UNEARTHING THE TRUTH

HOW THE MINES FAILED COMMUNITIES IN THE SEKHUKHUNE REGION OF SOUTH AFRICA

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THE VOICE OF THE MINING COMMUNITY

SOUTH AFRICA AMNESTY INTERNATIONAL

ABOUT PARTICIPATING ORGANISATIONS

ABOUT SEKHUKHUNE COMBINED MINING-AFFECTED COMMUNITIES

Sekhukhune Combined Mining-Affected Communities (SCMAC) is a non-profit community-based organisation based in the Limpopo Province of South Africa. SCMAC's membership is made up of communities and individuals from various parts of the district, whose environmental and human rights are affected by mining and related activities in the region. SCMAC is also a member of the national network of mining-affected communities, the Mining and Environmental Justice Community Network of South Africa (MEJCON-SA). A focus of SCMAC's work is the compliance of mining companies with their social and economic obligations.

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Cover photo: *GA-MAMPA VILLAGE, SOUTH AFRICA - 10 APRIL 2021: A view from a local resident's backyard onto the Sefateng Chrome Mine's opencast operations less than 100 metres away. (Photo by Charl Naudé & Xander Ehlers / Amnesty International South Africa)*

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CONTENTS

EXECUTIVE SUMMARY

The extractives industry in South Africa has a dark and sordid history characterised by discrimination, exploitation and exclusion. The mining industry was both a beneficiary and a driver of colonialism and apartheid in its economic, social and legal manifestations. As the mining industry grew, Black communities were driven away from ancestral lands and ghettoised into informal settlements. The mining sector also perpetuated and strengthened the apartheid state through ill treatment and economic exploitation of Black workers.

Given this past, the post-apartheid government, has made some attempts to regulate mining operations and to offset the challenges wrought by mining in local communities through the adoption of new legislation which includes Social and Labour Plans (SLPs) - legally binding mechanisms through which mining companies are required to address socio-economic impacts of mining on communities surrounding the mines.

Despite this, there is a growing body of research which shows that this legislation has done little to transform how mining companies operate. This is predominantly due to impropriety on the part of the mining sector coupled with lack of state oversight on their activities. A manifestation of this impropriety is the failure by some mines to abide by the obligations which arise from their SLPs.

This report examines the compliance of Social and Labour Plans (SLPs) of three mining companies in the Fetakgomo Tubatse Local Municipality (FTLM) area, namely Twickenham Platinum Mine (Twickenham), Marula Platinum Mine (Marula) and Sefateng Chrome Mine (Sefateng) and finds that these mines are to varying extents in non-compliance with aspects of their SLP obligations, resulting in human rights abuses in the communities they operate in.

METHODOLOGY

This report is based on desk and remote field research conducted between October 2020 and July 2021. Researchers conducted an extensive review of documents on the progress of implementation of SLPs by three mining companies operating in the Sekhukhune region, as well as a review of other documents including domestic legislation relative to mining operations, regional and international human rights standards, and correspondence from the mining companies. The research was complemented by interviews with 25 community members in six focus group discussions and individual interviews. These were conducted in order to capture the lived experiences of rightsholders impacted my mining activities in the area.

The research was conducted jointly by Amnesty International, the Centre for Applied Legal Studies and Sekhukhune Combined Mining-Affected Communities.

BACKGROUND

The Sekhukhune region of South Africa is a mineral-rich but under-resourced area of the Limpopo province. In addition to agriculture, mining is an increasingly dominant source of direct employment in the province. Yet even

with the arrival of mining operations and the potential employment opportunities for the region they bring, unemployment remains high at 47% and is projected to increase to 52% by 2023 and 56% by 2030.

People in Sekhukhune suffer poor access to services and score poorly on various development indicators, such as education and literacy levels, and access to health facilities. While they experience various intersecting negative impacts of mining on their environment and well-being, interviewees stated that they hardly saw any of the promised benefits of development. Witnesses interviewed felt excluded in local supply chain deals and transactions thereby increasing discontent. Our research also found that there was poor coordination and monitoring of implementation of SLPs.

LEGAL FRAMEWORK

South Africa is a party to a number of international human rights instruments that are relevant in the context of mining and its associated impacts, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR) and other international instruments and standards, including the UN Guiding Principles on Business and Human Rights (the Ruggie Principles). Under international law, South Africa has an obligation to respect and protect human rights in the context of corporate activities, including mining, through regulation, oversight, investigation, adjudication, and punishment. At the national level, mining activities are also subject to the provisions of the Constitution and directly regulated by the Interim Protection of Informal Land Rights Act (IPILRA) and the Mineral and Petroleum Resources Development Act (MPRDA) which places mineral and petroleum resources within state custodianship “for the benefit of all South Africans”.

MINE FAILURES TO COMPLY WITH SLPS

To varying degrees, this report found that all three mining companies investigated had failed to comply with obligations which arose from their respective SLPs. Upon receiving information requests from researchers, the mines would, in some cases, evade questions in relation to certain projects, at times provide answers which were contradictory to information in official progress reports and at other times refused outright to respond to requests for information. When answers were given, many justifications for non-compliance were questionable.

Twickenham - a wholly owned subsidiary of Anglo American Platinum Limited which is the world's largest primary producer of platinum - failed to complete the project related to water and sanitation at schools. When pressed for answers they acknowledged the delays in implementation but gave no reasons in some cases and in other cases blamed project procurement irregularities. Marula, another platinum mine, claimed in its most recent Environmental, Social and Governance (ESG) Report that it had completed an SLP project to build/rehabilitate a road, but site visits by the research team and interviews with community members contradicted this. The lack of adequate roads has resulted in mobile clinics avoiding affected villages and community members facing great difficulty in accessing clinics and hospitals. Sefateng was only in partial compliance with its community water support and schools support projects. Information received from the Department of Mineral Resources and Energy (DMRE) indicated that Sefateng had not been submitting annual compliance reports. This would indicate that the company is in non-compliance in relation to its reporting duties and in direct contravention of national mining legislation. However, in their response to the research team, Sefateng denied this was the case and noted that they have been complying with this obligation.

STATE OVERSIGHT FAILURES

In addition to the failures by mines to comply with SLPs, this report also found that the DMRE, as the state regulating body of mining rights and the enforcement of SLPs, failed to adequately regulate mines and carry out its oversight role to ensure the implementation of SLPs in the region. Researchers found that that the DMRE had a poor record management system and hindered access to information; had not given effect to the South African Human Rights Commission (SAHRC) directives regarding access to SLPs; and that the DMRE was unable to enforce compliance with SLP reporting obligations resulting in communities feeling abandoned and unable to enjoy human rights such as the rights to education, access to healthcare, livelihoods and water.

IMPACT ON MINE-AFFECTED COMMUNITIES

The lived experiences of communities in the region are inextricably linked to mining operations. While establishing a direct causal link between mining and the many challenges faced by communities in the area was outside the scope of the project, our research found that the failure by these mines to implement their SLPs was a compounding factor.

The overall picture painted by interviewees was a range of negative environmental, social and economic outcomes, gender inequality and a lack of adequate grievance mechanisms. Interviewees complained of polluted water sources and, while no formal medical link had been established, many suggested that they and livestock suffered serious health complications from using the water. They also stated that women in particular entered into transactional sex agreements with mine employees at management level in exchange for employment opportunities, and that communities lacked proper representation at the mines due to the co-option of their elected representatives by the mines.

However, SLPs are a mechanism intended to remedy the social, environmental, and economic impacts of mining, both historical and current. The failure to implement and monitor SLPs results in these harmful impacts being exacerbated, not mitigated or remedied, which negatively impacts the enjoyment of human rights by communities, such as the rights to education, access to healthcare, livelihoods, and water.

While the scope of the project and readily available information did not allow for definitive causal conclusions on the human rights impact of mining on surrounding communities, they nevertheless merit further investigation.

RECOMMENDATIONS

In light of these findings, the research team recommends that the three mines urgently comply with their legally binding obligations under their respective SLPs. This includes, but is not limited to, furnishing communities with all information required for transparent, informed and consent-based participation in consultation processes, including, but not limited to, SLPs, annual compliance reports, environmental impact assessments, all reports pertaining to environmental legislation, and any information relating to changes in the mining operation, licensing and conditions.

To the government of South Africa, we recommend, among others, to develop and implement an action plan outlining the steps that will be taken to ensure that the DMRE increases its capacity to monitor SLP compliance with clear timelines for their implementation, including supporting community-based monitors to supplement its compliance monitoring, and take any necessary action to ensure a more effective enforcement of the provisions of the SLPs. We further recommend that, whether through regulations or legislative measures, that all company SLP reports to the DMRE are publicly disclosed and made available and accessible to employees, communities and other stakeholders.

ACKNOWLEDGEMENTS

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PART ONE

1. BACKGROUND

1.1 SOCIO-ECONOMIC PROFILE OF FETAKGOMO TUBATSE LOCAL MUNICIPALITY

The Fetakgomo Tubatse Local Municipality (FTLM) falls under the greater Sekhukhune District Municipality in the Limpopo Province, about 340 km north-east of Johannesburg. It is located at the edge of the Bushveld Complex, which is an area rich in platinum and other platinum group metals. Mining has joined commercial agriculture as an increasingly dominant source of direct employment in the province.[1] Yet even with the arrival of mining operations around 2002 and the potential employment opportunities for the region this brings, unemployment is currently at 47% and is projected to reach 52% by 2025 and 56% by 2030.[2] In contrast, "mining is the biggest contributor in the economy of the district and it is forecasted to grow fastest at an average of 5.64% annually from R12.4 billion [US$800 million] in Sekhukhune District Municipality to R16.3 billion [US$1 billion] in 2023".[3] Whilst there are many factors to consider around job creation, growth in the mining sector is not translating into an increase in employment in the region, nor meaningful improvements in communities.

While an array of reasons exist regarding the forces that hinder the growth of the sector, some include the "exclusion of locals in local supply chain deals and transactions that often ferment [sic] local hatred against mining operations; and poor coordination and monitoring of implementation of social and labour plans."[4] With evidence showing the population is growing rapidly,[5] poor access to basic services continues to plague individuals residing in FTLM. As of 2016, only 24.4% of the eligible FTLM population received their matric,[6] and only 3.8% of households had piped water inside their dwellings.[7]

1.2 HISTORICAL CONTEXT OF MINING

The South African mining industry was both a beneficiary and a driver of colonialism and apartheid in their economic, social and legal manifestations. The mining sector perpetuated and strengthened the apartheid state through the ill treatment and economic exploitation of workers.[8] As is widely documented,[9] companies

[1] Statistics South Africa, "Stats SA releases Census of Commercial Agriculture 2017 Report", 24 March 2020, statssa.gov.za/?p=13144 (accessed 10 November 2021).
[2] Fetakgomo Tubatse Local Municipality, *IDP/Budget 2021/22-2023/*26, 2021, fgtm.gov.za/sstaff/pages/sites/fgtm/documents/idp/The%20Final%20%20IDP%20and%20BUDGET%20FOR%202021-22%20to%2026.pdf (accessed 10 November 2021).
[3] Sekhukhune District Municipality, "IDP Framework/Process Plan 2022/23", 2021, http://www.sekhukhunedistrict.gov.za/sdm-admin/documents/12AUG21Final%20IDP%20Framework%20-%20Process%20Plan%202022-2023.pdf, p. 19 (accessed 12 November 2021).
[4] Fetakgomo Tubatse Local Municipality, *IDP/Budget 2021/22-2023/*26, 2021, p. 103.
[5] Fetakgomo Tubatse Local Municipality, "About us", fgtm.gov.za/?q=node/8 (accessed on 29 September 2021).
[6] Matric is grade 12 and the final year of high school in South Africa. This is required to pursue any tertiary education or training and to enter the formal job market. The lack thereof is correlated to higher unemployment rates.
[7] Municipalities of South Africa, "Fetakgomo Tubatse Local Municipality", municipalities.co.za/demographic/1243/fetakgomo-tubatse-local-municipality (accessed 29 September 2021).
[8] See for example Vic Allen, *The history of black mineworkers in South Africa: The techniques of resistance 1871-1948,* 2007; Martin Legassick, 'Capital accumulation and violence', 1974, *Economy and Violence*, Volume 2, Issue 3, p. 253-291 (Capitalism accumulation and violence); Harold Wolpe, 'Capitalism and cheap labour-power in South Africa: From segregation to apartheid', 1972, *Economy and Society,* Volume 1, Issue 4, p. 425-456 (From segregation to apartheid).
[9] See for example Sonwabile Mnwana and Gavin Capps, *No chief ever bought a piece of land: Struggles over property, community and mining in the Bakgatla-ba-Kgafela Traditional Authority Area*, 2015.

commonly also gained access to land via agreements with traditional leaders with contested ownership rights.[10] These transactions remain both a cause and effect of the inequalities persisting to this day.

The inequalities were engineered through means which include land dispossession to make way for the mining operations, forced relocation from ancestral lands and the birth of homelands[11] that became the catalyst of today's rural-urban migration. An underlying driver of these injustices was an economic model built on profits derived from poorly paid Black, and often, migrant labour.[12]

A growing body of research, including a report by the South African Human Rights Commission (SAHRC), shows that despite legislation with the stated purpose of transforming the sector, mining in South Africa exhibits a continuation of colonialism for communities with the harms exceeding the benefits[13] and land dispossession, disregarding the right to "free, prior and informed consent" (FPIC).[14]

1.3 FOCUS OF THIS RESEARCH

This report examines the compliance with Social and Labour Plans (SLPs) of three mining companies in the FTLM area and how the failures related to the monitoring and implementation have resulted in the violation of human rights including the rights to access healthcare, water, education, and livelihoods. SLPs are legally binding mechanisms through which mining companies must address socio-economic impacts of mining on communities surrounding the mines. The three mines are Marula Mine owned by Impala Platinum Holdings Limited (Implats), Twickenham Mine owned by Anglo American Platinum Limited (Anglo Platinum) and Sefateng Chrome Mine (Pty) Limited (Sefateng). These mines were chosen for this report for a variety of reasons expanded upon in the methodology section.

This report also examines failures by the Department of Mineral Resources and Energy (DMRE), as the state regulating body of mining rights and the enforcement of SLPs, to adequately regulate the planning, licensing, compliance monitoring and enforcement of the SLPs. The examination is limited to the DMRE in the Limpopo Province where the mines operate.

This report concludes with the lived experiences of community members in the FTLM area and provides concrete recommendations for role-players to address deficiencies identified through this research.

1.4 METHODOLOGY

This report is based on desk and non-contact field research between October 2020 and July 2021. Researchers conducted an extensive review of documents on the progress of implementation of SLPs by three mining companies operating in the Sekhukhune region, as well as a review of other documents including domestic legislation relative to mining operations, regional and international human rights standards as well as correspondence from the mining companies.

These reviews led to invitations of engagement to all parties concerned and responses were received by all contacted parties. Follow-up research letters requesting further information and documentation were sent to all three mines, the Department of Mineral Resources and Energy (DMRE) and the Fetakgomo Tubatse Local Municipality (FTLM).

The research was complemented by interviews with 25 community members in six focus group discussions and individual interviews between October 2020 and April 2021. They were conducted in order to capture the lived experiences of rightsholders impacted by mining activities in the area. Given Covid-19 restrictions, all interviews were conducted through Chorus Call, a teleconferencing facility. In April 2021, a small delegation from the

[10] High Level Panel, *Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change*, 2017, parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf, p. 504 (High Level Panel Report).
[11] Homelands were areas established by the Apartheid Government into which the majority of the black population was moved to prevent them from living in urban areas.
[12] Capitalism accumulation and violence; From segregation to apartheid.
[13] In its report, the South African Human Rights Commission stated that "despite the entire community experiencing the negative impacts of mining, there is no overall improvement in the socio-economic circumstances of the community as a whole". South African Human Rights Commission, *Hearing Report on the Underlying Socio-Economic Challenges of Mining-Affected Communities*, 2018, available at: sahrc.org.za/home/21/files/SAHRC%20Mining%20communities%20report%20FINAL.pdf, p. 56. (The SAHRC Report).
[14] The SAHRC Report, p. 7.
Internationally, FPIC is recognised through the United Nations Declaration on the Rights of Indigenous Peoples and has been incorporated into many foreign jurisdictions' mining legislation and practices.

research team, visited FTLM collecting photographic evidence related to projects contained within the SLPs of the three identified mines.

The three mining operations in the area were chosen first, due to their encompassing different sizes of mine and companies, with the view that the small sample be as generalisable as possible. Second, due to the number, complexity, and varying scope for empirical verification between project types, a select number of projects were chosen to form the scope of the study. One such factor was whether the projects had a physical footprint so project sites could be located. The third consideration was shaped by SLPs being a five-year document and the reality that some of the mining operations at the time of study were on their second SLP. The selection of which 'generation' SLP to focus on was shaped by the following criteria: (a) the obligations should where possible be relatively recent, but (b) they should have matured sufficiently by the time of the study, and (c) the SLP must have been one the team had been able to access. As will be expanded upon in the section pertaining to the DMRE, SLPs and SLP compliance reports in particular remain difficult documents to access.

