & GREEN JOBS

Despite its potentials, it is important that artisanal mining, like all mining, be recognised as temporary and unsustainable for the long term. As such, transitional jobs in diversified, green local economies should be created alongside the establishment of a viable small-scale mining sector. Where small-scale artisanal mining sectors cannot be developed at all, creating such diverse green jobs must be treated as a matter of urgency and priority. For example, one community activist expressed hope about the potential of fibrous plant cultivation as a sustainable alternative industry, as the plants can also rehabilitate tailings on mining-affected land:

'Pampas grass...can be used to plant on the tailings to suppress the dust. It can hold the dust together and hold it down. It was doing good work. We have since discovered...Hibiscus

²¹¹ Online interview with Chris Molebatsi, Platinum Belt Community Alliance and Bench Marks Foundation, 23 April 2021.

²¹² Online interview with Sello, Lebjeleputswa / Welkom, 15 October 2020..

*Cannabis or Kenaf...It's a plant that used to be planted around East Africa for food, for animal feed, for human feeding, and it's also good for textile fibre. It can do a lot of things. Imagine if companies could help communities to buy such seeds and plant them- they would benefit a lot because they can make rags, they can make mats and all that- and sell that to motor repairers who are working on cars who can also actually use that to absorb spilt oil in their workshops. Those are some of the methods that can actually be used...We need to move from mining into the green economy. If we were going to use this method- this kind of plant-jobs would be created...That will be a shift from a toxic industry to a new industry.'*²¹³

THE EXPECTATIONS OF GOVERNMENT

*'In every town, there should be DMRE offices that are there...Nationally, there should be an annual report or quarterly report on the issues of compliance... we should be having regular meetings with the mine to find out what are the things that are happening...DMRE must be capacitated in order to ensure monitoring and compliance.'*²¹⁴

Communities want the government to take the non-compliance of the mining industry seriously and to work together with communities towards corporate accountability. This could mean employing more inspectors in offices that are accessible to communities who can engage with and report to communities on their mandates and assignments.

Activists also bemoaned class bias in the application of the law by the criminal justice system. They want the breach of environmental legal obligations to be treated as crimes and for legal consequences to follow, including arrests and prosecutions.

'In as far as the government is concerned- firstly, it must empower the department of environmental affairs with the powers that it can be able to regulate and punish those who are irresponsibly engaged in deliberate activities that are destructive to the ecosystem. Environmental affairs must ensure that it plays its role when it comes to that.

Secondly, the government must make sure that the police are getting involved in arresting even the mine bosses when they violate certain laws of this country, such as, the Environmental Management Act. If they violate every environmental law of this country, SAPS must be able to arrest mine bosses in the way that they arrest people who are stealing bread and sweets at Shoprite.

*[Thirdly] Police must be empowered to understanding what the environmental laws of this country require and when they are being violated... It can't happen that your sheriff and police are very harsh on poor working-class people and very soft on big mining companies and their bosses.'*²¹⁵

– Matthews Hlabane, Green Revolutionary Council

Communities have volunteered themselves to work with government in building capacity within the DMRE and to ensure that monitoring and enforcement is people-centred. Environmental justice is focused on the disproportional burden of environmental degradation on people, especially those most marginalised and vulnerable.

²¹³ Online interview with Chris Molebatsi, Platinum Belt Community Alliance and Bench Marks Foundation, 23 April 2021.

²¹⁴ Online interview with Meshack Mbangula, MACUA, 15 April 2021.

²¹⁵ Online interview with Elton Nkwane, MEJCON, 23 April 2021.

'As communities that have been working on mining issues and as communities that are affected by mining, we strongly recommend that the department or government should work hand-in-hand with activists and with community organisations such as ours to monitor the implementation of these obligations and commitments. At one point we even started to say that perhaps there should be a community stats/desk within the DMR where all these issues that are raised in various communities can be channelled through that desk to reach the DMR among others as part of ensuring compliance and as a starting point to enforcing compliance. Communities cannot enforce compliance, but departments, in conjunction with other agencies can do that- but, with the help of communities.

