

act:onaid
SOUTH AFRICA

MINING

IN SOUTH AFRICA 2018

Whose Benefit and Whose Burden?



Social Audit Baseline Report

Tracing the socio, political and economic conditions of mining-affected communities in South Africa using participatory research and social audit methodology to build community agency.

“


...Colonialism imposed its control of the social production of wealth through military conquest and subsequent political dictatorship.

But its most important area of domination was the mental universe of the colonised, the control through culture, of how people perceived themselves and their relationship to the world.

Economic and political control can never be complete or effective without mental control. To control a people's culture is to control their tools of self-determination in relationship to others.

”

—Ngugi wa Thiong'o, **Decolonising the Mind: The Politics of Language in African Literature**; London: James Curry, 1986, p.16



MINING IN SOUTH AFRICA

Whose Benefit and Whose Burden?

Social Audit Baseline Report

Tracing the socio, political and economic conditions of mining-affected communities in South Africa using participatory research and social audit methodology to build community agency.

CONTENTS

Acknowledgements and Thanks	3
Introduction	6
A brief overview of ActionAid South Africa	6
A brief overview of MACUA & WAMUA	8
About CALS	10
Executive Summary	11
About this Report	20
Background and Context	30
Mining Legislation & Access to Information - CALS	35
Social Audits Process	36
A Note on CALS' Experience in Accessing SLPs for Social Audits - Robert Krause	37
Methodologies	45
Objectives	45
Data Collection	45
Study areas:	
Mining-Affected Communities in South Africa and Mines	46
Findings	47
Demographics	48
Community Narratives	54
Analysis	71
Political Economy of Mining in South Africa	71
Agency, Participation and Development	74
Direct impacts of mining	77
Development and the Human Condition	78
Gender	80
Conclusions & Recommendations	86
ANNEXURES	89

ACKNOWLEDGEMENTS AND THANKS

ActionAid South Africa would like to acknowledge and thank the following people and organisations for their contribution to this report:

- Sifiso Dladla, Meshack Mbangula and Nester Ndebele for their tireless work in, and dedication to, realising this project and for facilitating the Social Audits across the country.
- Fatima Vally for leading the Women's Social Audit in Phola and her overall contributions.
- Lorraine Kakaza and Helen Jack for their contribution to the project and for arranging the extensive logistics required to make this report and project possible.
- Alia Kajee who organised and formulated the data and developed the initial draft.
- Aldrian Mungani for assisting with the initial development of the survey questionnaires.
- Christopher Rutledge for leading the writing and development of this report.
- MACUA & WAMUA for their leadership, participation and commitment to the process
- Centre for Applied Legal Studies (CALS), especially Louis Snyman and Robert Kause for their valuable work behind the scenes in securing SLP's and for their shared insights which added significant value to the overall outcomes of the project and for contributing to writing the section on SLP's for this report.
- Social Audit Network (SAN) for participating in training of volunteers and for connecting this project into the learnings and insights of other Social Audit Projects across the country.
- Ferial Adam whose in-depth gendered analysis of the MPRDA forms the basis of the gender analysis in this report.
- MISEREOR- The German Catholic Bishops' Organisation for Development Cooperation - the main funder of this project, without whom this valuable work would not be possible.
- Open Society Foundation (OSF) for their funding support and general commitment towards the social justice struggle of mining affected communities.
- Mbuso Ngubane and Collen Mfaswe who travelled around the country capturing the process on video and through photography.
- ActionAid Australia for their support on the Women's Social Audit in Phola and specifically Lucy Manne, the Head of Policy and Campaigns, for her commitment and overall contribution towards building and championing this campaign.
- And last, but by no means least, the Core Group Volunteers for their commitment to the project and their commitment to securing a better life for their communities.

Somkele

Billy Mngqondo
Bhekani Mkhathshwa
Zandile Ndawonde
Lungile Shelembe
Philip Zwane
Dumisani Ntombela
Medical Ndziba
Bongani Pearce
Nkosi Israel

Ekhuruleni

Qedusizi Masila
Nomakhosazane Nomqa
Mduduzi Mthembu
Steven Nkabinde
Mandla Jwili
Thabo Mogafe
Duduzile Mashiane
Jomo Khumalo
Lebo Makau
Mpumi Methula
Nokuthula Mtsweni
Zamuxolo Magona
Sandile Nombeni

Welkom

Mariel Masupa
Francis Mphomeli
Jones Mokhethi
Poshol Poshol
Dick Soga
Thabo Mahlatsi
Phillip Mokethi
Jethro Dlalisa
Mpai Nkali
Calvin Mafonyane
Tshepo Keketsi
Makhotla Sefuli
Themba Ngcezulla
Sello Mofokeng