Research partners wrote to the mining companies and to the DMRE presenting the findings of the research and seeking responses on a number of issues relating to the SLP projects that are the subject of the findings of the report. Responses, or the lack thereof, have been incorporated into the findings of the report. It should be noted that while Anglo Platinum and Sefateng responded (albeit after requesting extensions), no responses were received by Impala Platinum nor the DMRE at the time the report was finalised for print.

2. LEGAL FRAMEWORK

South Africa is a party to a number of international human rights instruments that are relevant in the context of mining and its associated impacts. Under international law, South Africa has an obligation to respect and protect human rights in the context of corporate activities, including mining, through regulation, oversight, investigation, adjudication and punishment. At the national level, mining activities are also subject to the Constitution[15] and directly regulated by a matrix of local statutes, common and customary law, and legal precedents which have been evolving over the last two decades. These regulations must perform a balancing act: on the one hand, there is the potential for putting vast mineral wealth to use by promoting mining and transforming the sector. On the other hand, the history of colonial exploitation and continuous underdevelopment has seen mining play a key role in making South Africa the most unequal society in the world.[16] The law, as it relates to mining rights holders' responsibilities toward host communities, the requirements of consultation, and the subsequent monitoring of the fulfilment of the state obligations, is central to the regulatory questions in this report.

The most important international instruments in this regard are the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) in relation to the state's developmental duties, and the UN Guiding Principles on Business and Human Rights on companies' human rights responsibilities.

The Constitution of South Africa contains a number of rights implicated in mining, including the environmental right (Section 24), the protection of security of tenure of historically disadvantaged persons and communities (Section 25(6)), the right to freedom of trade, occupation and profession (Section 22), and socio-economic rights (Section 27). The Bill of Rights in the Constitution binds all law, policy and conduct of state actors[17] and also private organisations "to the extent that, it is applicable, taking into account the nature of the right and the nature of the duty imposed by the right".[18]

The Mineral and Petroleum Resources Development Act (MPRDA) places mineral and petroleum resources within state custodianship "for the benefit of all South Africans".[19] The state therefore considers applications to mine mineral and petroleum resources and grants rights to do so, taking into consideration the "sustainable development of South Africa's mineral and petroleum resources within a framework of national environmental policy, norms and standards while promoting economic and social development".[20] Specific duties to protect the

[15] The Constitution of the Republic of South Africa, 1996, https://www.justice.gov.za/legislation/constitution/saconstitution-web-eng.pdf (the Constitution).
[16] IMF, Six Charts Explain South Africa's Inequality, 30 June 2020, https://www.imf.org/en/News/Articles/2020/01/29/na012820six-charts-on-south-africas-persistent-and-multi-faceted-inequality
[17] The Constitution, Section 8(1).
[18] The Constitution, Section 8(2).
[19] Mineral and Petroleum Resources Development Act (MPRDA), 2002, gov.za/documents/mineral-and-petroleum-resources-development-act, Section 3(1).
[20] MPRDA, Section 2(3)(b).

environment that mines stand under can be found in the National Environmental Management Act (NEMA),[21] the National Environmental Management Waste Act (NEMWA),[22] and the National Water Act (NWA).[23]

2.1 COMMUNITY ENGAGEMENT OBLIGATIONS

Given the history of racial dispossession and the co-opting of the power of traditional leaders during colonialism, many South Africans occupied land with very little security of tenure. Those who remain on land held in common, hold customary title to land, or whose land is held in a trust, are especially vulnerable to continued dispossession. The Constitution therefore provides that: "A person or community whose tenure of land is legally insecure as a result of past racially discriminatory law or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress".[24]

Before a mining right can be awarded, the MPRDA requires that the DMRE and the applicant for a mining right should consult with all interested and affected parties.[25] If these conditions for consultation are met, the Minister must issue a mining right.[26] The MPRDA, on the face of it, allows an applicant to obtain rights to mine on land without the consent of the occupier or owner, as long as those occupiers or owners were consulted, and all the MPRDA conditions were met.

However, a conflict exists between the MPRDA and the 1996 Interim Protection of Informal Land Rights Act (IPILRA).[27] The IPILRA is specifically designed to give effect to the above-mentioned constitutional mandate of protecting security of land tenure,[28] providing that those holding informal rights to land may not be deprived of their rights without consent.[29] Therefore, while the MPRDA allows mining to commence without the *consent* of a landowner (since it requires only consultation), the IPILRA requires consent of the landholder when the land is held under the class of informal rights. In two important judicial decisions, in the *Maledu*[30] and *Baleni*[31] cases, the courts confirmed that the MPRDA and the IPILRA should be read together. The courts have determined that since the awarding of a mining right has the effect of depriving the landholder of that land, the Minister does not have the authority to award a mining right on land that was held in terms of informal rights without their "full and informed consent".[32]

2.2 DUTIES UNDER SOCIAL AND LABOUR PLANS

SLPs are legally binding documents based on the MPRDA and the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry (known as the Mining Charter). SLPs should be understood against the backdrop of the socio-economic rights contained in Sections 27 (health care, food, water and social security) and 29 (education) of the Constitution which place corresponding duties directly on the state and potentially on private actors.[33]

The obligation on companies to comply with and annually report to the regulator on compliance with SLPs emanates directly from the MPRDA as an SLP is a condition for the awarding and renewals of mining rights.[34] Moreover, mining rights holders must "comply with requirements of the prescribed social and labour plan"[35] and annually submit a report to the minerals regulator on their compliance with the SLP.

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[21] National Environmental Management Act (NEMA), 1998, https://www.gov.za/documents/national-environmental-management-act
[22] National Environmental Management Waste Act (NEMWA), 2008, https://www.gov.za/documents/national-environmental-management-waste-act
[23] National Water Act (NWA), 1998, https://www.gov.za/documents/national-water-act#:~:text=The%20National%20Water%20Act%2036,provide%20for%20matters%20connected%20therewith.
[24] The Constitution, Section 25(6).
[25] MPRDA, Section 22(4)(b).
[26] MPRDA, Section 23(1)(a).
[27] Interim Protection of Informal Land Rights Act (IPILRA), 1996, gov.za/sites/default/files/gcis_document/201409/act31of1996.pdf
[28] In terms of Section 5, IPILRA is meant to be a temporary Act and to have lapsed on 31 December 1997, but it provides for the Minister to extend the Act for 12-month periods (with no limits on the number of times it can be extended).
[29] IPILRA, Section 2.
[30] Constitutional Court of the Republic of South Africa, *Maledu and Others v. Itereleng Bakgatla Mineral Resources (Pty) Limited and Another,* 2011, Case CCT265/17, 25 October 2018, collections.concourt.org.za/handle/20.500.12144/34600, paras 106-109.
[31] High Court of the Republic of South Africa (HCRSA), *Baleni v. Minister of Mineral Resources,* 2019, Case 2 SA 453 (GP), para. 83.
[32] HCRSA, *Baleni v Minister of Mineral Resources* (previously cited), para. 84.
[33] Through Section 8(2) of the Constitution.
[34] MPRDA, Section 23(1)(e) and Section 24(3)(c).
[35] MPRDA, Section 25(2)(f) and Section 25(2)(h).

SLPs must contain a number of measures for the benefit of communities and workers including human resources development (skills development, career progression), local economic development, housing and living conditions, broad-based black economic empowerment (BBBEE) procurement, downscaling and retrenchment, and a financial provision for the financing of SLP commitments. Part of the required local economic development projects must include basic services/infrastructure type projects.

These developmental projects must be formulated in consultation with communities.[36] Mining companies are required to hold a minimum of three meetings per year with communities and interested and affected persons to update them on the progress made on the SLP and to include the outcomes of these meetings in the annual compliance reports.[37] Companies are further required to disseminate and publish SLPs in English and an additional language spoken within the community through avenues such as, but not limited to, company websites and public libraries in communities.[38]

Domestic law on the socio-economic obligations of the state should be read along with its obligations under international law, including its obligation to respect and protect human rights in the context of corporate activities. The ICESCR states that "the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"[39] and "the steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for [...] (b) The improvement of all aspects of environmental and industrial hygiene".[40]

Companies' duties with respect to SLPs should be read alongside the UN Guiding Principles on Business and Human Rights which provide that "the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights".[41]

2.3 INTEGRATED DEVELOPMENT MANAGEMENT

Schedule 5B of the Constitution confers municipal planning powers on the local sphere of government. The Local Government: Municipal Systems Act[42] requires municipalities to develop a five year annually reviewable Integrated Development Plan (IDP) to address identified developmental challenges and plan broad-based management and expenditure.[43] An IDP reflects a municipality's development vision, with an emphasis on the most critical development and internal transformation needs. SLPs must at all times be aligned with municipal IDPs, involving local communities in the development, implementation and review of all IDPs.[44] The IDP is therefore a consultative document, requiring all the principles of meaningful consultation.

[36] MPRD Regulation 42.
[37] MPRD Regulation 45.
[38] MPRD Regulation 46A, as inserted by the amendment regulations.
[39] The International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12(1).
[40] ICESCR, Article 12(2)(b).
[41] UN Guiding Principles on Business and Human Rights, para. 11.
[42] The Local Government: Municipal System Act (MSA), 2000, gov.za/documents/local-government-municipal-systems-act.
[43] The Act also requires municipalities to review the IDP on an annual basis and to trace and reflect on progress made.
[44] MSA, Chapter 4.

3. SOCIAL AND LABOUR PLAN PERFORMANCE OF TWICKENHAM, MARULA AND SEFATENG MINES

SLPs are one of the primary vehicles chosen by the South African government through which the socio-economic ramifications of mining are remedied. This research drew principally on information gained through requests under the Promotion of Access to Information Act (PAIA)[45] and a physical site visit, and was supplemented by interviews, the exchange of research letters and the right of reply process with relevant role-players.

Table 1: Summary of compliance with SLP projects

TWICKENHAM 2016-2020 SLP			
Project	**Essence of deliverable**	**Due date for completion of all project deliverables**	**State of compliance**
Water supply	Provide water to 12 villages[46] in Greater Tubatse Local Municipality	2020	In compliance
Water and sanitation at schools	Toilets at two listed schools	2018	Non-compliance
School infrastructure project	Construct administrative blocks at 4 schools	2020	Partial compliance

[45] Promotion of Access to Information Act (PAIA), 2000, justice.gov.za/paia/paia.htm
[46] Village names not specified.

MARULA 2013-2017 SLP			
Project	**Essence of deliverable**	**Due date for completion of all project deliverables**	**State of compliance**
Driekop road upgrade	Upgrade of community roads on Driekop Farm to address dust problem	2017	*Prima facie* non-compliance with initial SLP deadline; Partial compliance subsequent to deadline
Electrical engineering project	Rollout of electricity infrastructure and connections to ward 8 and 10 (Driekop, Forest Hill Winnarshoek and Clapham farms)	2017	In compliance
Water supply and reticulation project	Supply of basic water (standpipes and elevated tanks) to households in the same four farms as the other SLP projects	2017	In compliance
SEFATENG 2016-2020 SLP			
Project	**Essence of deliverable**	**Due date for completion of all project deliverables**	**State of compliance**
Community water support	Installation and repair of water infrastructure and water supply in the villages of Ga-Mampa, Ga-Phasha, Tjibeng and Sekodibeng	2020	Partial compliance
Main road improved gravel upgrade project	Improve state of main road linking Ga-Phasha and Ga-Mampa villages	2020	In compliance

School support project	Construction of school infrastructure at 8 schools in 4 villages	2020	Partial compliance.

3.1 TWICKENHAM PLATINUM MINE (ANGLO PLATINUM) SLP PERFORMANCE

The mining rights for Twickenham Platinum Mine (Twickenham) are held by Rustenburg Platinum Mines Limited, which is a wholly owned subsidiary of Anglo American Platinum Limited (Anglo Platinum). Twickenham is located on the North-Eastern Limb of the Bushveld Complex, approximately 35km north-northwest of FTLM and approximately 2.5km to the west of the R37 (a regional road), which links Polokwane, the capital of the Limpopo Province, to FTLM. The operation was placed under care and maintenance[47] in 2016, which has been reported to have led to significant job losses, though exact numbers have not been cited.[48]

3.1.1 TWICKENHAM 2016-2020 SLP PROJECT 1: WATER SUPPLY[49]

The commitment under this project is to provide water to 12 villages in the Greater Tubatse Local Municipality. The target number as a result of the project is 14,000 people receiving 50 litres per person per day. The lack of clarity regarding the content of project obligations in the SLP project plan renders accountability challenging. The project plan does not specify which villages are to benefit from the water project, nor the means by which the water will be provided. In addition, the project is described as a partnership with the local government IDP Manager, but there is no explanation of agreed roles and responsibilities including with the District Municipality which is the water service provider.

Very limited information was provided to the regulator, the DMRE, in Twickenham's 2018 annual compliance report, the only such report in the research team was able to obtain. This is due, first, to DMRE failure to provide additional annual compliance reports (despite officially granting access through PAIA) and second, to Anglo Platinum's refusal to provide the research team with copies of these reports upon request. In refusing the request, Anglo Platinum cited the lack of an explicit requirement of publication of the reports in the MPRDA regulations.[50]

The 2018 annual compliance report states: "Project to be implemented during Q3 of 2019" due to budget constraints, with little further explanation of what has occurred to date.[51] Anglo Platinum's Environmental, Social and Governance (ESG) report of 2020 states that some unspecified SLP projects by the company were experiencing delays, citing the lockdowns to prevent the spread of Covid-19.[52] The report went on to state that

[47] Care and maintenance is a practice of temporary mine closure until the company decides it is profitable to mine again. This is not regulated in the MPRDA. The lack of any exception for care and maintenance means that all the licensing conditions remain in place unless amended in accordance with Section 102 of the MPRDA.
[48] City Press, "Life was better before the mine opened: Hard times hit mining villages", 6 June 2019, news24.com/citypress/news/life-was-better-before-the-mine-opened-hard-times-hit-mining-villages-20190606
[49] Twickenham, Social and Labour Plan, 2016-2020 (Twickenham 2016-2020 SLP), Project No 2: Twickenham Water Provision, p. 59.
[50] Given that the reports are critical for making sense of the status of SLP projects, it is arguable that they are a necessary accompaniment to SLPs and publication of the reports should be regarded as an ancillary of publication of SLPs.
[51] Anglo American, 2018 Annual Social and Labour Report – Twickenham Mine (Twickenham 2018 compliance report), 2018, p. 17.
[52] Anglo American Platinum, Environmental, social and governance report 2020 (Anglo ESG Report), angloamericanplatinum.com/~/media/Files/A/Anglo-American-Group/Platinum/investors/annual-reporting/2021/aap-esg-report-2020.pdf, p. 122.

for these projects "a formal application for extension was lodged with the DMRE".[53] The copy of the subsequent Twickenham SLP for 2021-2025 obtained from the DMRE contains no new local economic development (LED) projects, merely stating under this section that: "Twickenham SLP 2 Mine Community Projects still applicable for 2021. New projects will be identified for the next cycle in 2021".[54]

The response to the letter sent to Anglo Platinum on 26 August 2021 requesting further information and details on projects under review, did not result in any more clarity regarding the status of this particular project, with the company stating, "Please provide clarity on which water project you are referring to so that we can respond accordingly".[55]

On 29 January 2022, the research team received a response from Anglo Platinum to the findings presented in the research team's right of reply letter dated 6 December 2021 ("Anglo response to right of reply letter"). Besides clarifying the status of the water project as set out below, this response was of interest in several respects. First, the response was overdue, not only in relation to the initial deadline (20 December 2021), nor the final extension granted by the research team (24 January 2022) but in relation to Anglo Platinum's own requested extension of 28 January 2022. Anglo Platinum cited factors including the complex internal processes given that the mining rights holder was part of a large group of companies. Second, Anglo Platinum indicated a different view of non-compliance to the research team. Whereas for the research team this is an absolute obligation, absent a written amendment in accordance with Section 102 of the MPRDA, Anglo Platinum were of the view that if the delay was not their fault (e.g. contractor disputes and slow turnaround time of the DMRE for approving an amendment) they were not in non-compliance. For the research team those are at best mitigating factors for less than full compliance (partial compliance if being generous). Third, Anglo Platinum stated that the incomplete projects for this SLP would not be incorporated into the next SLP but it would complete the commitments in an addition to a new set of LED commitments. Fourth, Anglo Platinum again refused to provide annual compliance reports citing, among other reasons, their view that they are not required to do so by the MPRD Regulations which indeed do not expressly require this. To the research team, the cumulative impression of the above responses did not present a flattering perspective of Anglo Platinum's respect for transparency, for communities, and for human rights and civil society organisations. We however acknowledge that incomplete LED projects for the 2016-2020 SLP would not form part of the commitments for the next five-year SLP.