*There needs to be a working together between the mining communities- especially organisations that are working on mining issues, such as ours- and with the department and with industry. So, they mustn't continue with this notion that because they have a mandate as a department to oversee mining in the country, therefore, they don't need assistance from anyone even when it's evident that they've been battling over the years to enforce compliance... It should start from the beginning- the moment there is an application or proposal for a mining permit- it should start there. People should be involved from that point.'*²¹⁶

– Elton Nkwane / MEJCON

Above all, communities expect the government to develop a regulatory framework that supports communities and legally strengthens their position in relation to the mining industry. The most important legal change that communities want from government is the Right to Free, Prior and Informed Consent to mining.

EXPECTATIONS ON THE INDUSTRY

Besides transparency and participation in the decision-making that affects their well-being and health, participants want mining companies to be accountable and fulfil their environmental and corporate social responsibilities to workers, their families, and mining communities.

'In as far as companies are concerned- they must prioritize the interests of the local communities. They must stop dividing communities. They must stop supporting violence in the communities... We want companies to pay for the destruction of the environment... The government must create employment opportunities- equipping young people with the know-how so that they can do rehabilitation in these mining areas... Companies must make sure they pay for the costs of the damages.

They must respect the rights of the workers- not to employ workers through some middle-man in-between. When they use labour brokers the workers have no rights- the mining company talks to the brokers but not to the workers. They have no right to engage with the mining company. If they strike, they strike against the labour broker and if the broker cannot keep them under control, then the mining company will simply replace the broker... By allowing labour brokers, the government has allowed crime and the violation of human rights to continue. In short, if you permit labour brokers you are disallowing workers the right to unionize, they must work under contracts that are renewable so that they have no job security.

Moreover, it is a simple system of cheap labour... government will always say that mining is a pillar of our economy. What do they mean? Because if mining is a pillar

²¹⁶ Ibid.

of our economy, then these workers who are working for the mining industry must be an example of better living conditions- but they live in informal settlements.'

– Matthews Hlabane / Green Revolutionary Council

Participants want corporations to carry the costs of education to empower communities to meaningfully participate during consultations and monitor promises corporates make during these consultations and as part of their licensing conditions. Above all, communities expect mining corporations to uplift them in socially and economically meaningful ways in order to build robust, sustainable post-mining communities.

MINING LEGACY ASSETS

'...we have got structures that are abandoned in those mines, those structures are used as hideouts for thieves, you understand. How do we utilise and develop those structures? How does the municipality assist to develop them?'

– Sello – Lebjeleputswa / Welkom

*'If ever there was coordination between the two [the government and the mining company], I don't think they [the buildings] would have been abandoned. The government should take over so the buildings serve the community.'*²¹⁷

Many community activists expressed deep frustrations with mining legacy assets which are counterproductive to their intended purpose. Not only are assets abandoned and allowed to go to waste, they use up public resources and spaces and often allow for criminal activity. However, there is also a general consensus that inclusive planning and co-ordination between government and mining corporations to integrate and eventually hand over mining infrastructure can allow

these assets to contribute positively towards community development.

²¹⁷ Online interview with Margeret Molomo, MEJCON , 6 July 2021.

X. RECOMMENDATIONS



Figure 11: Mining-Affected Community in Limpopo

Legal

FREE, PRIOR AND INFORMED CONSENT

Mining-affected communities, alongside the civil society partners, should intensify campaigning to force government to enact a Right to a Free, Prior and Informed Consent. The mass campaigning must be linked to a deliberate strategy to expand on the significant advances in the development of jurisprudence in this direction brought about by the *Maledu* and *Xolobeni* judgments.

CARE AND MAINTENANCE

Regulatory framework on Care and Maintenance must be amended and tightened to combat the widespread abuse of the current loopholes to facilitate dereliction of mines and hoarding of minerals. The principle of use it or lose it must be upheld against mining corporations to ensure that community lands are not sterilised for alternative mining and economic developments.