Maremane

Matlhogonolo Mochware
Boitumelo Tshethla
Emmanuel Sethibang
Kgalalelo Masego
Nkosinathi Booysen
Kagiso Botha
Maphefo Mogabeng

Lephalale

Frančina Nkosi
Portia Ramachela
Sylvia Sebina
Andries Mocheke
Lucy Make
Lucky Letlhaka
Joyce Phasha
Tshepiso Choung
Douglas Moremi
Thabane Mafate
Phuti Walleng
Josephina Sebina
Eugene Mampa

Sekhukhune

Mmathapelo Thobejane
Tokelo Mahlakoane
Nthabiseng Thobejane
Mputhi Thobejane
Eustina Mapsepane
Neria Koma
Eunice Mampa
Aubrey Lengane
Oscar Thobejane

Steenbok Pan

Jeremiah Nkoati
Godfrey Raphosa

Atok

Caleb Mogale
Victor Makgopa
Morgan Selowa
Clifford Mohuba
Maria Mokgotho
Moshapi Selowa
Kediboni Ntobeng

Mokopane

Refilwe Raphasha
France Mashishi
Joyce Makgamatho
Julius Langa
Dineo Rakobela
Lucia Mmatlana
Olivia Chauke
Pretty Troubatla
Dikeledi Mpmamonyane
Dianah Mashaba
Victor Khoda
Makgotla Khomotso
Annah Manganye
Friddah Mathiyane
Daniel Mabhisho
Jacob Mapakela
Mokete Khoda

Kanana

Oupa Dodovu
Petrus Moshe
Nomaindia Gaji
Boitumelo Moshe
Yane Khubudi
Nthabiseng Leshoe
Sonilu Motobako
Puseletso Mothoane
Mmalehlohonolo Notyiwa
David Kganakgomo
Joe Mashilo
Shaun Lethoko
Dineo Taetsane
Mahadio Mahapi
Pale Grabie
Dineo Maitsile
Wendy Lekgowe
Nthabiseng Stabela
Papi Khiba
Maki Letikane

Phola

Yvonne Sampear
Millicent Shangube
Florence Mohlala
Thandi Tsotetsi
Zodwa masango
Lorraine Mvubelo
Magareth Lukhele
Siyabonga Lukhele
Valencia Ndlovu
Nhlanhla Nkosi
Suzan Mnabalala
Melta Ntuli
Ester Ngozo
Grace Ngubeni
Alice Motsepe
Betty Maphosa
Nandi Khanye
Elda Nkosi



INTRODUCTION

A brief overview of ActionAid South Africa

ActionAid South Africa was established in May 2006 and is a part of the global Federation of ActionAid International, a social justice movement working with people living in poverty in over 40 countries.

ActionAid works with people living in poverty to strengthen their participation in issues of governance by engaging with social movements that share our values and vision to address global inequalities worldwide.

Building on our existing programming that supports the agency of people living in poverty and exclusion to claim their rights, we work to increasingly connect the people, partners and communities with whom we work, with broader people's organisations and social movements engaged in struggles for justice. This recognises the interconnected nature of many of the issues we work on and the need for greater collaboration and solidarity within and among countries to influence structural change.

A key area of our focus is to ensure that women living in poverty and exclusion are central in our work, and to apply a stronger feminist lens to drive a deeper analysis of power and its many manifestations, enabling us to better work towards more equitable redistribution of power and resources, as well as enhancing women's ability to claim and enjoy their rights.

Our ongoing engagements with young people as drivers of change and as the majority of the population in many of the countries where we work constitutes a critical area of focus for the organisation to support affected communities, to drive just alternatives, working with communities and broader alliances to transform societies.

OUR VISION

A just, equitable and sustainable world in which every person enjoys the right to a life of dignity, freedom from poverty and all forms of oppression.

OUR MISSION

To achieve social justice, gender equality, and poverty eradication by working with people living in poverty and exclusion, their communities, people's organisations, activists, social movements and supporters.

OUR GOALS

To see poor and excluded people and communities exercise their power to secure their rights.

To see women and girls exercise their power to secure their rights.

To see citizens across the world fight for their rights and against injustice.

To make states and their institutions accountable and democratic and promote, protect and fulfil the human rights of everyone.