If this water project is one of the 2016-2020 commitments deferred for implementation in 2021, then an amendment to the SLP in terms of Section 102 of the MPRDA prior to the lapsing of the deadline would be the only way to avoid non-compliance.

Members of surrounding communities have reported intermittent supply of water installed by Twickenham with some reporting no water coming out of the taps. Boreholes are on the outskirts of villages, next to rivers or in ploughing fields, and existing infrastructure within villages is not connected to these. Electricity and pumps were not installed according to a project partner.

During a site visit on 8 April 2021, the following was observed:

Below: *A large leak on the lower Anglo JoJo tanks*

[53] Anglo American Platinum, Environmental, social and governance report 2020 (Anglo ESG Report), angloamericanplatinum.com/~/media/Files/A/Anglo-American-Group/Platinum/investors/annual-reporting/2021/aap-esg-report-2020.pdf, p. 122.
[54] Twickenham, Social and Labour Plan, 2021-2025, p. 26.
[55] Anglo American Platinum response to research letter, 1 October 2021.

Above: *Two of the lower Anglo JoJo tanks.*

However, the response by Anglo Platinum to the findings does suggest that they have complied with the project commitments and have done substantial work. The response states that they have implemented the project in the villages of Ditwebeleng, Morapaneng, Dithabaneng, Mantjekane, GaMongatane (GaMashabela), GaMakgopa, Dikgopeng, Manaleng, Magobading, and Seelane. They further state that about 500,000 people "have received access to potable water". The full response on this and all projects is to be found in the response to the right of reply letter attached as Annexure II.

3.1.2 TWICKENHAM 2016-2020 SLP PROJECT 2: WATER AND SANITATION AT SCHOOLS[56]

In terms of the SLP, the mine was to provide sanitation services to Mongatane and Maboragane schools. The project was due to have been completed and ready for handover by the end of 2018. The 2018 annual compliance report for Twickenham indicates that the work was incomplete at the close of that year in spite of a 2018 project deadline in the SLP.[57] At the time of writing this report, this project remained unfinished.

The 2018 annual compliance report simply states, "to be completed in 2019". Anglo Platinum's response to the letter sent by the research team on 26 August 2021 confirmed that the deadline for completion had been missed and that the initial service provider for the project had been appointed in the deadline year of 2018 instead of 2017 as provided in the SLP.[58] They provided the following explanation for the delay:

> **"As this is a specialist works, a service provider was appointed in 2018. However, due to disagreements with the local subcontracting and local procurement of materials, the project was stalled while stakeholder engagements were conducted.**
>
> **The Covid-19 lockdowns significantly contributed to the delays in engagements."*[59]***

They further stated that:

> **"A breakthrough in the local subcontracting and rates was achieved in June 2021. Site establishment commenced in September 2021 and the project is in track for completion in November 2021."*[60]***

It is concerning that in its response to the letter, Anglo Platinum stated that it had not applied for an amendment in respect of the 2016-2020 SLP.[61] This appears to contradict the statement in the company's 2020 ESG report that "we faced delays in implementing some of our infrastructure projects" and "formal application for extension was lodged with the DMRE".[62] While this ESG report does not identify the particular mining

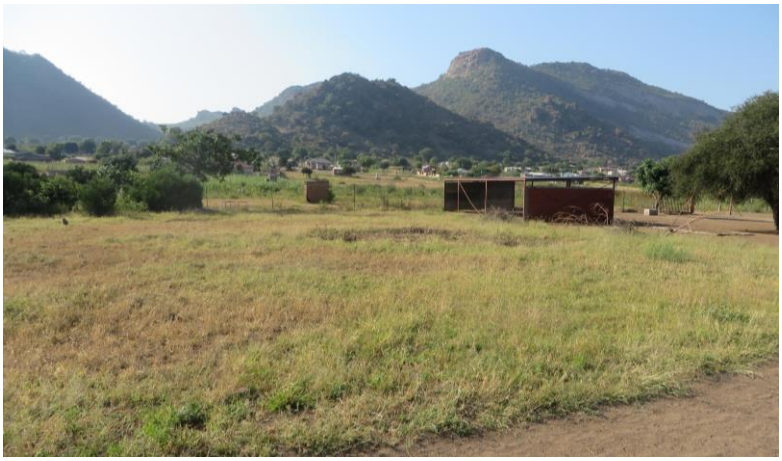
[56] Twickenham 2016-2020 SLP, Project No 5: Construction of water and sanitation in schools, p. 62.
[57] Twickenham 2016-2020 SLP, p. 17.
[58] Anglo American Platinum response to research letter, 1 October 2021; Twickenham 2016-2020 SLP, Project No 5: Construction of water and sanitation in schools, p. 62.
[59] Anglo American Platinum response to research letter, 1 October 2021.
[60] Anglo American Platinum response to research letter, 1 October 2021.
[61] Anglo American Platinum response to research letter, 1 October 2021.
[62] Anglo ESG Report, p. 122.

operation and projects to which the application pertained, it at best indicates an inconsistent approach to addressing failures to meeting binding project deadlines. While Anglo Platinum in this official report is likely to be referring only to certain operations, it is likely to create the impression that Anglo Platinum had applied for amendments to all SLPs that are behind schedule prior to the 2020 deadline and that risks of non-compliance with licence conditions had been minimised across the board.

Also of interest was that while the project plan made reference to Mongatane School, the response to the letter instead referred to Majoe a Kgoro School which raises questions regarding the clarity and accuracy in defining the scope in the SLP.[63]

A site visit on 9 April 2021 suggested that no work had been done at Maboragane School at that point.

Above: *Proposed site for toilets at Maboragane School, which are yet unbuilt. The two buildings on the right house the eight toilets currently serving the school's 175 students and 6 staff members.*



Above: *The proposed site for the installation of underground sanitation tanks, which also remain unbuilt.*

Based on the 2018 annual compliance report, the company was in non-compliance with its 2018 project deadline, and as explained above, they have effectively admitted that they are in non-compliance with the overall end of 2020 SLP deadline. Further, the company did not even obtain a formal amendment to the 2016-2020 SLP to adjust the timeframes and admitted that completion of the project was only planned for November 2021, outside the binding deadlines of the entire SLP.

In its subsequent response to the right of reply letter, Anglo Platinum acknowledged that this project was not to date complete, while explaining that this delay was on account of factors outside of their control, including the disagreement with project subcontractors and subsequent "community interference" which meant completion was now only planned for during 2022. They asserted that they engaged with communities and kept the DMRE up to date, while not making reference to an approval in writing from the DMRE in accordance with Section 102,

[63] Both the SLP and research letter make reference to the Maboragane School.

nor providing evidence of the engagement with communities. They clarified that the reference to a Mongatane School was to the name of the village and that Majoe a Kgoro School was a school in Mongatane. The full response with respect to the school project can be found in the complete response to the right of reply, attached as Annexure II. In the view of the research team, the factors cited by Anglo Platinum are factors in mitigation that do not elevate the company to be in compliance in the absence of the requisite formal approval.

3.1.3 TWICKENHAM 2016-2020 SLP PROJECT 3: SCHOOL INFRASTRUCTURE PROJECT[64]

The commitment was to construct administrative blocks at four schools, namely Masebudi Primary School (Ditwebeleng), Hlakanang School, Tekanang School, and Maboragane School. The administrative blocks were to be constructed over the 2018-2020 period and completed by the end of the SLP cycle (in 2020). The responsibility for the project is allocated between the social performance manager and the Department of Education with no further information in that regard.

The 2020 ESG report does not contain much detail but does describe 'good progress' at Tekanang School specifically, one of the four schools listed in the 2016-2020 SLP and the only school from the project plan mentioned in the ESG Report.[65] The choice of the phrase 'good progress' however implies it was not complete at the end of the year which was the final year for the implementation of the SLP. Anglo Platinum's response to the research team's letter dated 26 August 2021 notes that "Masebudi and Tekaneang Schools have been completed, handed over, and are in use". This indicates that two out of the four schools were completed within the 2020 project deadline. The most work was done at Masebudi Primary school: "The project features the construction of a New 4 Classrooms Block & furnishings and New Administration Block & Furnishings. Completed in September 2018".[66] Anglo provided photographs, which the research team have on file.

With regards to Hlakanang School, Anglo stated that "DMRE consulted on an extension"[67] and explained the delay as follows:

> **"The project was delayed for 24 months due to procurement irregularity allegations lodged by a community member to the AAP open line. Thereafter a robust investigation followed by the Anglo American Protection Services team. The investigation did not find any irregularities and the project was cleared to commence. However shortly thereafter, intimidations and threats were made to the Anglo teams by community members and the project experienced further delays while stakeholder engagements were resumed. A further delay in formal registration of the Joint Venture Contractor was experienced during 2021 due to the slow activities during the Covid-19 lockdown. The project is in execution phase and site works is expected to commence in October 2021."**

One of the four schools in the SLP Maboragane School, is not even mentioned in Anglo American's response to our letter. In addition, pictures without narrative context were provided for Lephenye School which was not mentioned in the SLP. The images show what looks like an administrative block.

A site visit by the research team on 9 April 2021 to Tekanang School and satellite pictures of the site indicate that three new buildings were built between August 2017 and March 2020.

64 Twickenham 2016-2020 SLP, Project No 4: Construction of 4 Admin Block in 4 Schools: Masebudi Primary, Hlakanang, Tekanang and Maboragane Schools, p. 61.
65 Anglo ESG Report, p. 130.
66 Anglo American Platinum response to research letter, 1 October 2021.
67 Given that the only valid form of extension involves an amendment application and elsewhere Anglo Platinum say they have not applied for amendments, the inference seems to be that whatever engagement occurred, it falls short of the formal amendment required by the MPRDA.

Above: *Satellite image of Tekanang High School, August 2017*
Maps data: Google © 2021 Maxar Technologies

Above left: *Satellite image of Tekanang High School, June 2019. Two small buildings, probably additional toilets, have been built in the upper-left quadrant of the image.*
Maps data: Google © 2021 CNES / Airbus
Above right: *Satellite image of Tekanang High School, March 2020. The new administrative block has been built, and an existing building has been re-roofed. The buildings constructed or altered after August 2017 are clearly distinguishable by their green roofs.*
Maps data: Google © 2021 Maxar Technologies

Our research indicated that that no work related to SLP commitments had been done in the SLP period. The administrative block was built long before the SLP (between 2007 and 2012)

Above left: *December 2012, four large buildings and two smaller ones are visible, December 2012.*
Above right: *March 2020, only one small structure with a light roof to the right of the main complex has been added. The research team observed that this was not the administration block that was supposed to have been built be the end of 2018, but a carport. At the time of the site visit, the school's offices were located in the northernmost larger building with the red roof. This building predates the SLP commitments, since it is visible in the 2012 satellite image of the site.*
Maps data: Google © 2021 Maxar Technologies

The 2020 ESG report read together with Anglo Platinum's response to our letter dated 26 August 2021 show that while significant work has been done and is ongoing, the required work only occurred in respect of two of the schools, out of the initial four, within the SLP deadline. The failure to obtain an amendment to the SLP in time means that the company has been in non-compliance with its obligations in terms of the project as a whole. An amendment approved in writing by the DMRE to an SLP prior to the lapsing of the 5-year period, in accordance with Section 102 of the MPRDA, is required to rectify non-compliance. While the reasons for the delay appear compelling, this did not stop the company applying for an amendment to the SLP when the problems initially arose, to defer the obligation to the resolution of the dispute regarding the contractor.

In their response to the right of reply letter, Anglo Platinum reiterated that as per their prior response to the research letter, three out of four schools had administrative blocks built as per the project requirements. They admitted that work at Hlakanang Primary School had not been completed due to disputes between the community business forum and main contractor and resulted in severe "safety and security threats" and the indefinite postponement of work until the situation is resolved. They confirmed that in September 2020 the company applied to the DMRE for an extension to Hlakanang Primary School but do not state whether the DMRE had approved the request in writing. They explained that the reason for providing information about Lephenye School and not Maboragane school was that it came to Anglo Platinum's attention that Maboragane school already had an administration block and Kgoshi Mashabele of the GaMashabela Traditional Authority requested that Lephenye Secondary school be the recipient. The overall finding of the research team, in the absence of evidence that the DMRE approved the amendment in writing, is partial compliance.

3.2 MARULA PLATINUM MINE (IMPLATS) SLP PERFORMANCE

Marula Mine (Marula) is a subsidiary of Impala Platinum Limited (Implats).[68] The mine is located on portions of the farms Driekop 253KT[69], Forest Hill 117KT, Winnarshoek 250KT, and Clapham 118KT, as well as additional portions, since the initial awarding of the mining right, of Driekop 253KT and Hackney 116 KT. The 2013-2017 SLP, which is the subject of this report states that the Marula project was initiated in 2000.[70]

In contrast to the two other operations, the research team managed to obtain a near-comprehensive set of annual compliance reports which constitute the primary source of findings albeit supplemented by the 2020 ESG Report, the subsequent (2018-2022) SLP, and the site visits.

3.2.1 MARULA 2013-2017 SLP PROJECT 1: DRIEKOP ROAD UPGRADE[71]

The project is described as a 3-phase upgrade of community roads in Driekop farm between 2015 and 2017 to address dust problems. Construction of roads was to occur in 2015, 2016 and 2017 albeit with no further description of what work must be done and when. Further, no detail is provided in the project plan regarding the role players and allocation of roles of responsibilities.

The 2018 annual compliance report indicates that, following the due date for the project and the entire SLP, the project was not yet complete. The report simply puts the commencement date as November 2017 and the "revised completion date" as February 2019.[72] This indicates non-compliance, though it is possible that the commitments were carried over into the next SLP with the approval of the DMRE. However, it must be noted

[68] Marula Platinum Mine, Social and Labour Plan, 2013-2017 (Marula 2013-2017 SLP), p. 7.
[69] The KT designation at the end of the official numbering of farms is common.
[70] Marula 2013-2017 SLP, p. 7.
[71] Marula 2013-2017 SLP, Table 3.1: Project No 1 – Community Road Construction Project, p.59. All subsequent references to the project description, timeframes and deliverables are taken from this table.
[72] Marula Platinum Mine, Social and Labor Plan Annual Progress Report for Financial Year 2018 (Marula 2018 Annual Compliance Report), p. 32.

that if this is the case – that companies can evade SLP obligations by incorporating them into subsequent SLPs - then this renders the entire process useless and goes against the purposes of the SLP system.

The most recent 2020 ESG Report of Implats states that the project is complete. The wording is as follows: "Our Marula operation has completed its outstanding SLP II project, the protracted construction of a road in conjunction with the Roads Agency Limpopo".[73] Yet community interviewees noted that the project was not completed.[74]

During the site visit on 9 April 2021 to villages Kgoete/Matuba Park, Mashishi and Manyaka which traverse the Winaarshoek, Driekop, Forest Hill and Clapham farms, images taken by the team suggested some work had occurred but that roads remained in very poor condition. Photographs taken of roads in the villages show heaps of crushed stone likely to be used for gravelling.

Above: *The poor condition of the road at Manyaka village.*

Above*: Heaps of crushed stone at Mashishi village next to the road, which washed away in places.*

[73] Impala Platinum, ESG Report 2020 (Implats ESG Report 2020), implats.co.za/reports/2020/implats-esg-2020.pdf, p. 73.
[74]Focus group discussion interview, 21 October 2020; Community member interview, 4 November 2020.

Above: *The end of the gravelled section of road, looking in the direction of the Marula mine.*

While findings are subject to the 2020 annual compliance report, which the research team were unable to obtain through the PAIA request, the 2020 ESG Report stated that the company had met its commitment even though photographic evidence suggests that the project might not have fully achieved the above-stated objective of addressing the problem regarding the dust on the road and that the company only partially complied with its commitment. At the time of printing this report, Marula had not responded to our right of reply letter dated 6 December 2021 outlining these findings.

3.2.2 MARULA 2013-2017 SLP PROJECT 2: ELECTRICAL ENGINEERING PROJECT[75]

This electrical engineering project involves rolling out electricity infrastructure and connections to ward 8 and 10 in the same four farms as the other projects and is presented as an extension of a prior SLP project. This is a project in the Greater Tubatse Municipality IDP, but additional funding was required and supplied by Marula. This is a project partnership between the municipality, Eskom[76] and the Marula Community Development Agency.

Concrete and measurable targets are not provided in the SLP project plan, undermining accountability to communities and the state regulator. Roles and responsibilities between project partners are not specified, but the language in the SLP suggests construction is the responsibility of the mine, stating that construction is to be done by "consultant and contractor".