‘We want to know what is LHR going to do? Do we have the power to initiate a case against the company? Can we force them to reopen the mine? If they have taken our land, can they at least provide us with jobs?’ – Sepadi Thobejane – Limpopo – Twickenham Mine

For many communities, especially in Limpopo, the Northwest, and the Free State, where mining is the only industry and source of income outside of weak commercial and public sectors, this is probably the most urgent and vital area of campaigning and litigation, alongside the right to Free, Prior and Informed Consent. In light of deepening levels of unemployment, poverty, xenophobia, and the need for development of minerals resources for green energy solutions to the climate change, communities want mines on prolonged care and maintenance to be reopened.

Communities also raised opportunities for communities and workers take-overs of these mines and participation in development of these mines and, to build a socially owned, ecologically sustainable, workers-community controlled alternative mining to profit-driven corporate mining and its environmentally damaging, colonial, and exploitative tendencies.

DRAFT NATIONAL STRATEGY ON MINE CLOSURES

During the drafting this report, the DMRE released a draft national mine closure strategy, in response to the directive issued by the South African Human Rights Commission and campaigning from the mining-affected communities and civil society, including LHR which has been working on issues related to mine closure for some time. This includes engaging and making submissions to the regulatory authorities following the completion of LHR's Human Rights Impact Assessment on the Blyvooruitzicht Gold Mine closure.²¹⁸ LHR has further used the data collected from communities during consulting for the current report to make submissions on the initial draft, alongside MACUA/WAMUA, on behalf of mining-affected communities.

The current draft National Strategy on mine closure is a promising development on planning for mine closures, and insulating communities against its worst effect through diversified local economies, integrated development of EMPs, Closure, and Social and Labour plans, amongst others to address many issues already raised here and to ensure robust post-mining communities.

There are still areas of concern, including the role of communities in the formulation, monitoring, and enforcement of closure plans and strategy. Mining-affected communities and the civil society partners must take up this issue, as it will decide if the draft will usher in the new dispensation or become another in the long list of failed and broken promises of mining justice. But given how far reaching some of the elements of the proposed draft strategy are, it is clear they will not be implemented or enforced without a struggle, communities must absolutely plan and organise.

Part of the fight should be to ensure legislation of those aspects of the strategy that are not part of the current legal and regulatory framework. History and experience teach that the mining industry never volunteers anything for communities and workers and only do the absolute minimums required in law.

DEVELOPMENT OF LAW REGULATING ARTISANAL MINING

In an attempt to empower communities affected by mine closure and adequately address communities' safety concerns about artisanal mining, we recommend the enactment of the Artisanal and Small-Scale Mining Policy and/or implement Regulations pertaining to the regulation of Artisanal Mining. We further advocate for the support of artisanal mine workers with capital, training, and access to the formal market to eradicate dependence on the criminal syndicates ruthlessly exploiting and terrorising these miners.

Non-Legal

THE ROLE OF COMMUNITY CIVICS AND CIVIL SOCIETY PARTNERS

After decades of struggle against the mining industry, and the current government post-1994, many community activists have no illusions that the most fundamental aspirations will come about the simple dialogues and better communication, as many argue. They have come to realise that

²¹⁸ Lawyers for Human Rights (note 46 above) 27.

communities and workers are the only agents for genuine transformation of the mining industry and the potential for the political agency lies in the strength of their own organisations, unity, and struggles.

To this end, they recognise the need to building a robust national mining-affected community civic movement that is rooted in strong, democratic local community organisations, that can unite communities and link their struggles, as communities, with workers, climate justice movements, and others, into a powerful mass movement to shift the political correlation and balance of forces, which ultimately decide distribution of power and wealth in the mining, as in other industries across the economy.

Participants raised the issue of capacitation of community civics on skills and resources to organise, build, and mobilise for demonstrations and campaigns, as being crucial to the realisation of this task.