OUR VALUES

- **MUTUAL RESPECT:** requiring us to recognise the innate worth of all people and values and diversity.
- **EQUALITY AND JUSTICE:** requiring us to work to ensure equal opportunity for everyone, irrespective of race, age, gender, sexual orientation, HIV status, colour, class, ethnicity, disability, location and religion.
- **HONESTY AND TRANSPARENCY:** being accountable at all levels for the effectiveness of our actions and open in our judgements and communications with others.
- **SOLIDARITY:** helping the poor, powerless and excluded will be the only bias in our commitment to the fight against poverty.
- **COURAGE OF CONVICTION:** requiring us to be creative and radical, bold and innovative, without the fear of failure, in pursuit of making the greatest possible impact on the causes of poverty.
- **INDEPENDENCE:** from any religious or party –political affiliation.
- **HUMILITY:** in our presentation and behaviour, recognising that we are part of a wider fight against poverty.



A brief overview of MACUA & WAMUA

The formation of MACUA and WAMUA was inspired by the events of the Marikana Massacre in August 2012. Between the 2nd – 5th of December 2012, the International Alliance on Natural Resources in Africa (IANRA), supported by ActionAid South Africa, hosted the South Africa Mining Communities and Allies Dialogue.

Over 150 community delegates and civil society representatives from the 9 provinces across South Africa gathered to discuss the state of affairs for mining affected communities. Civil society was represented in the form of ActionAid South Africa, Benchmarks, IANRA as well as academic representatives.

Despite the geographical spread of communities represented, the challenges facing those affected by mining were glaringly similar. Communities across the nation had no voice, no agency and no opportunity to participate in the decisions that affected them. Whether at a macro level when engaging with the government, or at a micro level when being sidelined by mining companies in their backyard, communities were being systematically and physically excluded.

The utilization of NGO's, Public Interest Law Organisations and academics were noted as key resources but maintaining a community lead project was a decisive factor.

It was agreed at this conference to form and build a movement of mining affected communities who could bring together the various struggles of so many communities suffering in the shadows of mines.

The need for women to self-organise as a targeted response to the gendered impacts of mining lead to the realisation of [WAMUA](#) (Women Affected by Mining United in Action). WAMUA presents a critical channel through which to address patriarchy not only within the mining sector, related policies and practices, but within [MACUA](#) and communities they represent as well.



In one of its earlier founding documents, MACUA sets out its missions as follows:

“Our starting point must be that mining affected communities have AGENCY and that they are willing and able to take up the fight around the issues that affect them.”

Oppressors and exploiters the world over have always existed because of the Internal Power Distribution. That is to say, they exist because they do not face a determined and committed people who are willing to assert their power within society.

Tasks and Aims of MACUA:

1. We seek to strengthen people living in poverty, especially women, and the communities affected by mining to build their determination, self confidence and resistance skills.
2. We seek to strengthen independent social groups, organisations and institutions of people living in poverty and affected by mining and build unity across the sector.
3. We seek to create a powerful internal movement of mining affected communities united around the concept of a People's Mining Charter and Economic and Social Justice.
4. We aim to develop a Strategy Plan to support and build a network of mining affected communities as a social movement for change.

Principles and core values to which affiliating organisations must subscribe:

1. Economic and Social Justice
2. Participatory Democracy and Inclusive Decision Making
3. Respect for Human Rights
4. Promotion and Respect for Women's Rights
5. Respect for Cultural Diversity
6. Equitable Sustainable Development
7. Solidarity with People Living in Poverty
8. People Before Profits
9. Non-Partisan
10. Non-Sectarian

In 2015 MACUA and WAMUA undertook a campaign to collect the aspirations and demands of mining affected communities across South Africa and after extensive consultations with over 150 communities adopted the Peoples Mining Charter in June 2016. [See Appendix.](#)

“Our starting point must be that mining affected communities have AGENCY and that they are willing and able to take up the fight around the issues that affect them.”

About CALS

The Centre for Applied Legal Studies (CALS) is a civil society organisation based at the School of Law at the University of the Witwatersrand, Johannesburg. CALS is also a law clinic, registered with the Law Society of the Northern Provinces. CALS connects the worlds of academia and social justice. CALS' vision is a socially, economically and politically just society where repositories of power, including the state and the private sector, uphold human rights. CALS practices human rights law and social justice work with a specific focus on five intersecting programmatic areas, namely Basic Services, Business and Human Rights, Environmental Justice, Gender, and the Rule of Law. CALS strives to make creative use of the tools of research, advocacy and litigation, adopting an intersectional and gendered understanding of human rights violations.

CALS' ROLE IN SOCIAL AUDITING PROJECT

CALS has entered a collaboration with ActionAid South Africa, MACUA and WAMUA, on their social audits project. This project entails assisting mine-affected communities, through a core group, to audit mining companies' compliance with those legal obligations identified as of particular concern by members of the respective communities.