The 2017 annual compliance report states that "subsequent recommendations by Fetakgomo Greater Tubatse Municipality for the electrification of the Ga-Kgwete community and also authorization from DMRE the project implementation commenced in July 2016. One hundred and thirty households have been connected that is about 90% of the completed electrification work. Currently the project is awaiting energising of lines by Eskom. Anticipated completion period is 30 November 2017".[77] The project was not mentioned in the 2018 SLP annual compliance report. This is a failure of comprehensive compliance reporting. However, the DMRE record received by the research team is heavily redacted with some pages missing which constitutes a lack of transparency. The 2019 compliance report states that "the project is complete (to be energised once Eskom has completed Kgoete Feeder Splitter this year)."[78]

A site visit found electrical infrastructure installed throughout the villages of Kgwete/Matuba Park, Mashishi and Manyaka. Passers-by confirmed that they have reliable electricity. These villages correlate with the farms Winnaarshoek, Driekop, Forrest Hill and Clapham.

[75] Marula 2013-2017 SLP, Table 3.2: Project No 2 – Electrical Engineering Infrastructure Project, p. 60.
[76] Eskom, the Electricity Supply Commission, is a state-owned enterprise and South African electricity public utility, generating 95% of electricity used in South Africa.
[77] Marula Platinum Mine, Social and Labour Plan Annual Progress Report for Financial Year 2017 (Marula 2017 Compliance Report), p. 32.
[78] Marula Platinum Mine, Social and Labour Plan Annual Progress Report for Financial Year 2019 (Marula 2019 Compliance Report), p. 27.

Above: *Electrical poles and a transformer installation at Manyaka village.*

The compliance reports and photographic evidence suggest that Marula complied with its commitments in relation to this project as defined in its SLP.

3.2.3 MARULA 2013-2017 SLP PROJECT 3: WATER SUPPLY AND RETICULATION PROJECT[79]

The essence of this project was the supply of basic water (standpipes and elevated tanks) to households in the same four farms as the other SLP projects and, like the electricity project, an extension of a project which it states had succeeded in delivering "basic water supply (standpipes and elevated tanks) to 1,900 households on the same farms".

The SLP project plan provides no specification of roles and responsibilities between the mine and government project partners and there does not appear to be a concrete plan. The project partners cited in the SLP are Marula Community Trust, Sekhukhune District Municipality, Greater Tubatse Municipality (the SLP was developed before merger of the Tubatse and Fetakgomo municipalities) and the (then) Department of Water Affairs and Forestry,[80] with no explanation of how roles and responsibilities for delivery are shared. There is no specification of numbers of households to benefit, nor the villages, nor any criteria for selection of beneficiaries. The lack of measurable targets undermines accountability to communities and the state regulator.

The 2018 annual compliance report states that the project is complete without further explanation of what was done.[81] This level of reporting should not have been accepted by the regulator.

The Impala Platinum ESG 2020 Report does state that the company has made amendment applications to extend SLP timelines (not necessarily pertaining to this project). The 2020 ESG Report states that the company was "awaiting approval of MPRDA amendment applications seeking extensions on SLP LED project timelines at our South Africa Operations".[82] This report does not, however, state which projects these extensions relate to.

While official statements by the parent company in its 2018 annual compliance report are that the project was completed, there remains a lack of specificity of project deliverables in the SLP and only a bare assertion of the mine's reporting in the aforementioned annual compliance report.

[79] Marula 2013-2017 SLP, Table 3.3: Project No 3 – Water Supply & Reticulation Network (Wards 8 & 10), p. 61.
[80] The portfolios combined in that department at the time of the SLP have since been re-organised and today water is combined with sanitation.
[81] Marula 2019 Compliance Report, p. 33.
[82] Implats ESG Report 2020.

3.3 SEFATENG CHROME MINE SLP PERFORMANCE

The Sefateng Mine (Sefateng) is owned by Sefateng Chrome Mine (Pty) Limited.[83] Amongst shareholders are Umela Resources, Lephatsi Investments, Umthombo Trust, the MampaSerole Community Trust, the Jibeng Community Trust, and the Roka PashaMakgalanoko Community Trust. The three community trusts have roughly 1.67% shareholding each (no financial contribution required for ownership) totalling around 5% of the operation. The remaining 55% is owned by Corridor Mining Resources, a wholly owned subsidiary of LimDev (Limpopo Economic Development Enterprise), which in turn is a parastatal of Limpopo Economic Development, Tourism and Environment (LEDET). The mine is located on the farms of Zwartkoppies (413KS) and Waterkop (113KT), approximately 50km north-west of FTLM. The 2016-2020 SLP is the subject of this report.

3.3.1 SEFATENG 2016-2020 SLP PROJECT 1: COMMUNITY WATER SUPPORT[84]

This project aims to provide water infrastructure to Ga-Mampa, Ga-Phasha, Seokodibeng and Tjibeng villages. The deliverables, timeframes and beneficiaries of this water infrastructure project are clearly defined in the project plan.

Table 2: Deliverables and timeframes of community water support project

Ga-Mampa (by 2017) Installation of 1.5 km pipe in Ga-Mampa Replacement of 2 hand pump boreholes in Ga-Mampa Refurbishment of 15 standpipes in Ga-Mampa village	**Ga-Phasha (by 2018)** Installation of additional borehole in Ga-Phasha Refurbishment of 30 standpipes in the village Installation of 1.5 km pipe
Tjibeng (by 2019) Replacement of hand pump borehole in Tjibeng Installation of additional borehole Refurbishment of 15 standpipes in the village	**Seokodibeng (by 2020)** Installation of additional borehole in Seokodibeng Installation of 3 km pipe Refurbishment of 30 standpipes in the village

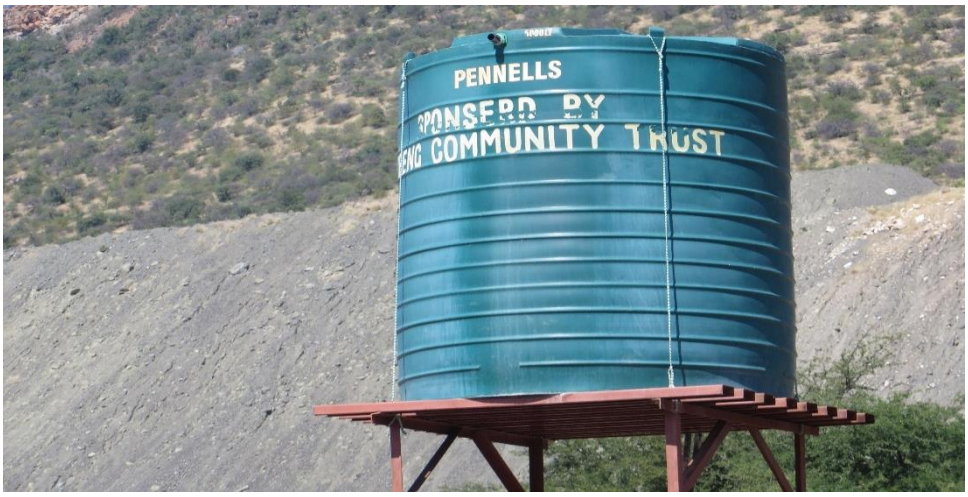
In April 2021, our visit to some of the villages found that no work had been done besides repairing infrastructure damaged due to mining in Ga-Mampa[85].

[83] Sefateng Chrome Mine, Revised Social and Labour Plan, 2016-2020 (Sefateng 2016-2020 SLP), Appendix A2: Company Structure, p. 43.
[84] Sefateng 2016-2020 SLP, Project 1: Community Water Supply Project, p. 23-24.
[85] Research team site visit on 10 and 11 April 2021, and testimonies from interviewees in the area.

Above: *A water tank and borehole. A community member who is part of the research team reported that the community had drilled the borehole initially but that it was damaged by the mine in 2019. Community members interviewed reported that the borehole was repaired by the mine around October or November 2020.*

Above: *A water reservoir. A community member who is part of the research team reported that the reservoir was supplied by a municipal pumping station but, only had water twice a week.*

We photographed several standpipes and boreholes in Tjibeng, Ga-Mampa and Ga-Phasha, but it is not possible to verify whether those were part of SLP installations. None had Sefateng markings. It was not possible to verify via correspondence with Sefateng whether the tanks marked "Jibeng Community Trust" were constructed as part of the SLP programme.



Above: *A water tank at a borehole with the words "Sponserd [sic] by Jibeng Community Trust" painted on its side.*

The very fact that the team was unable to obtain documentary evidence regarding the state of completion of all three Sefateng SLP projects that are the subject of this report is, in and of itself, indicative of a non-compliance with the duties of mining right holders under South African law. The DMRE noted in email correspondence on 20 August 2021 that Sefateng has not been submitting annual compliance reports, which is an explicit legal duty on mining right holders under the MPRDA.[86]

The testimonial evidence in the interviews coupled with the photographs during the site visit initially suggests that the project itself was not complied with. In their response to our letter dated 26 August 2021 requesting, amongst other information, a comprehensive set of annual compliance reports and whether they had been submitting them, Sefateng noted that they were unable to provide responses to our questions regarding SLP

[86] MPRDA, Section 25(2)(h) and 28(2)(c).

projects under investigation in this report, as they are currently facing numerous litigious matters with local communities in the area.[87]

Sefateng responded to our right of reply letter on 22 January 2022 following the granting of an extension.[88] In contradiction to the information we received from the DMRE, the company asserted that it was complying with its obligation to submit annual reports to the DMRE without providing the research team with copies of said reports. Also of interest in this letter was the company's acknowledgment that "some of the projects had fallen behind schedule", its view that SLPs are "flexible commitments" and that they had "achieved more than 75% of the original SLP objectives". The letter further states that "…the mine's financial condition was compromised as a result of the Covid pandemic and as a result it has been necessary for us to carry some of our SLP obligations over to our second SLP". This points to a different view of the nature of SLP commitments to that of the research team which is that, first, 100% compliance is required; second, that companies are required to set aside sufficient funding to ensure SLP projects can be carried out in full; and, third, that SLPs are 'rigid' at least to extent that one party (the mining company) cannot unilaterally vary the condition without going through the requisite formal process of amending the SLP within the 5-year period.

Sefateng provided a detailed account of measures to improve access to water in three of the four villages named in the SLP (Ga-Mampa, Ga-Phasha and Tjibeng), while not addressing what work was done in fulfilment of its commitments in Seokodibeng. Their response to the right of reply letter does describe a significant number of measures undertaken to improve water infrastructure and access to water in the aforementioned villages, though the particular measures differed to what was provided for in the SLP project plan. Key measures cited include: two newly installed stations supplying water to Ga-Phasha since 7 May 2019; one installed station supplying water to Tjibeng since 18 March 2019; and two newly installed stations supplying water to Ga-Mampa since 19 March 2020.[89] The letter does not specify whether or not formal written approval was obtained from the DMRE, nor whether there was consultation with the community. Their response is included in Annexure III of this report.

3.3.2 SEFATENG 2016-2020 SLP PROJECT 2: MAIN ROAD IMPROVED GRAVEL UPGRADE PROJECT[90]

This project is mainly intended to improve the main road linking the Ga-Phasha and Ga-Mampa villages which are in poor state due to lack of maintenance, flooding and using dump rock from the mine. Community members face difficulties in accessing services such as healthcare and education, due to the poor condition of roads.

Table 3: Deliverables and timeframes of project

COMPLETION OF FIRST 2KM OF ROAD BY 2018
COMPLETION OF NEXT 2KM OF ROAD BY 2020
COMPLETION OF LAST 0.5KM OF ROAD BY 2020

As was the case for all Sefateng's SLP projects that are part of this research, the mine's lack of compliance with its reporting obligations according to the DMRE, and their refusal to share annual compliance reports with the research team, meant that the team was not able to obtain documentary evidence on the state of SLP performance.

The site visit on 10 and 11 April 2021 revealed the state of the Ga-Phasha Ga-Mampa road to be in fair condition and no recent work done on it.

[87] Letter from Sefateng to research team dated 8 September 2021.
[88] Sefateng's letter from 22 January 20222 is hereinafter referred to as "response to right of reply letter"
[89] See the full detailed list of measures set out in Sefateng's response to the right of reply letter in Annexure III.
[90] Sefateng 2016-2020 SLP, Project 2: Main road improved gravel upgrade project, p. 25.

Above: *The road in fair condition, with the Sefateng mine in the background*

The pictures below were taken at Mangaka and show the road in poor condition, with several areas washed away. Project partners on the ground state that the road was re-gravelled in 2017, but that it was maintained or repaired only once in mid-2018. The repairs done were cosmetic and since then, the road washed away gradually as can be seen below.

Above: *The road in poor condition at a culvert.*

Sefateng, in their response to the right of reply letter received on 22 January 2022, stated that the company had, in accordance with the project obligations, upgraded the road in question using dump rock from the mine and other local sources. It ascribed the deterioration in the road to the failure of the local municipality to exercise its responsibilities and to heavy rains in the pasts six months.

3.3.3 SEFATENG 2016-2020 SLP PROJECT 3: SCHOOL SUPPORT PROGRAMME[91]

This project is a school infrastructure project which included additional classrooms, science laboratories and equipment, administrative blocks, and a kitchen across eight schools in Ga-Pasha, Tjibeng and Seokodibeng villages[92].

[91] Sefateng 2016-2020 SLP, Project 3: School Support, p. 26-28.

[92] The specific project deliverables included: a) Completion of Ga-Phasha Education Project in 2017 by construction of 2 additional classrooms at Makgalanotho Primary school with a total size of 40 sqm; b) Construction of an additional room at Ga-Phasha's Selatole Secondary School to be utilised as a science lab with a total size of 30 sqm; c) Procuring equipment for the science lab at Ga-Phasha's Selatole Primary School; d) Construction of an administration block at Ga-Mampa's Malegase Primary School to be utilised by teachers and admin staff with a size of 30sqm by 2018; e) Construction of 3 additional classrooms at Ga-Mampa's Seroletshidi Secondary School with a size of 60 sqm by 2018; f) Construction of 2 additional classrooms at Tjibeng's Matianyane Primary School by 2019; g) Construction of an administration block to be utilised by teachers and admin staff with a seize of 30sqm at Tjibeng's Morwasi Secondary School by 2019; h) Supply of 100 learner desks at Seokodibeng's Manku Primary School by 2020; i) Construction of a kitchen at Seokodibeng's Manku Primary School for the nutrition child programme by 2020; j) Construction of an additional room at Seokodibeng's Poo Secondary School to be utilised as a science lab with a total size of 30sqm by 2020); and k) Procuring equipment for the science lab at Seokodibeng's Poo Secondary School by 2020.

While we were unable to obtain documentary records of the state of compliance due to factors mentioned above, the detailed breakdown of deliverables, beneficiary schools and timeframes allowed us to locate more of the sites than was the case with the other mines in this report. Given the level of detail, this subsection, which paints a picture of partial compliance with work having been conducted at some, but not all, of the schools mentioned in the SLP, is instead included as 'Annexure I' of the report.

Sefateng's response to the right of reply letter seems to confirm a picture of partial compliance. The company stated that it rebuilt a larger Seroletshidi school in a new location and that the old school had been in a state of disrepair and unsafe. They stated that they had "engaged with DMRE who has granted permission to Sefateng for the rest of educational projects to be included under the succeeding SLP 2 commitments". It is, however, not clear whether this was formal consent granted in writing as required by Section 102 of the MPRDA.

4. FAILURES BY THE DEPARTMENT OF MINERAL RESOURCES AND ENERGY

4.1 DMRE HINDERS ACCESS TO INFORMATION

The research team experienced great difficulty in accessing documents held by the DMRE, such as SLPs and SLP annual compliance reports, through the process specified under PAIA. This is in line with past experience of CALS, community organisations and other civil society organisations.[93]

First, despite the national department officially communicating its decision to grant access to information,[94] it took almost three months following this decision for its Regional Office to provide the documents.[95] This delay occurred, in spite of a duty on the requestee to provide access once a decision to grant access has been communicated.[96]

Second, the process was time-intensive, requiring extensive following-up. This included a total of 18 follow-up emails, 14 unanswered phone calls,[97] and an official letter sent to the national department by research partners requesting their intervention with the regional department.[98]

Third, the official that the national DMRE advised the team to liaise with did not appear to be the best placed official, as a regular chain of communication with the Limpopo Regional Office was only established with another, more senior official (contact details obtained through an email thread prior to the project) a few days before receiving the first tranche of documents.

Finally, the set of documents obtained once regular communication was established was far from the complete set of records requested, despite three trips by the courier, with no annual compliance reports obtained in respect of Twickenham[99] or Sefateng.