‘...the government is busy issuing licenses even if we say no. Just a week back... I think Meshack was is Bunanono [name of location not clear], where the community is protesting- they don’t want the mine. The mine is there but it wants to extend and evict the people. So, now those we capacitate know their rights and now they are fighting the mines.’ – Nester Ndebele / WAMUA.

‘I think what needs to be done is that we need to organize ourselves more as women and start saying we demand, one two, three, as women. I think that is the only solution.’ – Franscina Nkosi / WAMUA/MACUA²¹⁹.

Participants raised both appreciation and concerns about the role of NGOs which can be supportive, but also problematic when they substitute themselves for the democratic leadership, decisions, and aspirations of the communities by imposing funder driven NGO agendas. Activists have lauded the support NGOs have given over years, but also pointed to the limitations of this support. According to them, NGOs must assist in building capacity, providing legal and other support, including fundraising for communities, but with a deliberate aim at building capacity for self-reliant, independent organisations, capacity, and initiative on the part of community civics. MACUA/WAMUA Advice office is a vital experiment on civil society initiative tailor-made to support independent community organising. Fatima Vally, who is responsible for WAMUA, amongst others, described the role of the office as follows:

‘Our [WAMUA] primary work is focussed around supporting communities to ensure that their rights are not infringed upon by mining companies and the state...As a result of that, I think that because communities had seen MACUA and WAMUA activists in their communities and in the streets, through the latter part of last year WAMUA started- and this is across our branches- started getting a lot of calls for support around gender-based violence...so trying to get the state to intervene and having- because these are such remote areas it makes it even more difficult- we’ve had to equip a lot of our WAMUA activists with very legalistic training...and provide resources... We’re going to roll out at 21 of our branches training on domestic violence acts, sexual harassment, how to report it, the duties of the police and, together with looking at obstetric violence because a lot of health care facilities- particularly in mining communities. So, these are all issues that we are trying to equip our

²¹⁹ Online interview with Franscina Nkosi, WAMUA/MACUA, 6 July 2021.

members to be able to handle- to allow them some degree of feeling empowered to help people²²⁰.

The advice office has also been supporting MACUA/WAMUA with mobilisation of resources to support setting up of branches with clearly defined membership and structures; to facilitate regular meetings; membership service; capacity building; local and national campaigns. These have greatly strengthened MACUA/WAMUA as an organised force on the ground and on the coalface of mining where real power and struggles are located.

LHR and the Centre for Applied Legal Studies (CALS) have also developed a programme of mining-affected communities' capacitation courses in partnership with the Nelson Mandela Institute that focus on systematic and methodical education and training of community activists in all areas of work vital to building a capable cadre for an environmental and mining justice movement.

Growing relationships between MACUA/WAMUA, and MEJCON, and South African Federation of Trade Unions (SAFTU), and participation of these civics in the climate justice coalition, are promising signs of the working-class unity desperately needed for working class power. Whilst these are only restricted to MACUA/WAMUA, and to MEJCON, SA Artisanal Miners Forum amongst others, which by no stretch covers all the mining-affected communities, there are still divisions amongst them at national levels. These are examples of what is possible and can be done, in terms of building real, organised working-class power in mining-affected communities and the role of the civil role.

Without mass community civic movement and organised working-class power, everything said in this report will remain a pipedream. The recent decision by Anglo American Platinum to hand-over an astronomical R80 billion in dividends to the handful of their shareholders, instead of communities which it owes an enormous debt, clearly shows that profit-driven mining corporations will not concede anything significant without a struggle. As the state is systematically failing, it is clear that this struggle is going to be the sole burden of communities and their allies, and as such, building an organised power in them is absolutely vital and indispensable to forcing meaningful consultation and participation, monitoring, and compliance with EMPs, SLPs, and mining closure plans an impending strategy.

²²⁰ Online interview with Fatima Vally, MACUA/WAMUA Advice Office 13 July 2021.



Figure 12: Winds blow toxic dust southward from the mine towards the historically black settlements in Snake Park, Gauteng