Social and Labour Plans (SLPs), as required by the Mineral and Petroleum Resources Development Act, 2002 (MPRDA), comprise binding legal commitments by mining companies with respect to developmental benefits for workers and community members. CALS' role has, for the five communities who have elected to audit SLP compliance, included the following:

- a. Use the procedure under the Promotion of Access to Information Act, 2000 (PAIA) to obtain access to the SLPs of mining companies identified by communities from the Department of Mineral Resources (DMR);
- b. Provide training/capacitation on SLPs and discuss the commitments in the relevant SLP/s with communities;
- c. Provide support in the process of auditing the SLPs themselves





EXECUTIVE SUMMARY

The Social Audit Baseline report, which was conducted in 10 mining affected communities across South Africa, as part of the ActionAid South Africa's Social Audit Project, was conceptualised as part of our ongoing work with MACUA and WAMUA and premised on the understanding that the social, economic and political challenges faced by communities affected by mining can only fully be addressed when communities have organised themselves into active collectives who are able to hold duty bearers and other mining stakeholders to account.

Our work with affected communities has highlighted the systemic manner in which the agency of individuals and collectives within communities have been eroded and how, through a systemic programme of legislative prescriptions, power within communities to decide on their well being, governance and developmental paths has been stripped away.

The Social Audit methodology was particularly important for us, as it allowed communities to engage in the hard work of rebuilding activism and agency in ways that did not reduce communities to passive recipients of handouts.

The project itself has maintained strict parameters in terms of accountability of all participants, both vertically and horizontally, based on the understanding that it is through our individual and collective actions that we learn how “to become”. What we do, matters, and through building accountability into our projects, we not only hold duty bearers to account, but also ourselves and the activists we work with are able to hold us and themselves to higher standards.

This baseline report only includes the outcomes of the surveys from 8 communities in Mpumalanga, Gauteng, North West, Limpopo, Northern Cape, the Free State and KwaZulu Natal.

The other 2 community surveys were not included as they were not adequately completed by the time we compiled this report.

The findings from the report has broadly confirmed our initial hypothesis that mining affected communities are disproportionately negatively affected by mining, not only because of their proximity to the mines, but also because of the political, economic and social structural impediments they face in holding corporations and state parties to account.

Among the structural political impediments faced by communities, are the lack of adequate legislative protection and a distinct lack of policy and legislation which fosters and encourages active participation by communities in their own governance.

In this report we unpack how the reality of the mining legislative regime often runs counter to the constitutional imperative of active citizen participation in affairs of governance as well a distinct dissonance between the rhetoric used by government and politicians with regard to the constitutional and political imperative for communities to not only participate in their own governance but also their right to benefit from the activities on and around their land.

At the very least, this report highlights the deep divide between political, legislative and constitutional prescriptions and the lived reality of communities living in constant distress and experienced as a type of structural violence against their person.

Among the key findings and statistics of the baseline surveys are that:

1. 64% of the respondents surveyed were women and 36% men.
2. 62% indicated they were single and 26% married.
3. 64% had education up to a secondary level and 13% indicated a tertiary level or higher.
4. 44% of respondents indicated that their main source of income was from social grants with Phola in Mpumalanga and Somkele in KwaZulu Natal indicating a 59% and 53% reliance on social grants respectively.
5. 24% indicated they survived on petty trading or self employment.
6. Only 30% indicated some type of formal or informal employment.
7. 73% of respondents indicated that no individuals in their households were either currently employed or previously employed by the mine.
8. Of the 27% who indicated that someone in their household was employed at a mine, 41% indicated that they were casual or manual jobs.

The statistics collected in the survey indicate deep levels of unemployment with significant reliance on social grants to survive and very little opportunity to find employment opportunities at or through the mines.

With regards to the social responsibility of the mines and the Department of Mineral Resources, the following picture emerged:

1. 91% of respondents did not know what a Social Labour Plan (SLP) was.
2. 85% did not know of any structures in their community who engaged with the mine on SLPs.
3. 95% had never seen an SLP.

Social Labour Plans are meant to be the main drivers of corporate social responsibility programmes which are mandated by the Constitution and the Mineral Resources Development Act (MPRDA), yet the beneficiaries of the programmes appear not to be aware of the programmes and of how they are supposed to benefit from it.

Three clear core themes emerged from the surveys with regards to the challenges faced by communities affected by mines. These are:

1. Environmental issues such as air, land and water pollution which impacts on human and livestock health, soil and water quality.
2. Living in an Unsafe environment, relating to blasting close to houses and the tremors experienced as a result of blasting, as well as concern about the rising crime levels within communities.
3. The constant threat to health ranging from TB and HIV to skin rashes and infections, asthma, silicosis and chest and lung problems.