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[93] Centre for Applied Legal Studies, The social and labour plan series: phase 1: systems design: trends analysis report, 2016, p. 19-20; Centre for Environmental Rights, Barricading the doors, 2013.
[94] This decision was communicated to the research team via email on 17 May 2021 but the attached notice was dated 12 May 2021. The request was submitted on 15 April 2021 together with proof of payment of the request fee.
[95] The documents were received in three tranches and collected by a courier contracted by the research team, with the last tranche being delivered on 18 August 2021.
[96] PAIA, Section 29(1).
[97] Members of the research team made notes of calls made.
[98] Letter to DMRE dated 6 July 2021.
[99] The 2018 annual compliance report referred to extensively in the findings of Twickenham Mine's SLP compliance was obtained by team members in the course of other work prior to this research project.

The implications of this information bottleneck are far more serious for the communities whose rights and interests to information such as SLPs and annual compliance reports pertain to directly. Accountability requires equal access to knowledge regarding the content of commitments, as well as the reported compliance status. If a well-resourced, multi-organisation team had to conduct multiple follow-ups over several months to obtain an incomplete record, then the prospects of communities obtaining this information timeously are far lower.

In practice, requests under PAIA remain the manner in which the department facilitates access to SLPs and other licensing and compliance information and this process is highly time-consuming and inaccessible.

4.2 INADEQUACY OF DMRE'S MEASURES TO GIVE EFFECT TO THE HUMAN RIGHTS COMMISSION DIRECTIVES

In 2016, the SAHRC issued directives and recommendations, requiring the DMRE to place all licensing information online and develop a dissemination strategy.[100] Further, it directed the Department to give effect to its own PAIA manual which states that SLPs are documents for which no PAIA request is required.[101] The response of the Department to the directive seemed to be contained in the amendments to the MPRD Regulations, which imposed a duty on companies to place SLPs on their websites and disseminate them in communities through a number of listed channels.[102]

4.3 CHALLENGES WITH DMRE'S RECORDS MANAGEMENT SYSTEM

The courier employed by the team to collect the documents from the DMRE offices in Polokwane, Limpopo, had to undertake three trips to recover small tranches of documents (around 500 pages from all three trips) that had been requested 4 months earlier. On one of the trips, the courier was handed SLPs for the incorrect mining operation. For example, the team received two versions of the Sefateng SLP for the same years (2016-2020). There was an earlier, less detailed version dated 28 February 2014 and a later more detailed version dated 2 June 2014. This inconsistency raises questions regarding the Department's records management and, in particular, whether the regional office was familiar with the content of the obligations it should be monitoring.

4.4 FAILURE BY THE DMRE TO HOLD MINING COMPANIES ACCOUNTABLE

The state is obliged to take measures towards the realisation of rights enshrined in Chapter 2 of the Constitution[103] (such as education, food, water, health care, and social security). The state's failure to ensure compliance not only leads to the violation of these rights, but creates an untenable situation in which companies have free rein to do as they please.

A DMRE official sent email responses to a member of the research team, stating that they had not yet received a compliance report by Sefateng for the year 2020,[104] but that, even worse, Sefateng have not been submitting annual compliance reports generally.[105] The mine has continued to operate despite being a persistent offender in failing to report (according to the DMRE) as expressly required by the MPRDA.[106]

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[100] The SAHRC Report, p. 94-95.
[101] Department of Mineral Resources (DMR), *Manual issued in terms of Section 14 of the Promotion of Access to Information Act,* 2017, (DMR PAIA Manual), https://www.environment.gov.za/sites/default/files/legislations/dea_paia_mannual2012_0.pdf
[102] MPRD Amendment Regulations, Regulation 46A.
[103] The Constitution, Chapter 2: Bill of Rights.
[104] Email from the DMRE to research team member, 18 August 2021.
[105] Email from DMRE to research team member, 20 August 2021
[106] MPRDA, Sections 25(2)(h) and 28(2)(c).

4.5 COMMUNITIES EXPERIENCE ABANDONMENT BY THE DMRE

Not a single interviewee recounted a positive experience of the DMRE. The common thread amongst interviewees was very minimal presence and contact of the DMRE in their communities. The DMRE was not perceived as an institution that looks after the rights of communities, nor one to hold mining companies accountable to their SLP obligations.[107] A municipal official concurred in this view, stating that in issuing mining rights they have a responsibility for the social and environmental consequences that follow from this decision and for ensuring compliance.[108] This is especially concerning given the moral, constitutional, and statutory obligations of the DMRE described above.

4.6 LACK OF CAPACITY WITHIN THE DMRE TO ENFORCE COMPLIANCE

At the time of the SAHRC report, there were only 96 DMRE Environmental Mineral Resources Inspectors[109] tasked with monitoring mines' compliance with their environmental obligations.[110] This is grossly insufficient given the 1,757 operational mines across the country.[111] The environmental impacts associated with mining are complex and require significant personnel to monitor rigorously. The SAHRC concluded that the DMRE is not the appropriate department to regulate environmental impacts.[112] The limited capacity of the Department is also indicated by the number of inspections of mines' SLP compliance being below target – it had only achieved 99 out of its target of 120 in the year 2019/2020.[113]

Given the complexity of monitoring obligations such as SLP compliance and the environmental impact of mining, DMRE resources should rather be freed up to concentrate on the economic and social aspects (i.e. SLP commitments), while the expertise and systems of the Department of Environment, Forestry and Fisheries, responsible for the environment, should be deployed to monitor the environmental impacts of mining.

[107] Interview with community member, 4 November 2020; interview with community member, 15 April 2021.
[108] Interview with municipal official, 22 June 2021.
[109] The SAHRC report, p.76.
[110] The research team requested information from the DMRE including the number of inspectors servicing the Limpopo region and records pertaining to community consultation. At the time of publishing, the team had not received a response from the department.
[111] The SAHRC report, p. 76.
[112] The SAHRC Report, p. 145.
[113] Portfolio Committee on Environment, Forestry and Fisheries, Presentation on the Department of Minerals and Energy 2019/2020 Annual Report, 2 February 2021, pmg.org.za/committee-meeting/31888/

5.RECOMMENDATIONS

Through this report, the research team hopes to establish meaningful dialogue with and between mining companies and the regulator, and for actors within the industry to take the necessary steps to address the social, economic, and environmental impacts mining operations contribute to. To assist in this, the team makes the following recommendations:

5.1 TO MINES (TWICKENHAM, MARULA AND SEFATENG IN PARTICULAR)

- Submit all outstanding annual compliance reports to the DMRE for each generation of SLPs.
- Publish all annual compliance reports made to the DMRE on SLPs since the start of mining in the region and commit to publishing all future reports to the DMRE, in English and Sepedi[114] on an annual basis.
- Publish and disseminate the current SLP and all future SLPs in English and Sepedi, making these available online and in at least one public venue (e.g. public library) for communities to access.
- Furnish communities with all information required for transparent, informed and consent-based participation in consultation processes, including, but not limited to, SLPs, annual compliance reports, environmental impact assessments, all reports pertaining to environmental legislation, and any information relating to changes in the mining operation, licensing, and conditions.
- Develop an accelerated action plan with clear timelines and deadlines to the meet the commitments not yet met in full.

5.2 TO THE MINISTER OF MINERAL RESOURCES AND ENERGY

- Develop and implement an action plan outlining the steps that will be taken to ensure that the DMRE increases its capacity to monitor SLP compliance with clear timelines for the implementation and take any necessary action to ensure a more effective enforcement of the provisions of the SLPs.
- Require, by policy or legislative measures, that all company SLP reports to the DMRE are publicly disclosed and made available and accessible to employees, communities, and other stakeholders.
- Review the human and financial resources available to the DMRE to monitor and enforce SLPs and increase these resources to enable effective monitoring.

[114] The dominant language spoken in the Limpopo Province.

5.3 TO THE DEPARTMENT OF MINERAL RESOURCES AND ENERGY

- Ensure any amendments including, but not limited to, extension requests of SLP projects, are published in advance of any decision by the DMRE to enable stakeholders to review the basis for change.
- Follow the directive of the SAHRC and develop a comprehensive online database of licensing and compliance reports of the mining sector and publish all SLPs in the DMRE's possession.
- Review, in consultation with affected communities, mining companies and other relevant stakeholders, the SLP regulatory framework. This review must include:
    - The extent to which communities and local government should be legislatively mandated to participate and contribute in responding to the socio-economic challenges of the affected community.
    - Clear divisions of roles and responsibilities between the local government, DMRE and mining companies.
    - Gender responsiveness and the inclusion of women in decision-making processes.
    - The prohibition of amendments to SLPs without prior consultation with communities and relevant stakeholders.
    - Sanctions for mining companies that fail to comply with their SLP commitments
    - Clear directives that mining companies cannot defer unmet duties in a particular five-year SLP iteration into the next five-year iteration.
- Amend the Mineral and Petroleum Resources Development Act (MPRDA) to align with the Interim Protection of Informal Land Rights Act (IPILRA) and the right to full and informed consent, to develop a formalised framework by which directly affected communities have decision-making power into allowing mining to occur and how it occurs.
- Establish and define a minimum percentage of financial contribution towards SLP projects, which is to be ring-fenced.
- Establish well-resourced - financial and human - local community DMRE offices in minerals complexes.
- Establish an independent, impartial, and thorough grievance mechanism for mining-affected communities.
- Develop a programme for resourcing local community monitors to supplement the DMRE's monitoring capacity.

5.4 TO INVESTORS IN MINING COMPANIES

- Call on mining companies to implement the recommendations set out above.

5.5 TO CIVIL SOCIETY AND PUBLIC INTEREST LAW ORGANISATIONS

- Challenge the decision by the Department of Health to not share health statistics including on miscarriages and/or stillbirths.
- Publicly advocate for mining companies and the state to give effect to these recommendations.

PART TWO

6. LIVED EXPERIENCES OF COMMUNITY MEMBERS

Despite the mineral wealth running through FTLM, communities in immediate proximity to mines experience the impacts on their lived environment commonly associated with mining but see little to no tangible development. Across different mining regions there are significant commonalities in community members' experiences of mining – that mining companies, senior management, and often senior traditional leaders derive wealth from the minerals below the ground, while most communities directly affected, live in poverty and suffer a multitude of environmental, socio-economic and cultural injustices.

Several sources paint this overall picture of mining in South Africa. These include investigative reports of public institutions and officially mandated commissions and panels[115], public statements by networks of mining-affected communities,[116] research reports by civil society organisations[117], and in policy instruments such as the preamble to the Mining Charter of 2018.[118] These experiences are also reflected in this research.

LIMITATIONS

This section is informed by focus group discussions and individual interviews with community members living in FTLM. In total, 25 community members residing in 18 different villages across the region were interviewed. Several interviewees were community leaders with broader knowledge regarding the challenges of communities in the area. They all live in close proximity to various mining operations and represent a range of the community including women, young adults, elders, and cattle herders.

This section conveys the experiences of interviewees regarding mining in their areas, which includes multiple mines, with 18 identified in the Integrated Development Plan (IDP) of the FTLM as 'key actors'.[119]

The issues raised by the interviewees in most cases, are shared by many communities impacted by mining elsewhere but our findings are limited to the region under discussion. While the scope of this report and readily information did not allow for definitive causal conclusions on the human rights impact of mining on surrounding communities, they nevertheless merit further investigation. This project was co-developed by a community-based organisation, SCMAC, for whom it was very vital that the report would give expression to these lived experiences.

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[115] See The SAHRC Report; the High Level Panel Report, p. 59, 203, 264-271, 277, 448, 489-509.
[116] See The Peoples Mining Charter (2016) at macua.org.za/wp-content/uploads/2019/11/Peoples-Mining-Charter.pdf and macua.org.za/2020/11/26/re-macua-wamua-national-caravan-roadshow-to-deliver-50-000-signed-petitions-to-the-speaker-of-the-national-assembly-and-a-letter-to-the-portfolio-committee-on-natural-resources-and-energy-2/
[117] See Bench Marks Foundation, *Policy gap series,* bench-marks.org.za/policy-gap-series/
[118] The Mining Charter, 2018, gov.za/sites/default/files/gcis_document/201809/41934gon1002.pdf
[119] Fetakgomo Tubatse Local Municipality, *Draft IDP and Budget 2020/21*, p. 98.

6.1. IMPACTS ON LIVELIHOODS, CULTURE AND IDENTITY TIED TO LAND

> **"Some are sterilized by that water. In some other areas where the mine affects, the miners don't care about the livestock and the livestock drink that water from mines and as a result they don't produce offspring."**
>
> Focus group discussion interview, 19 October 2020

Mining has caused disruptions to the livelihoods, ways of life and identities of communities that are inextricably linked to the land. Some of the more severe impacts are through the removal of gravesites (culturally important for the performance of rituals and connection with ancestors)[120], the relocation from their ancestral and agricultural lands, and the pervasive impacts on livestock. Livestock and land are vital as a source of wealth, income, and food security in African rural economies.

Inhabitants of several villages suffered loss of livestock due to mining-related impacts according to interviewees.[121] These experienced impacts include soil and water pollution (which has in some instances caused declining livestock fertility stated by community members), and loss of previous sources of water and grazing land, both of which have exposed livestock to dangers such as attacks by wild animals as they have had to feed near mountains.[122] One researcher interviewed explained how the loss of cattle further impacts life prospects of rural communities, by limiting the ability to sell livestock to pay for education of their children.[123]

> **"Now there's no other way of making a living, because those farms are now polluted with mining rubble and waste from the mines, which was dumped on their farms and there's nothing they can do. We're trying to negotiate with the mine and they are not willing to listen to the plight of those families."[124]**

The overall sentiment was that mining companies did very little to remedy the effects of mining on the livelihoods of communities. Where there were initiatives, these frequently stalled without adequate explanation. For example, interviewees reported that following complaints from cattle herders regarding the loss of safe grazing land, one of the mining operations undertook to set up a cattle pen on land identified by the community through clearing vegetation, planting lucerne for the cattle to graze on, and building a fence. However, herders stated that while the company did indeed commence with the initiative, it soon stalled. They were told the

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[120] See, for example, Dineo Skosana, 'Grave matters: dispossession and the desecration of ancestral graves by mining corporations in South Africa – working paper 11', 2019.

[121] Focus group discussion interview, 19 October 2020; interview with community member, 12 November 2020; interview with community member, 16 November 2020. The impacts of mining on the livestock of rural communities have been extensively documented across Africa. See for example WoMin, *Paper 3: Land and food sovereignty undermined: Impacts on peasant women*, no date, womin.africa/wp-content/uploads/2020/09/paper-three.pdf

[122] Focus group discussion interview, 19 October 2020.

[123] Interview with researcher, 12 November 2020.

[124] Focus group discussion interview, 20 October 2020

machinery broke and the project would be postponed until further notice. This is despite previously creating the impression that this project was budgeted for.[125]

To dispossess communities of their land, without putting in place measures to ensure that their economic, social and cultural rights are upheld, particularly to livelihood and food, is to put them at risk of hunger. This is in contravention of Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which makes provision for adequate food and "continuous improvement of living conditions".[126]

6.2. LIMITED ACCESS TO HEALTHCARE

Some interviewees stated that they did not have a clear picture of the health impacts of mining, in part due to the limited access to healthcare.[127] Challenges described by interviewees included distance needed to travel[128] (clinics are approximately five to ten kilometres away from villages), the limited nature of the services offered by local clinics, mobile clinics and home-based care (often limited to people registered with chronic illnesses)[129], and shortages of medication.[130]

"It takes a long time to get to the clinic, it's far."[131]

They also do not have access to general health testing and screening to determine whether ill health is a consequence of mining activities. The general pattern based on the interviews suggests that mining companies confine testing to their employees and not communities directly exposed to the different forms of pollution.[132]

Interviewees from different villages reported that the lengthy time it takes to reach healthcare facilities is at least partly due to the poor state of roads.[133] They explained how companies' vehicles contributed towards the poor state of the roads, and road repair projects outlined in their SLPs did not adequately address this challenge.[134] Community members often have to walk if they cannot afford to take a taxi, or if taxis do not pass through the villages due to poor road conditions.[135] While the cost of taxis varies depending on village and clinic, one interviewee noted that it costs ZAR68 (US$4.50) for a round trip to the nearest hospital.[136] Once there, they wait for four to five hours to be seen by a doctor.[137] They are then given a prescription to buy medication from a hospital or pharmacy, as clinics often only stock painkillers. A shortage of medication is often cited by clinics, yet no reasons are given for this. This results in additional time and transportation costs. While mobile clinics pass through villages once a month, they, too, are only stocked with painkillers and contraceptives. Yet even this is not reliable according to interviewees.[138]

> **"For some people who have an emergency sickness, we are failing to rush them to those places. As a result of roads which are very damaged by rains and**

[125] Interview with community member, 12 November 2020.
[126] ICESCR, Article 11.
[127] Focus group discussion interview, 19 October 2020; interview with community member, 2 November 2020.
[128] Focus group discussion interview, 19 October 2020; interview with community member, 2 November 2020; interview with community member, 9 November 2020.
[129] Focus group discussion interview, 19 October 2020.
[130] Focus group discussion interview, 19 October 2020; interview with a community member, 9 November 2020.
[131] Focus group discussion interview, 22 October 2020
[132] Focus group discussion interview, 19 October 2020.
[133] Focus group discussion interview, 19 October 2020; Interview with community member, 2 November 2020.
[134] Focus group discussion interview, 19 October 2020.
[135] Focus group discussion interview, 19 October 2020; focus group discussion interview, 22 October 2020; interview with community member, 2 November 2020.
[136] Interview with community member, 9 November 2020.
[137] Focus group discussion interview, 22 October 2020.
[138] Focus group discussion interview, 19 October 2020.