In terms of community benefit from having Mines close to or around the community the following emerged:

1. 79% indicated that there was no benefit from the mines at all.
2. 8% felt that the mine only brought negative benefits such as sickness, dispossessions and damages.
3. 13% felt there were positive benefits such as clinics, roads and employment.

When the respondents were asked about what they would want to change in the relationship between the mine and the community, four clear themes were highlighted:

1. 39% wanted more employment, skills development and livelihood options.
2. 35% wanted more accountability, consultation and communication by the mine.
3. 20% wanted more basic services and infrastructure.
4. 6% wanted some form of compensation.

Read through the lens of agency and structural exclusion, the outcomes of this portion of the survey suggest that the communities surveyed have consistently preferred outcomes that allow them to develop and act on their own agency through either gainful employment or through access to other livelihood options.

The significant amount of respondents who indicated that they wanted more participatory processes such as consultation and communication also support the suggestion that community agency, even in dire situations, is preferred to being agentless recipients of philanthropy.

In terms of the gendered impacts of mining, the survey found that the women not only have to bear the severe impacts on health, and social and personal violence against their bodies, they also have to contend with structural impediments to their well being. Among the key findings in this regard is:

1. 40% of women indicated that jobs are only accessible through sexual favours.
2. 14% of women indicated that some sort of payment, fee or bribe was needed in order to secure a job.
3. 73% of women indicated that they have received no benefit from the mine.
4. 25% of the women indicated that the community experiences substantial amounts of violence such as rape, murder, abuse and protests.
5. 85% of women linked the increase in violence to the development of the mine.



The approach to mining in South Africa has consistently been a violent, masculine and exploitative project to concentrate benefits for a few at the expense of the majority.

The potential wealth in mining has had a significant influence over the political arrangements of South Africa, and has historically been the main driver underpinning the Apartheid economic model of wealth accumulation. This model saw the development and rise of a Mineral-Energy-Complex (MEC) that brought together various key players in the extractive, electricity and downstream industries to systematically exploit the mineral wealth while catalysing the development of the rest of the South African economy for the benefit of a minority.

According to Price Waterhouse Coopers (PWC) reports that have been compiled for Johannesburg Stock Exchange listed corporate entities within the South African Mining Industry **since 2008 and incorporating financial results from 2007 to June 2018, the South African Mining Industry has**, despite a consistent media narrative in which the mining industry corporates are cast as victims struggling to make a profit, **accumulated and reported net profits of R221 Billion rands over this period.**

The declared profits do not include the undeclared illicit financial flows which the African Monitor claims peaked at R237 Billion per annum in 2011. According to the African Monitor, South Africa has lost a cumulative R1,007 Billion to illicit outflows between 2002 and 2011

These are significant amounts that has a direct impact on whether communities are able to escape their poverty traps or not. In the Lonmin case a submission by the Centre for Applied Legal Studies (CALS) to the Marikana Commission the legal researchers who had studied the Lonmin case specifically reported that:

“A number of programmes suffered from poor planning with resulting problems of implementation. These programmes include brick-making factory, the agricultural farm project and most importantly, the construction of 5,500 houses as committed in the 2006 SLPs. The failure of these projects points to non-compliance that requires further investigation.”

They further conclude that:

“The lack of delivery under these projects and the resultant lack of impact on the lived reality of the mine-affected communities, including workers and their families, could constitute a significant factor precipitating the events in Marikana of 09 to 16 August 2012.”

The state on the other hand, remains a significant beneficiary of the mining regime as it is currently configured and the same PWC report series from 2009 to June 2018, suggests that the state has received R160 billion in direct tax revenues during this period. An additional amount of approximately R45 billion is estimated to have been paid to government as Royalties. In all, the PWC reports (which do not factor in any potential mis-invoicing and/or illicit financial flows) estimate that **government takes approximately 24% of value reported** among the listed JSE mining corporates, **employees 47% of value reported and shareholders, 29% of value reported. Community investments by contrast has only amounted to 0.9% over the same period** . But, as has been shown in this report, none of the value from these community investments are experienced in the lived realities of communities who participated in this survey. **Up to 79% of respondents, those to whom these benefits are meant to accrue, have not participated in or benefited from the claimed investments.**

By our calculations, this implies that close to R5.92 billion of the estimated R7.5 billion earmarked for community development did not reach its intended beneficiaries during this period.

The extent of the unaccounted for expenditure on community development no doubt plays a significant role in maintaining the cycles of poverty that continue to manifest in mining affected communities.