> **not maintainable by the mining companies and municipalities too."**
>
> Focus group discussion interview, 19 October 2020.

The failure to provide adequate healthcare services to communities goes against the state obligation under ICESCR Article 12 regarding the right to create conditions to ensure medical services are available in times of sickness.[139]

6.3. INADEQUATE RESPONSES TO THE COVID-19 PANDEMIC

During lockdown alert level five[140], certain types of mining were declared essential and allowed to continue.[141] The rest of the sector was among the first to be re-opened during the gradual reopening of the economy, despite social distancing challenges in underground mining. While the official stance of the industry body - the Minerals Council - was to emphasise that mines were not epicentres of Covid-19[142], evidence indicated that incidents of Covid-19 were higher in municipalities with concentrations of mining than comparable nearby municipalities.[143]

By not introducing specific measures to curb the spread of Covid-19 within mining communities, this too, was in contravention of Article 12 of the ICESCR which places an obligation on the state to take necessary steps to prevent, control and treat epidemic diseases. [144]

The community network Mining-Affected Communities United in Action (MACUA) intervened as *amicus curiae* (friends of the court) in a successful challenge brought by the Association of Mineworkers and Construction Union (AMCU), to compel the Minister of Mineral Resources to develop binding and detailed standards for preventing the spread of Covid-19. [145] MACUA highlighted the need for specific measures to target mining-affected communities. While the experience of community interviewees was that mining companies had done very little, it was clear that at least one of the operations[146] had undertaken a significant programme of Covid-19 relief in communities including the delivery of food parcels. Interviewees benefitting from this expressed the positive contribution this had in reducing the potential spread of Covid-19 – *"at least they received food parcels, so movement wasn't at its worst, which prevented the spread"*.[147]

However, interviewees stated that in developing its relief programme, this mine had not consulted community-based organisations which led to gaps. These included relying solely on government's indigent list (when many, including informal traders, had only recently lost livelihoods due to the lockdown) and failing to provide isolation facilities to community members living with, and exposed to, Covid-19 positive mineworkers. Interviewees directly impacted by other mining operations largely reported that they were not aware of any assistance by companies and only received support from non-governmental organisations.[148]

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[139] ICESCR, Article 12.
[140] Level 5 lockdown is South Africa's most stringent lockdown level in terms of regulations to prevent the transmission of COVID-19 under the Disaster Management Act No. 57, 2002. It was enforced from midnight on 26 March to 30 April 2020.
[141] Regulation 11K of the Disaster Management Act, 2002: Amendment of Regulations Issued in terms of Section 27(1), 16 April 2020.
[142] Minerals Council, "Mines are not the epicentre of COVID-19", 12 June 2020, mineralscouncil.org.za/industry-news/in-the-news/1122-mines-are-not-the-epicentre-of-covid-19
[143] New Frame, "Minerals Council denies mines are COVID-19 hotspots", 5 August 2020, newframe.com/mineral-council-denies-mines-are-covid-19-hotspots/
[144] ICESCR, Article 12.
[145] Johannesburg Labour Court, *Association of Mineworkers and Construction Union v Minister of Mineral Resources and Energy and Others* [2020] 9 BLLR 929 (LC), 4 May 2020, saflii.org/za/cases/ZALCJHB/2020/68.html
[146] Due to the limitations set out in this chapter, the name of the mining company is withheld.
[147] Focus group discussion interview, 19 October 2020.
[148] Focus group discussion interview, 19 October 2020.

6.4. LACK OF MEANINGFUL CONSULTATION AND FULL CONSENT

Interviewees spoke of the lack of meaningful consultation by the mines in key decisions regarding mining including construction of SLPs[149] and departures from the original mining works plan which have an impact on the community (such as decisions to expand operations or be placed under care and maintenance).[150]

The situation is especially concerning regarding resettlement to make way for mining, which represents a still-endemic continuation of colonial dispossession in the mining sector and severs the affiliation to the land, causes losses of livelihoods and frequently, the breaking of communal relations.[151] The SAHRC found "that insufficient time and accessible information is availed to communities to undertake decision-making processes as required by their customary law".[152]

Community consultations are often a tick box exercise, with little notice given ahead of time.[153] Community members and a researcher in the area noted that companies engage traditional leadership[154] who often do not represent the true needs of the community, as well as co-opted community representatives, who, while in some cases are elected by the community, no longer serve and represent the needs of the community.[155]

Some interviewees suggested that in certain instances signing what they believed to be attendance registers, was in fact them granting consent for the plans developed by the mining companies.

> **"They would call a meeting and then in that meeting, they act as if rollcall and the community would sign the rollcall only to find out it's a contract binding them to various issues like taking their land."*[156]***

This lack of obtaining full and informed consent is in direct contravention of Article 2 of the Interim Protection of Informal Land Rights (IPILRA).[157]

6.5. LACK OF ACCESS TO ADEQUATE WATER SOURCES

> **"There is a shortage of water due to water capacity shortages because the community is getting bigger each and every day but there is no extension of the boreholes in my area, that's why there is shortage of water. The mines doesn't do anything about it and**

[149] Focus group discussion interview, 21 October 2020; interview with community member, 15 April 2021.
[150] Focus group discussion interview, 20 October 2020; interview with community member, 3 November 2020
[151] The SAHRC Report, p. 12.
[152] The SAHRC Report, p. 66.
[153] Focus group discussion interview, 21 October 2020, focus group discussion interview, 28 October 2020; interview with community member, 3 November 2020.
[154] Interview with community member, 3 November 2020; interview with community member, 16 November 2020.
[155] Interview with community member, 4 November 2020; interview with community member, 11 November 2020; interview with community member 16 November 2020
[156] Interview with community member, 3 November 2020.
[157] IPILRA, Article 2.

> **they promised us in their Social and Labour Plans. But up to so far there is nothing that they have done."**
>
> Focus group discussion interview, 19 October 2020.

Community members stated that existing difficulties with accessing water (such as through droughts) are intensified by the activities of mines around them.[158] Some report having been left even more vulnerable to, and less able to mitigate, those impacts because they have been relocated by mining companies to places with less water for them and their livestock[159,] or because the available water was polluted.[160]

In most places, individuals access a part of their water requirements from shared boreholes that were previously drilled by the municipality or a mine and connected to tanks or dams. Interviewees found these communal boreholes inadequate.[161] In some cases, the supply of water diminished from when the holes were first drilled, and in others the pumps or holes have not been maintained, leaving communities without water for a week or more according to interviewees.[162] Many resort to collecting water from wells and streams or buy water from neighbours who have drilled their own boreholes.[163] Interviewees noted that they pay approximately ZAR150-R200 (US$10-13) per 1,000 litres[164] or ZAR400 (US$26) for 2,000 litres.[165]

Those who cannot afford to buy water, walk long distances to fetch water, which means they are in danger of encountering snakes and other dangerous animals.[166] Due to cultural norms, it is often women and children who are expected to fetch water.[167] They are at risk of sexual assault and rape.[168]

"We are afraid of men actually […] as women, we aren't safe in everything."[169]

6.6. LIKELY CONTAMINATION OF WATER

> **"The pipe water is raw water for operations. When they are done using it for drilling, it flows into streams. It's contaminated water, no way it's clean."**
>
> Focus group discussion interview, 19 October 2020.

Where communities are very close to mines, out of desperation, they sometimes tap into the mines' "raw water" pipes that carry water meant for mining operations and is not suitable for human consumption. Once this water has been used in the mine, community interviewees reported that it is discharged back into streams.[170]

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[158] Focus group discussion interview, 19 October 2020; focus group discussion interview, 22 October 2020; focus group discussion interview, 21 October 2020; interview with community member, 4 November 2020; interview with community member, 11 November 2020; interview with community member, 12 November 2020; interview with community member, 13 April 2021; interview with community member, 15 April 2021.
[159] Interview with community member, 2 November 2020; interview with researcher, 13 April 2021.
[160] Focus group discussion interview, 19 October 2020; interview with community member, 12 November 2020.
[161] Focus group discussion interview, 19 October 2020; interview with community member 2 November 2020; interview with community member, 13 April 2021.
[162] Focus group discussion interview, 19 October 2020; interview with community member, 13 April 2021.
[163] Focus group discussion interview, 19 October 2020; focus group discussion interview, 21 October 2020; interview with community member, 9 November 2020; interview with community member 16 November 2021; interview with community member, 13 April 2021.
[164] Focus group discussion interview, 21 October 2020.
[165] Focus group discussion interview, 19 October 2020.
[166] Focus group discussion interview, 19 October 2020; focus group discussion interview, 22 October 2020.
[167] Focus group discussion interview, 19 October 2020
[168] Focus group discussion interview, 22 October 2020.
[169] Focus group discussion interview, 22 October 2020.
[170] Focus group discussion interview, 19 October 2020.

"Complaints of miscarriages in the area, and cattle dying due to contamination of water."[171]

Interviewees noted that some cattle that drank from water discharged from the mines either died or had miscarriages.[172] When people collect water from streams and rivers, especially from sources that must be shared with livestock, they get sick with stomach complaints.[173] Interviewees estimated that around 15 women in their area suffered miscarriages since they started drinking from these sources, and stillbirths and infant mortality rates have increased.[174]

While this report cannot make definitive causal conclusions in this regard, nitrate and nitrite pollution is associated with mining[175] and there is some exploration in scientific literature regarding a possible link between nitrates in drinking water and negative reproductive effects.[176] While not yet proven, the seriousness of this possible impact merits further research.

Furthermore, there are many barriers faced by women in communities, and, indeed, by researchers seeking to further investigate these possible links. The first is access to information. An access to information request to the Department of Health by the research team to receive statistics was denied on the grounds that this was for a research project.[177] This refusal and lack of justifiable grounds as outlined in PAIA[178] is in direct contravention of the Act. Second, the barriers to accessing healthcare and specialised medical expertise identified above mean that it is near impossible for women to investigate and demonstrate the formal causal validity of these experiences.

This contamination, in addition to the lack of access to safe and adequate water described in sub-section 6.5 above, is in violation of ICESCR, specifically General Comment 15 on the right to water, which further expands on Articles 11 and 12 providing for an adequate standard of living and health.[179]

6.7. CHANGES IN RAINFALL PATTERNS

> **"Before mining in the area, even in the region, [we] used to get beautiful cool rain. It wasn't as heavy as it is now."**
>
> Focus group discussion interview, 19 October 2020

Interviewees also observed that the rainfall patterns have changed from steady rain across the summer rainy season to periods of drought interspersed with heavy rain and floods.[180] Due to the excavations and roads that the mines built around the villages and in the hills, some interviewees have reported that water now flows down into the villages much quicker than it used to.[181]

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[171] Focus group discussion interview, 19 October 2020.
[172] Focus group discussion interview, 19 October 2020; interview with community member, 12 November 2020; interview with researcher, 13 April 2021.
[173] Focus group discussion interview, 22 October 2020; Interview with community member, 16 November 2020.
[174] Focus group discussion interview, 22 October 2020; interview with researcher, 13 April 2021.
[175] Carin Bosman, "The hidden dragon: nitrate pollution from open-pit mines – a case study from the Limpopo Province, South Africa", Paper presented at the International Mine Water Conference, 19-23 October 2009, patagoniaalliance.org/wp-content/uploads/2014/08/THE-HIDDEN-DRAGON-NITRATE-POLLUTION-FROM-OPEN-PIT-MINES.pdf
[176] Deana Manassaram and others, "A Review of Nitrates in Drinking Water: Maternal Exposure and Adverse Reproductive and Developmental Outcomes", *Environmental Health Perspectives*, Volume 114, Issue 3, p. 320-327, 2006, ncbi.nlm.nih.gov/pmc/articles/PMC1392223/
[177] Email correspondence from Limpopo Department of Health Official to research team member, 7 April 2021.
[178] PAIA, 2000.
[179] ICESCR, Article 11 and 12; General Comment No. 15.
[180] Focus group discussion interview, 19 October 2020, interview with community member, 2 November 2020; interview with community member, 16 November 2020.
[181] Focus group discussion interview, 19 October 2020

6.8. GENDERED IMPACTS OF MINING

Globally, there is an increasing body of scholarship which indicates that the extractives industry has an unequal impact on women.[182] In fact, "[w]omen and girls bear a disproportionate share of the negative social, economic and environmental impacts of the sector".[183] Women are likely to be more impacted by large-scale mining deals because of the systemic discrimination they face in relation to their access to, ownership of, and control over land. The arrival of a transient, largely male workforce also increases the demand for transactional sex, risk of sexual violence and infection rates of sexually transmitted diseases.

This holds true for communities in FTLM where gender inequality across communities is pervasive and affects various facets of women's lives. These include being actively excluded and prevented from participating in decision-making processes, marginalised and exploited in the job market, burdened with unpaid care work, faced with barriers in accessing health care for themselves and their children, and faced with daily threats to their safety and bodily integrity.[184]

> **"When they were blasting, there was smelly dark air from the pollution that was circulating around the community which has caused a lot of miscarriages that year."[185]**

According to interviewees, in 2017 and 2018, a lot of pregnant women had miscarriages. They were aware of over 15 during this time period. Additionally, an increase in stillbirths and infant deaths was observed. This coincided with the year in which a local mine started blasting daily. Since the mine stopped blasting, the incidences of miscarriages, stillbirths and infant deaths have declined, according to interviewees.[186] Because, as stated above, the Department of Health denied us access to health statistics, we are not in a position to provide confirmation of this pattern.

> **"Ever since [the] mine stopped blasting and operation, those experiences are gone. We no longer experience those situations. So the dust from their blasting was causing miscarriage."*[187]***

As primary caregivers and given that there are many female-headed households in the area, women bear the additional unpaid caregiving burden of taking care of children, including when they are sick.[188] As one interviewee noted, "so your life and the things you want to do, you have to put aside, to get water and healthcare."[189]

Women interviewed also reported that there were very limited employment opportunities for women in mining operations.[190] These were usually limited to cleaning, belt attendants, or cadetships[191]. Especially disturbing were incidents described by interviewees as a pattern of 'sex for jobs' at mining operations.[192]

> **"It kills our morals. It kills our confidence. We have to sell ourselves before we get the job."*[193]***

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[182] Eftimi, Adriana; Heller, Katherine; Strongman, John. 2009. Gender Dimensions of the Extractive Industries: Mining for Equity. Extractive industries and development series; no. 8. World Bank, Washington, DC. © World Bank. https://openknowledge.worldbank.org/handle/10986/18236 License: CC BY 3.0 IGO.
[183] EITI "Towards a more gender-inclusive extractives sector", 2 July 2020, https://eiti.org/blog/towards-more-genderinclusive-extractives-sector
[184] Focus group discussion interview, 22 October 2020.
[185] Focus group discussion interview, 22 October 2020.
[186] Focus group discussion interview, 22 October 2020.
[187] Focus group discussion interview, 22 October 2020.
[188] Focus group discussion interview, 22 October 2020; interview with community member, 9 November 2020.
[189] Focus group discussion interview, 22 October 2020.
[190] Focus group discussion interview, 22 October 2020; interview with community member, 9 November 2020.
[191] A training programme providing on-the-job experience.
[192] Focus group discussion interview, 22 October 2020; interview with community member, 9 November 2020.
[193] Focus group discussion interview, 22 October 2020.

In addition, some of these interviewees asserted that some men in management at the mines refuse to wear condoms, thus exposing women to potentially severe health risks, such as HIV and other STIs, as well as pregnancy.[194] Interviewees told researchers that pregnancy was a barrier to obtaining employment, even when 'sex for jobs' resulted in pregnancy.

> **"It's a problem because I have to open my legs to get in the mine. And for what? To be just a cleaner or belt attendant."*[195]***

Interviewees further expressed that women are systematically excluded from customary consultative and decision-making processes, leaving them feeling disempowered.[196] Raising questions, for example about compensation for loss of land, is considered insubordination and results in them being fined by the traditional authority.

> **"If you request for a response as a woman, they say you act in an improper way because you shouldn't ask questions to tribal authorities. You then get fined. It ends up getting you into trouble if you ask them. You end up keeping quiet."[197]**

These experiences violate several rights enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Specifically Article 5 requiring states to take action to address social and cultural norms, including cultural practices, that subjugate women; Article 6 requiring states to ensure that exploitation of women is suppressed; Article 11 which provides for all persons to have the same employment opportunities and not be discriminated against based on maternity status; Article 12 regarding the right to access appropriate and necessary health care services, including family planning; Article 14 requiring states to take into account and develop measures to address unpaid care work, in addition to problems faced by rural women; and General Recommendation 35 on gender-based violence against women, which expands on Article 1 of CEDAW.[198]

6.9. LACK OF ACCOUNTABILITY BY MINING COMPANIES

One of the overarching trends that emerged through interviews, was a sense that mining companies operating in the area enjoyed complete impunity for the impacts on the environment, land and livelihoods. Of the multiple infringements of rights interviewees spoke of, they felt that none have resulted in completely satisfactory remedies and proper accountability of the mining companies. Interviewees either reported some degree of accountability, albeit very limited and insufficient,[199] or a complete absence of accountability and recourse.[200]

Interviewees described one instance in which explosive material not removed by a mining company led to injuries suffered by young children playing in the area. They stated that to-date no one has been held criminally or civilly responsible, nor has adequate compensation been provided.

> **"[The mine] made a commitment to take care of injured kids, pay school and medical bills and if grown up they'd take to mines to work there and to help families. Up until today there's nothing that's happened. Even DMR made same promise and [has] done nothing up until today."*[201]***

[194] Interview with community member, 9 November 2020.
[195] Focus group discussion interview, 22 October 2020.
[196] Focus group discussion interview, 22 October 2020; interview with community member, 9 November 2020.
[197] Individual interview, 9 November 2020.
[198] CEDAW, Articles 5, 6, 11, 12, 14 and General Recommendation 35.
[199] Interview with community member, 12 November 2020.
[200] Interview with community member, 4 November 2020, interview with community member, 16 November 2020.
[201] Interview with community member, 4 November 2020.

6.10. CO-OPTION OF COMMUNITY REPRESENTATION

> **"...the mine has captured our trustees, they are serving the mine not the beneficiaries and we can't remove them."**
>
> Focus group discussion interview, 20 October 2020

A central enabler of this lack of accountability experienced by communities is what appears to be a manipulation or co-option of whichever structure represents communities.[202] In some of the operations there are "protocols" by which the company refuses to directly engage with community members outside of designated channels. Interviewees were not convinced that traditional authorities,[203] trustees (of community trusts)[204], or elected community representatives on community forums are properly taking up their issues.[205] They further spoke of some representatives improperly benefiting from mining (for example as contractors) and using proximity to contractual and employment processes to create a web of patronage.[206]

These experiences are not unique to these communities. The SAHRC found a number of challenges with community representative forums in mining-impacted areas. These include a perception amongst communities that mining companies establish forums and elect representatives to serve their own interests. Divisions and a multiplicity of forums were observed as a pervasive issue, as were certain representatives "act[ing] as gatekeepers for opportunities meant to benefit communities more broadly".[207]

6.11. LACK OF GRIEVANCE MECHANISMS FOR COMMUNITIES

Compounding the sense of helplessness community members feel in relation to the impunity enjoyed by mining companies, is an absence of accessible mechanisms interviewees felt they could approach to report and resolve problems. From the interviews, it does not appear that companies have effective, well-publicised and approachable grievance mechanisms through which community members could escalate discrete issues. Several interviewees recounted unsuccessful, or only partially successful, attempts to engage surrounding mining companies on a range of impacts including on land and livelihoods.[208]

The establishment of community engagement forums (CEF) by mining operations, while important, does not in and of itself provide a channel for grievances to be addressed. Interviewees expressed not having access to their CEF who claim they are too busy.

An official from the local municipality echoed the view regarding the deficiency of existing grievance mechanisms. The official pointed to the lack of clarity in the legislative and policy framework on where communities should express unhappiness with mines. Local government feels unassisted by national government and they lack the powers to ensure companies comply with their SLPs. This belongs to the DMRE. Local government works closely with mines to align SLPs with the relevant IDP, but beyond that, roles and responsibilities fall into grey areas between the different spheres of government according to the official. The

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[202] Focus group discussion interview, 21 October 2020; focus group discussion interview, 28 October 2020; interview with community member, 4 November 2020; interview with community member, 9 November 2020.
[203] Interview with community member, 11 November 2020; interview with researcher, 10 November 2020.
[204] Focus group research interview, 20 October 2020; focus group discussion interview, 28 October 2020; interview with community member, 4 November 2020; interview with community member, 10 November 2020.
[205] Interview with community member, 9 November 2020.
[206] Interview with community member, 4 November 2020; Interview with community member, 12 April 2021.
[207] The SAHRC Report, p. 67.
[208] Interview with community member, 4 November 2020; interview with community member, 12 November 2020; interview with community member, 16 November 2020.

official pointed out the apportionment of roles and responsibilities for SLP projects as a gap in the legal framework.

> **"That is a challenge we're facing as municipality, I indicated that there are grey lines. DMR needs to come down and give level or yardstick measure, the level to answer satisfactorily, where do community members who aren't happy with activity mines are doing – that monitoring and control, that grey line, where do we report, or where do communities report if they aren't happy with what's being done in SLP?"*[209]***

These experiences accord with a broader pattern. In 2018, the SAHRC[210] found that a number of mining companies do not have grievance or complaints monitoring and resolution mechanisms. They also found that traditional councils sometimes form part of grievance mechanisms and while this "may facilitate complaints resolutions, the mistrust that sometimes exists between leaders and the communities which they represent may hinder the ability of communities to voice complaints".[211] Despite mining companies' submissions that they operate 'open door' policies, "this has not been the Commission's observation as such attempts are often dealt with in a volatile or unwelcoming manner".[212] Of the companies that had mechanisms, only some kept records or statistics. Further, community perceptions are that there is collusion between mines and municipalities.[213]

As outlined in the shortcomings of the DMRE in Section 4 above, interviewees felt that the DMRE is nearly entirely absent. Few interviewees have had any interaction with DMRE officials and where they have, it was typically following a crisis after a complaint was lodged.

> **"Even DMR made same promise and done nothing up until today."*[214]***

The lack of accountability by mines, co-option of community representatives and the lack of adequate grievance mechanisms all go against the United Nations Guiding Principles on Business and Human Rights, which provide for the state's duty to protect human rights, corporations' responsibility to respect human rights, and access to remedies for those whose rights have been violated.[215]

[209] Interview with municipality official, 22 June 2021.
[210] The SAHRC Report.
[211] The SAHRC Report, p. 79.
[212] The SAHRC Report, p. 79.
[213] The SAHRC Report, p. 80.
[214] Interview with community member, 4 November 2020.
[215] UN Guiding Principles on Business and Human Rights.

ANNEXURE I: PHOTOGRAPHIC DOCUMENTATION REGARDING THE STATE OF SEFATENG'S COMPLIANCE WITH ITS SCHOOL INFRASTRUCTURE COMMITMENTS

The following satellite imagery suggests partial compliance of Sefateng's school infrastructure SLP commitments.

MAKGALANOTO SCHOOL

Satellite imagery shows four structures with green roofs erected between 16 June 2016 and 14 June 2017 south of the school. These small structures are likely toilets. No other construction is visible on satellite imagery since 2012.

Above left: *August 2012, Makgalanoto School.*
Above right: *June 2016, Makgalanoto School. No new buildings visible since 2012.*
Maps data: Google © 2021 Maxar Technologies and CNES / Airbus

Above: *June 2017, five small structures with green roofs have been built to the north and south of the school since June 2016. The research team could not access this site to verify completion. Given the size of these structures and their positions relatively far away from the other classrooms, these are likely toilets rather than the classroom referred to in the SLP.*
Maps data: Google © 2021 Maxar Technologies

Above: *July 2020, no new structures likely to be the 40sqm classroom referred to in the SLP seem to have been built since 2012.*
Maps data: Google © 2021 Maxar Technologies

SELATOLE SCHOOL

Above left: *January 2017, Selatole High School.*
Above right*: July 2020, the only new structure that seems to have been erected during the time that construction of the 30sqm laboratory was planned for 2017 is a large, elongated new structure with a flat roof North East of the pre-existing buildings. This flat-roofed structure seems to have been built sometime between 23 August 2017 and 18 June 2018 according to satellite imagery. This structure is much larger than a single room, measuring 6m x 50m and resembling a long carport rather than a laboratory room.*
Maps data: Google © 2021 CNES / Airbus and Maxar Technologies

MALEGASE SCHOOL:

For Malegase School, satellite images show no new construction between 2016 and March 2020 at the site.

Above left: *April 2016, Malegase School*
Above right: *March 2020, Malegase School with no new buildings. One building seems to be missing a part of its roof. It seems that the 30sqm administration block mentioned in the SLP was not built.*
Maps data: Google © 2021 CNES / Airbus and Maxar Technologies

SEROLETSHIDI SCHOOL

Above left: *June 2016, The site of Seroletshidi School at Ga-Mampa.*
Above right*: June 2017, it seems that construction was completed between June 2016 and June 2017, except for the pavement which is still being constructed here.*

Maps data: Google © 2021 CNES / Airbus and Maxar Technologies

Above: *March 2020, no new buildings are visible compared to the school as it was first built by mid-2017. It seems that the three "additional" classrooms mentioned in the SLP were not built as they were supposed by Q4 of 2018.*
Maps data: Google © 2021 Maxar Technologies

MATIANYANE PRIMARY SCHOOL TJIBENG

Above left*: April 2016, Matianyane Primary, Tjibeng.*
Above right: *June 2017, it seems that several small buildings, probably toilets, in the left bottom quadrant were built between April 2016 and June 2017.*
Maps data: Google © 2021 CNES / Airbus and Maxar Technologies

Above*: July 2020, no new buildings. It does not seem like the two new classrooms committed to by Q4 2019 were built. In fact, one building right in the centre of the pictures seems to have been demolished.*
Maps data: Google © 2021 Maxar Technologies

MORWASWI SECONDARY SCHOOL TJIBENG

Above left: *June 2018, Morwaswi School Tjibeng*
Above right*: July 2020, it seems like one building with a green roof was built, and one building just to the right and above the centre of the image was demolished between June 2018 and July 2020. The research team could not obtain access to the site to verify whether the newly built structure is the administration block referred to in the SLP.*
Maps data: Google © 2021 Maxar Technologies

MANKU SCHOOL

Above left: *May 2019, Manku Primary School.*
Above right: *March 2020, one building seems to have been added to the courtyard of Manku School. The research team could not access the site to verify whether this was the kitchen referred to in the SLP.*
Maps data: Google © 2021 Maxar Technologies

ANNEXURE II: ANGLO AMERICAN PLATINUM'S RESPONSE TO RESEARCH TEAM'S RIGHT OF REPLY LETTER

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Shenilla Mohamed
Executive Director,
Amnesty International South Africa
97 Oxford Road
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By email: marike.keller@amnesty.org.za

CC: Centre for Applied Legal Studies

Sekhukhune Combined Mining Affected Community (SCMAC)

Dear Shenilla

1 Introduction

1.1 We refer to your letter dated 6 December 2021, outlining the preliminary research findings of Amnesty International South Africa, the Centre for Applied Legal Studies and the Sekhukhune Combined Mining Affected Community (**SCMAC**) (collectively, the **Researchers**) on the human rights impact of mining communities in Sekhukhune (**Preliminary Findings**).

1.2 Anglo American Platinum Limited (**AAP**) was afforded an opportunity to respond to the Preliminary Findings by 20 December 2021. An extension was sought to 28 January 2022 as the timeframe afforded, in our view, was unreasonable. Pursuant to further correspondence, the Researchers granted AAP an extension to respond by 24 January 2022. For reasons set out in our letter dated 20 December 2021 and our emails dated 10 and 24 January 2022, we maintain that 28 January 2022 is a reasonable timeframe within which to respond.

1.3 We set out below our response to your Preliminary Findings.

1.4 For ease of reference, we have transcribed your Preliminary Findings onto a separate document and have numbered your paragraphs. A copy is annexed hereto as "A". Where we refer to paragraph numbers in our response; please have regard to the annexure.

1.5 We provide our comment on the Preliminary Findings by dealing with the following topics, in sequence:

(1) Our commitment in the Limpopo Region.

(2) Your findings that AAP is non-compliant with its obligations in terms of its second Social and Labour Plan for the Twickenham platinum mine (**SLP2**). We also deal here with your findings pertaining to project deferments and the third iteration of the Twickenham Social and Labour Plan (**SLP3**).

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(3) Your findings pertaining to the water project.

(4) Your findings pertaining to the school infrastructure project.

(5) Your findings pertaining to the school sanitation project.

1.6 As a point of clarification, the Twickenham mine is an operation of Rustenburg Platinum Mines Limited, which is a wholly owned subsidiary of AAP. It is important to also note that Twickenham mine, which in the project phase, is under care and maintenance.

2 Our commitments in the Limpopo Region

2.1 AAP continues to play a meaningful role in contributing to the betterment of society around our operations in the Limpopo Region.

2.2 **AAP's commitment is demonstrated through dynamic projects outlined within our current and former** social and labour programs, which incorporates, in line with regulation 46 to the *Minerals and Resources Petroleum Development Act*, 2002 (MPRDA), a local economic development (LED) program. We remain committed to the transformation and economic empowerment of the host communities of our operations, as our actions and this response demonstrate. This is underscored by the fact that we are in good standing with the regulator in regard to our Twickenham mine.

2.3 In developing and implementing our social and labour programs, AAP ensures that its commitments are conducted with appropriate input from all relevant stakeholders. These stakeholders include affected communities, traditional authorities, community-based organisations, National, Provincial and Local Government, labour unions and other business partners.

2.4 On its LED projects, AAP acknowledges that most of its operations are located in rural areas characterized by low levels of formal economic activity, the inadequate infrastructure provision of infrastructure and poor levels of service delivery. With our mines representing the centre of socio-economic activity and social welfare, we approach community development on understanding local contexts and using our core business to promote development.

2.5 **AAP's** SLP2 for Twickenham identified a total of 12 projects, ranging from infrastructure, education and skills development, income generating projects to health and social welfare.

2.6 We note that the Researchers focused on three of our infrastructure-related projects, and we also note that a narrow focus in this regard does not create a complete picture. Nonetheless, the three projects focused on by the Researchers are:

(1) SLP2 infrastructure project number 2 – Twickenham water provision;

(2) SLP2 infrastructure project number 4 – Construction of administrative blocks in 4 schools; and

(3) SLP2 infrastructure project number 5 – Construction of water and sanitation in schools.

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3 Response to your findings on non-compliance with SLP2 obligations

3.1 We reiterate our commitment to the betterment of society around our operations in the Limpopo Region through our social and labour plans. The implementation of our social and labour plan projects (and more specifically, the LED projects on which your research is focused) is not without its challenges.

3.2 Pursuant to engagements with relevant stakeholders and submission of its social and labour program, AAP commences with implementation with an aim to completing the projects within the published timeframes. Notwithstanding this, our efforts are, from time to time, affected by external factors. These include, but are not limited to, delays at local government level, difficulties occasioned by engagements with the communities, community conflict and obstacles arising from the appointment of contractors. It is also sometimes the case that AAP faces budget and resource constraints due to its status as a mine that is under care and maintenance.

3.3 AAP takes its social and labour plan obligations seriously. Despite the challenges we face, AAP remains focused on the execution of its social and labour plan projects. We make every effort to engage with stakeholders to resolve concerns and to move forward expeditiously with implementation.

3.4 Amendments and/or extensions to SLP2

(1) In respect of the Hlakanang school, AAP had applied for an extension on the specific project itself. AAP does not concede that that any other extensions and amendments are in fact required.

(2) AAP has continuously engaged with the affected communities and the Department of Mineral Resources and Energy (**DMRE**) on project-implementation progress and delays. In compliance with our obligations under the MPRDA Regulations, we also submit annual compliance reports to the DMRE.

(3) We pause here to note that engagements with the DMRE around our social and labour plans is often not a linear process. We appreciate that the DMRE is burdened with countless applications from a considerable number of mining operations. This being the case, it is our experience that the DMRE is often not in a position to respond to or deal with social and labour plan submissions or related applications timeously or expeditiously. **For example, SLP2's LED** projects were submitted to the DMRE on 27 September 2016. Acknowledgement was only **received on 14 July 2017. A copy of the DMRE's acknowledgement letter is attached hereto as "B".**

(4) AAP accordingly disagrees with your finding of non-compliance, particularly where project delays were the result of external factors beyond our control.

(5) **In paragraph 7.3 of your Preliminary Findings, you refer to AAP's 2020 Environmental, Social** and Governance report. The extensions sought due to COVID-19 related lockdown are wholistic delays and did not specifically relate to SLP2.

(6) In your Preliminary Findings, applications for amendment and extensions are referred to interchangeably. See for example paragraph 8.2. We are of the view these processes are distinct and ought not to be conflated.