The extent and scale of the potential misappropriation of funds meant for community development implies both that high levels of corruption exist in the way that funds are allocated to community development and that besides the potential corruption inherent in the way funds are distributed, that the projects meant to advance community development are not trickling down to communities in the way envisaged by the corporations and the DMR.

The ineffectual character of the current Mining Charter regime and the SLP's are inextricably linked to the paternalistic nature and logic of the existing legal and governmental framework in our opinion.

The Constitution, the MPRDA and the Mining Charter propose a transformed country through broad-based trickle down beneficiation. However, the unrelenting **paternalistic approaches to the idea of development has entrenched the very inequalities that a new mining regime was aimed at overcoming.**

On the one hand, government is keenly aware of the systemic nature of the ongoing inequalities and resultant public discontent. On the other hand, being fully aware of the democratic, social and economic deficit at the local level, the **government remains committed to policies that place corporate interests above those of the citizens on the assumption that value will eventually trickle down to communities.**

The two divergent responses by Government suggests **a deep dissonance within the corridors of government and the rhetoric of inclusivity and consultation is not supported by the evidence of systematic and deliberate exclusion built into mining legislation and regulation.**

The upshot of paternalistic top-down development, is that the developmental outcomes, are more often than not, the type of outcomes that deepen inequality.

When examining the human-centred results of the baseline studies, the promise of progress and development driven by SLP's and the Mining Charter are not evident and **the evidence points instead to a far more systemic process of excluding the voices of affected communities.**

"We don't have democracy!... We [are] still struggling... you see if we are in democracy there's no more shacks here... No more bucket system... we supposed to have roads, everything! A better education... There is a democracy?... No, this is not a democracy! They have, these people in Constantia, Tableview, Parklands, they have a democracy, not for us!"

This type of exclusion, which the baseline survey points to, produces a structure within which **the social and economic outcomes are experienced as a violation against the person of those affected.**

The social audit baselines surveys, indicate **a strong correlation between mining and excessive or severe environmental impacts on communities living around mines.**

The extensive nature and types of negative impacts experienced, and the apparent visceral sense of damage expressed by communities living close

to mines, suggests some correlation with the findings of scholars, such as those of Carin Runciman, Senior Researcher at the Centre for Social Change at the University of Johannesburg, who has studied the rising tide of protests in South Africa.

In a 2017 article in The Conversation, Carin Runciman draws a comparison between the lack of democratic practise at local level with the rising tide of protests on the national level;

"As part of research by the Centre for Social Change we spoke to protesters all over the country. A new book from the centre highlights the extent to which protesters are raising not just concerns about the quality of service delivery but also about the quality of post-apartheid democracy. As Shirley Zwane, from Khayelitsha, near Cape Town, explains:

We don't have democracy!... We [are] still struggling... you see if we are in democracy there's no more shacks here... No more bucket system... we supposed to have roads, everything! A better education... There is a democracy?.... No, this is not a democracy! They have, these people in Constantia, Tableview, Parklands, they have a democracy, not for us!"

The visceral way in which poverty and exclusion is felt by affected communities is compounded by the way in which mining companies and mining regulators generally deny or ignore the lived experiences of mining affected communities.

Any attempt to advance social cohesion and any efforts to undercut the rising tide of protests will have to grapple with a mining policy that does not address the fundamental weakness of excluding people from participating in their own governance.

On the question of the severe health impacts experienced by communities, there is sufficient evidence to suggest that **poverty and poor health are inextricably linked.**

The causes of poor health are rooted in political, social and economic decisions that seldom take adequate account of the interests, needs and realities of those most directly impacted.

Poverty is both a cause and a consequence of poor health. Poverty increases the chances of poor health. Poor health in turn traps communities in poverty.

This baseline survey outcomes corresponds in significant ways with this view.

There appears to be a deep chasm of understanding about the benefit of mining between government and the people, whose interest's government is supposed to represent.

The assertion by the Minister of Minerals that mining will bring development, employment and other benefits to communities is not supported by the findings from this report and points instead to burden rather than benefit for communities.