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3.5 SLP3 and the deferment of projects

(1) The LED projects for SLP3 have not yet been approved. We assume that the document referred to in paragraph 7.3 of your Preliminary Findings i.e. the "subsequent Twickenham SLP for 2021 – 2025" is AAP's social and labour plan submission pertaining to the human resources development programme (HRDP).

(2) For context, Twickenham's LED projects under its social and labour plans commence a year after its HRDP. This is because the first iteration of Twickenham's social and labour plan was approved only a year after the mining right was granted, during which time implementation on the HRDP continued. The DMRE is aware of this fact. It is for this reason that the HRDP document indicates that SLP2 projects remained applicable in 2021. AAP intends to align the LED and HRDP components of the SLP and are engaging on how best to do so.

(3) AAP is currently engaging with stakeholders, and has commenced with consultations on the contents of SLP3 LED projects. Submission of this portion will be done this year.

(4) We emphasise that AAP intends to conclude implementation of all outstanding SLP2 projects. We will engage with the DMRE and communities on progress. SLP2 LED projects have accordingly not been deferred for implementation into SLP3, as suggested in paragraph 7.5 of your Preliminary Findings.

(5) Where project delays result in late completion, AAP does not reinstate those projects into the next social and labour plan iteration. Our teams work tirelessly to deal with the cause of those delays to ensure implementation and completion within a reasonable timeframe. As mentioned, the community are engaged periodically on both progress and delays.

(6) Despite exceeding the allocated budget on a number of projects due to external factors, AAP remains cognisant of its commitments and intends to fulfil its obligations under SLP2. In addition to its stated commitments, AAP also extends provision of services to include projects such as electrification and infrastructure (e.g., community access bridges), and has notably exceeded its financial obligations from time to time.

3.6 Annual compliance reports

(1) We do not intend dealing with the contentions raised in your paragraph 7.2 on the publishing of annual compliance reports (ACR).

(2) AAP had previously engaged with CALS and the SCMAC on this topic and remain of the view that it is not required to publish ACR's in terms of the MPRDA Regulations.

3.7 We turn now to deal with the specific projects referred to in your Preliminary Findings.

4 Response to your findings on the water project

4.1 AAP has completed project implementation on the water project at most of the earmarked villages. These include Ditwebeleng, Morapaneng, Dithabaneng, Mantjekane, GaMongatane (GaMashabela), GaMakgopa, Dikgopeng, Manaleng, Magobading, Seelane.

4.2 To date, around half a million people have received access to reliable potable water resources. There has also been an additional project spend of around R4.5 million to cater for certain upgrades; a service

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provider was appointed for this purpose in April 2020. The SLP2 budget for the project is R 11.1 million. AAP also intends to enhance and augment the community water supply programme.

4.3 Where water supply is reported to be intermittent, this is often influenced by several factors, which include, for example, load shedding and population increases, over which we have no control. There were several instances where water infrastructure had been vandalised and equipment stolen. In our view, it is not appropriate to attribute these issues to the mine as the infrastructure was handed over to the communities post-completion.

4.4 In respect of the boreholes, these are often located in proximity of underground aquifers. Most of these boreholes are also located within the borders of the various villages, where reservoirs (JoJo Tanks) are installed to ensure access and ready availability of pumped potable water. Borehole water supply is a specialised discipline and a competent external service provider was selected for this task. Factors that influence the water adequacy and availability are demand, yield, sustainable use and quality. Boreholes generally provide temporary supply depending on the above factors. For sustainable water supply, a more robust system such as a water purification system reliant on continuous raw water supply will be required. Reticulation infrastructure such as installation of water reservoirs and associated feeder pipelines were installed where feasible. Pumps were installed when boreholes were refurbished or constructed.

4.5 In respect of paragraphs 7.3, 7.5, 7.7 and 7.8 of your letter, we refer you to our paragraph 3 above.

5 **Response to your findings on the school sanitation project**

5.1 In respect of the school sanitation project, we refer you to our 1 October 2021 response, in that a specialist service provider was appointed in 2018. Due to disagreements with the local subcontractor and an in respect of the procurement of materials, the project was stalled while stakeholder engagements were conducted.

5.2 We maintain that the delays were not deliberate, nor something that we could control. You will appreciate that community disagreements often lead to a volatile environment. Our efforts to preserve a safe and secure platform further delayed the finalisation of engagements.

5.3 In our 1 October 2021 response, we indicated that the service provider established site during September 2021, and that the project was on track for completion by November 2021. Further delays, **beyond AAP**'s control have been experienced, particularly as a result of community interference that resulted in project disruption. It is now estimated that the project will be complete during the course of 2022, this being on the assumption that there will be no future delays. The DMRE is being kept abreast of all developments.

5.4 In respect of paragraph 8.3 of your Preliminary Findings, we refer you to our paragraph 3 above. We note that the delays were caused not only by Covid-19 lockdowns, but also, as aforementioned, disagreements relating to the subcontractor and the procurement of materials. Where delays were experienced, we engaged with the affected communities.

5.5 In respect of paragraph 8.4 of your Preliminary Findings, we point out that the Maboragane Primary School is located in the Mongatane Village (under the GaMashabela Traditional Authority) in a sub-village known as Modimolle. The SLP2 project is for the provision of water supply and sanitation at the Maboragane School and Majoe a Kgoro School which is located in the Nareng Thokwane Traditional Authority. The reference to Mongatane School refers to the village within which the school is located. The project features repairs and upgrades to water sources (as required), and construction of water borne sanitation facilities that will produce treated grey water. Remedial work on existing facilities is also planned.

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5.6 The project-budget was set at R1, 978,000 million, which amount AAP has already exceeded. Upon completion, it is estimated that AAP will have spent closer to R3 million, this being an increase of 60% on the original budget.

6 **Response to your findings on the school infrastructure project**

6.1 We reiterate that completion has been achieved at three schools, with the exception of the Hlakanang Primary School.

6.2 Hlakanang remains incomplete as a result of conflicts and disagreements between members of the business forum in the community and the main contractor. Although planned for December 2021, following hostile engagements between the local contractor and local community groups, site establishment was indefinitely postponed pending further stakeholder engagements. Safety and security threats persist as relating to demands for contracting and sub-contracting. AAP remains committed, nevertheless, to completing the Hlakanang school administration block. However, as you will appreciate, AAP has no control over these external interfering factors.

6.3 In respect of paragraph 9.4 of your Preliminary Findings, you correctly point out that we did not deal with the Maboragane School in our 1 October letter to you, and that we provided information relating to work done at the Lephenye School, which is not reflected in SLP2. It had come to our attention that the Maboragane School already has an administration block. Requests were subsequently made by Kgoshi Mashabela of the GaMashabela Traditional Authority that Lephenye Secondary School be the recipient of the administration block. AAP acceded to this request. We trust that this clarifies the issue.

6.4 In respect of paragraph 9.6 of your Preliminary Findings, we confirm that in September 2020, AAP approached the DMRE for an extension on the implementation of certain projects on SLP2, one of which included the Hlakanang Primary School. The reasons provided to the DMRE were as follows:

(1) The targeted completion date was 2021.

(2) The delay in this project emanated from the allegations of contractual discrepancy and implications of some officials which warranted formal investigation on the matter.

(3) The complainants did not cooperate to facilitate a speedy resolution of the investigation and resisted the appointed contractor, because they wished to have a different, community contractor appointed. However, the proposed community contractor did not qualify.

(4) Factionalism, death threats, and the intervention of Tribal Authorities led to considerable delay on this project

6.5 We also note that although the original budget for the four school projects in terms of SLP2 was R13.3 million AAP has, to date, spent R19 million on construction of administrative blocks at the three (complete) schools. We anticipate that the total cost post completion for all four schools will be in excess of R24 million.

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7 Conclusion

7.1 We trust that our comments will be carefully considered and incorporated into your final report.

7.2 Please let us know if you have any additional questions.

Yours faithfully

Yvonne Mfolo
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ANNEXURE III: SEFATENG'S RESPONSE TO RESEARCH TEAM'S RIGHT OF REPLY LETTER

SEFATENG
CHROME MINE

21 January 2022

TO: SHENILLA MOHAMED
Executive Director
Amnesty International South Africa
The Centre for Applied Legal Studies, Amnesty International and the Sekhukhune Combined Mining-Affected Communities

BY EMAIL: robert.krause@wits.ac.za, marike.keller@amnesty.org.za and nkwaneelton@gmail.com.

Dear Executive Director Mohamed *et al*

RE: SEFATENG CHROME MINE PROPRIETARY LIMITED SOCIAL AND LABOUR PLAN

Thank you for your patience and allowing us the time to provide you with a considered response to your findings with respect to Sefateng's compliance with its 2016-2020 Social and Labour Plans.

We would like to provide you with detailed feedback on the respective projects you have referred to, namely the three projects in the 2016-2020 Social and Labour Plans:

1) the water supply support program in villages Ga-Mampa, Ga-Phasha, Tjibeng and Seokodibeng;

2) the 'main road improved gravel upgrade project' for the Ga-Phasha-Ga-Mampa road; and

3) the school support (infrastructure) project at Makgalanotho Primary School, Selatole Secondary School, Malegase Primary School, Seroletshidi Secondary School, Matianyane Primary School, Morwasi Secondary School, Manku Primary School, and Poo Secondary School.

We would like to present the most recent updates on these projects to you:

1) THE WATER SUPPLY SUPPORT PROGRAM

Sefateng committed to and budgeted R5 million under the SLP 2016-2020 for this project, the actual spend on the water supply support program was R7.9 million.

Ga-Phasha

The village of Ga-Phasha receives water, on a daily basis, from two newly installed stations. These stations have consistently supplied more than 181kl per day to the community since 7 May 2019.

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Company Secretary: C Jacob

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Jibeng

The village of Jibeng receives their daily water requirements from one installed station. This station has consistently supplied more than 115kl of water per day to the community since 18 March 2019.

Ga-Mampa

The village of Ga-Mampa receives their daily water requirements from two newly installed stations. These stations have consistently supplied more than 21kl per day to the community since 19 March 2020.

Before these stations were installed, water was supplied directly to each of the three communities from the mine from 2018 until such time as the new stations were operational.

Infrastructure maintenance and upgrades

Sefateng has successfully exceeded the required minimum supply of 50 litres of water per person per day. In addition to ensuring water supply to the communities, Sefateng has implemented infrastructure upgrades which includes:

- Upgrades to electrical connections and transformers;
- Upgrades to, and installation of, 4 pump stations (which included the restoration of a 5th community pump);
- Construction of 5 dams/storage facilities;
- Main-line and reticulation leak repairs;
- Water treatment plant connections at Jibeng;
- Telemetric monitoring; and
- Ongoing water quality monitoring and treatment.

Telemetric monitoring

Remote telemetry has been installed on all pump stations to accurately manage and track pump performance, this monitoring system is managed by an independent service provider in order to ensure excellent visibility in respect of the following parameters:

- Daily volumes (Kilolitres per day);
- Flow rate (litres per minute);
- Water level;
- Pipe pressure; and
- Pump functionality, electrical supply.

The installation of remote telemetry ensures that where there are shortcomings these can be addressed on an urgent basis.

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Additional milestones achieved in respect of the water supply project:

- A borehole (BH1) located on the mine's Zwartkoppies property was equipped with a pump, pipeline infrastructure, telemetric control, and pressure management system in order to feed a primary water reservoir. Telemetric control was also installed at this reservoir in order to ensure proper functioning at all times.
- From the master reservoir, water reticulation was installed to a second reservoir with a 230kl capacity.
- A third reservoir, with 198kl capacity, which is also fed from the master reservoir has been installed and commissioned.
- In the Ga Mampa Community, a new borehole was drilled. This has been equipped with a borehole pump and tank/reservoir (5kl) and has been fully commissioned. Prior to the installation of the borehole and reservoir a temporary reservoir/tank was used to supply water to this community.

2) THE 'MAIN ROAD IMPROVED GRAVEL UPGRADE PROJECT'

Sefateng committed to and budgeted R2.2 million for the gravel road upgrade project in the SLP, and spent R2.4 million on the project.

In this regard it should be noted that although Sefateng committed to improvements for the communities, the commitment made by Sefateng did not encompass ongoing maintenance of the road. The maintenance of this infrastructure is the responsibility of the local municipality.

Sefateng upgraded the main road (approximately 4.5km), which was done by using the dump rock from the mine and other local sources which was used to upgrade and improve the gravel road. This project was completed in October 2019. The maintenance was not performed on a regular basis and unfortunately this has caused the road surface to deteriorate significantly, especially after the heavy rains experienced in the last six months.

3) THE SCHOOL SUPPORT (INFRASTRUCTURE) PROJECT

Sefateng committed and budgeted R3.5 million for the school infrastructure project in the SLP, and spent R4.67 million on the school support project.

Sefateng conducted needs analyses at all of the schools in the relevant villages and the implementation plan was structured to address the needs of the schools as identified.

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The Seroletshidi Secondary School was relocated, and Sefateng built an entirely new and bigger school. This was deemed to be a priority under the project because the old structure was dilapidated beyond repair, was found to be unfit for use and considered to be a safety threat.

The SLP budget for the school support (infrastructure) project was exhausted by the construction of the Seroletshidi Secondary School in GaMampa and Sefateng has therefore engaged with DMRE who has granted permission to Sefateng for the rest of the educational projects to be included under the succeeding SLP 2 commitments.

The new Seroletshidi Secondary School:

IN CONCLUSION

We acknowledge that some of the projects have fallen behind schedule. That being said, and considering that SLP's are flexible commitments, and in the context of the challenges in the economy which have arisen since 2020, we have achieved more than 75% of the original SLP objectives. We have and will continue to work closely with the DMRE in order to ensure that all of our commitments under and in terms of the SLP will ultimately be met. Unfortunately, the mine's financial condition was compromised as a result of the Covid pandemic and as a result it has been necessary for us to carry some of our initial SLP obligations over to our second SLP. This also required us to reconsider the priority of certain projects under the SLP objectives. The prioritization of the financing of the construction of the Seroletshidi Secondary School in GaMampa is a prime example thereof.

Sefateng remains fully committed to the ongoing implementation of Social and Labour Plans, and we have been engaging with the Department of Mineral Resources and Energy in regularly reporting on our Social and Labour Plan progress. We assure you that Sefateng has complied with annual reports to the Department, and we have had regular DMRE visits to the mine to monitor our regulatory compliance. We have record of the receipt of all the annual reports by the DMRE.

The new Social and Labour Plan is currently with the DMRE for approval and/or recommendations.

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Once approved the plan will be made available on our website which is located at www.sefateng.co.za. The Environment, Social and Governance elements of the company are a focus area of our management team, and we intend to regularly have transparent and positive project updates published on our website.

We hope that this has given you more insight as to the achievements, challenges, vision and values of Sefateng, including our continued efforts to uplift the communities that support and surround our mine. Please do not hesitate to respond with any further questions.

Yours faithfully

GERARD BLAAUW

CEO

Sefateng Chrome Mine Pty Ltd

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cc: Candace@Sefateng.co.za

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THIS RESEARCH WAS DONE IN PARTNERSHIP WITH AMNESTY INTERNATIONAL, THE CENTRE FOR APPLIED LEGAL STUDIES, AND THE SEKHUKHUNE COMBINED MINING-AFFECTED COMMUNITIES

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UNEARTHING THE TRUTH

HOW THE MINES FAILED COMMUNITIES IN THE SEKHUKHUNE REGION OF SOUTH AFRICA

The extractives industry in South Africa has a dark and sordid history characterised by discrimination, exploitation and exclusion. Given this past, the post-apartheid government has made some attempts to regulate mining operations, to offset the challenges wrought by mining in local communities through the adoption of new legislation. This includes Social and Labour Plans (SLPs) - legally binding mechanisms through which mining companies are required to address socio-economic impacts of mining on communities surrounding the mines.

This report examines the compliance with SLPs of three mining companies in the mineral-rich Sekhukhune region of South Africa. The report finds that these mines – namely Twickenham Platinum Mine, Marula Platinum Mine, and Sefateng Chrome Mine – were largely non-compliant with their SLPs.

In addition to the failures by mines to comply with SLPs, this report finds that the Department of Mineral Resources and Energy, as the state-regulating body of mining rights and the enforcement of SLPs, failed to adequately regulate mines and carry out its oversight role to ensure the implementation of SLPs in the region.

The lack of implementation and monitoring of SLPs results in human rights abuses in the communities mining companies operate in.

In light of these findings, the research team recommends that mining companies urgently comply with their legally binding obligations under their respective SLPs, including by furnishing communities with information required for transparent, informed and consent-based participation in consultation processes. We also call on the government to take necessary measures to enhance the capacity of the DMRE to monitor SLPs and improve the enforcement of SLP provisions.

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