The DMR's main focus has been on speeding up the process of investment with the Minister declaring in his Budget Speech that; *"to unleash our economy, we must overcome this to ensure that prospectors can prospect and those with the legal permits and the means to mine can do so."*

In line with this commitment to speeding up the rate of exploitation of mineral reserves, **the DMR has increased the budget to be spent on the Mineral Promotion and International Coordination subprogramme, within the Mineral Policy and Promotion programme, to R239.1m in the medium term.**

By the same token, the number of SLP verification inspections (those inspections which are supposed to ensure that the intended beneficiaries of the SLP's are benefiting) per year, has **decreased from a high of 285 in 2013/14 to 212 at present** while the number of **environmental verification inspections per year has decreased from a high of 1889 in 2015/16 to 1275 at present.**

MINTEK and the Council for Geosciences account for 50.1% of the DMR's annual budget and salaries at these institutions account for 33% (which is "due to the labour intensive nature of the

department's work, particularly with regards to enforcement, compliance monitoring, and the inspections of mines across the country.") Personnel numbers are expected to decrease though, from 1122 in 2016/17 to 1040 in 2019/20 indicating **reduced capacity to monitor compliance and enforcement.**

The disjuncture between communities who are reporting that their experience is one of burden, not benefit and that of the government who seems intent on continuing to pursue a strategy which preferences investors over social and environmental impacts, suggests that the sector is on a course for deepening poverty and increased conflict.

On the question of gender: The Minerals Petroleum Resources Development Act (MPRDA) mentions women as a specific category only once. This is surprising considering that the South African Constitution sets out in its founding provisions, the two social contradictions which have historically been at the centre of our Apartheid Past, namely anti-racism and anti-sexism.

While much attention is paid in the act to the broader category of "historically disadvantaged persons", women are broadly omitted from special consideration in the main act.


This is astonishing given the empirical evidence and general agreement in government and within civil society that women are generally and specifically oppressed and discriminated against, and specifically in legislation dealing with a sector whose dominant frame of reference has been patriarchal, exploitative and which has historically entrenched unequal social and economic relations.

Issues of Gender and specifically with reference to **Women and Girls** have been largely ignored in Mining Charter 3. Where women are included they are interchangeably mentioned with youth. Instead of a mining company having to ensure that they procure from women owned companies for example, they could instead procure from youth owned companies. This interchangeability occurs throughout the Mining Charter, leaving specific targets for women and girls unquantifiable and unenforceable.

Targets aimed at improving the socio-economic condition of women are not included extensively enough to shift the patriarchal nature of the sector and the targets for women's empowerment need to be significantly increased in all areas of the Charter.

Without specifying interventions to benefit local women, the Charters minimal provisions for women serves only to benefit women who are already economically empowered. As a general rule, communities who participated in this research indicated that community consultations were often not public knowledge and where consultations did take place they were often with traditionally dominant men or politically connected men in the community. Women are generally excluded as a rule and often were the least impacted of any potential beneficiaries. As a result, women are stripped of the means of acquiring status and wealth. Research indicates that men and women often prioritize community investments differently, and frequently more sustainable development outcomes are planned where women have an equal engagement with men in setting priorities.

As we have suggested in this report, any kind of exclusion of vulnerable groups within society, especially with regard to decision making that impacts on the livelihoods of those groups produces and exacerbates the inequalities already prevalent within that society or community.



Women Claiming their
Rights to health, water and
food.

The exclusion of women in an already patriarchal society, and communities in an already unequal society, can never lead to a more just outcome for those women and communities.

As long as women and communities remain on the margins of consultation and decision-making processes, the gender bias and pro-elite bias, in benefits and costs of extractive projects, will not be adequately addressed and will continue to disproportionately oppress women and vulnerable communities.

About this Report

The Mining sector in South Africa has been the backbone of economic and social development in South Africa for over 150 years. With its colonial legacy of racialised capital, and later as a legalised social project, in the form of Apartheid, **development within the sector has historically been grossly skewed towards a minority at the expense of the majority**, mainly black, South Africans.

Post the 1994 transition to a more democratic state, **the fundamental economic and political structure of the sector has not changed significantly**, with the exception perhaps of the nationalisation of the mineral wealth under the custodianship of the State and the inclusion of organised labour as a key stakeholder in developing Policy and Regulations.

Communities, who are often brutally affected by mining, have remained largely excluded from participating in the development of policies and legislation that directly affect them.

These systematic and deliberate exclusion of communities impacted by mining, and despite various court rulings which affirm the constitutional right of communities to participate in their own governance, has in turn contributed towards the unequal outcomes characteristic of the sector, and which is clearly illustrated through this baseline survey. The sector can broadly still be described as one in which only a small minority continues to benefit at the expense of the majority.



The deliberate denial and what we call extraction(remove or take out, especially by effort or force) of agency of affected communities, has often been a consistent feature of mining in South Africa and its patterns of dispossession resonates with experiences of communities impacted by mining across the world.

Since the introduction of the Mining Charter in 2002, and promulgated in 2004, as a regulatory tool to advance the *“primary objective of the MPRDA to ensure the attainment of government’s objectives of redressing historical, social and economic inequalities as stated in the Constitution”*, various evaluations undertaken by the Department of Mineral Resources (DMR) have highlighted its limited success.

A 2009 assessment¹ concludes that there have been *“shocking levels of non-compliance”* by the industry and that *“[c]onsequently, the intended benefits flowing from the mining industry fall significantly below the expectations and aspirations of the majority of South Africans as intended by the Charter.”*

In 2010 the Mining Charter was amended to deal with the shortcomings of the original Mining Charter, but a second assessment by the DMR in 2014² found that, *“overall transformation of the mining industry remains unacceptably low, the spirit of the Mining Charter was not fully embraced”*, and that *“the majority of mining communities continue to live in abject poverty.”*

Amidst a growing concern around the effectiveness of the Mining Charter and continued disputes on the outcomes of the assessments by the Chamber of Mines, another assessment was undertaken by the DMR in 2015.

The 2015 assessment³, however confirmed that,

- *the meaningfulness of economic participation remains largely elusive.*
- *communities and ESOP’s⁴ participation is low, there has been limited impact in terms of intended beneficiaries realising optimal economic benefits.*
- *the objective of improving the living conditions of mine workers has not been fully realised, especially taking into consideration that nearly half the right holders did not meet the target.*
- *with regard to the creation of the social fund to improve socioeconomic conditions in mining communities, the assessment shows that most companies did not contribute to the social fund.*
- *White males still dominate most of the key functional categories, especially senior and middle management.*
- *African females are under-represented at all levels.*
- *Most of the right holders have not met the target of spending 5% of their annual payroll on skills development.*
- *Only 36% of the mining right holders have met the mine community development target for 2014.*
- *Less than half of the right holders comply with Sustainable Development and Growth Targets.*

1 https://www.gov.za/sites/default/files/Mining_Charter_Impact.pdf

2 <http://www.dmr.gov.za/API/Evotiva-UserFiles/FileActionsServices/DownloadFile?ItemId=2355&ModuleId=1414&TabId=162>

3 <http://www.dmr.gov.za/API/Evotiva-UserFiles/FileActionsServices/DownloadFile?ItemId=1041&ModuleId=1414&TabId=162>

4 Employee Share Ownership Programmes

Despite its glaring failures over the last 14 years, and despite its primary objective of redressing historical social and economic inequalities, the key stakeholders who control the sector, namely government, corporate mining investment interests and organised labour,⁵ have broadly preferred a paternalistic approach to affected communities, with decisions about the well being of communities being taken and overseen on their behalf by a paternalistic state who are often beholden to the interests of investors.⁶

A LEGAL QUEST FOR INCLUSION

On the 24th of October 2017, MACUA, WAMUA and MEJCON⁷ along with other community groups applied to the Gauteng High Court to intervene as parties in a case brought by the Chamber of Mines against the Minister of Mineral Resources. The legal challenge specifically centred around the gazetting of the 2017 Mining Charter. **At its core the application by mining affected communities brought to the fore critical questions of consultation, participatory democracy and the right of communities to participate in the development of policy and regulations affecting their lives.**

Following the court victory, in which the court affirmed the responsibility of the Department of Mineral Resources to consult MACUA, WAMUA and MEJCON as relevant and interested stakeholders, the Department of Mineral Resources and the Minister of Mineral Resources undertook “consultation” meetings near mining towns across the country.

The consultation meetings were fraught with inconsistencies and shortcomings which failed in our opinion to meet a reasonable standard of consultation. These included:

- Meeting venues were either changed at the last minute or inadequate notice was provided for meetings.
- At various meetings, members of MACUA were either denied entry to the meetings or were not allowed adequate time to engage with the issues in the Mining Charter.
- Communities were required to attend meetings that were often far from the communities in which they reside and struggled to obtain transport and support to attend.
- Communities were not provided with copies of the Charter.
- Communities were not provided with copies of the Charter in their home languages.
- All the consultations did not allow for adequate debate and engagement and instead comments to the Minister often went unanswered or were ignored.
- Many of the invited participants to these consultations were representatives of business even though the Minister and the DMR had already held substantive and extensive consultations with the Minerals Council and other business stakeholders.

5 We are of the view that recent calls by trade unionists to seriously consider returning to social movement unionism must be welcomed as a step out of the corporatists arrangement unions have been ensconced in since the 1994 transition. Because of their shared community experiences, solidarity between unions and community struggles has the potential to reconfigure the power dynamics in the sector towards more just outcomes. Reference: Kwezi Mabasa and Crispin Chinguno; Trade Union organising in the Mining Sector. Chapter in The future of Mining in South Africa- Sunset or Sunrise- Mistra 2018 Pg 298 - 332

6 <http://safiii.org/images/329756472-State-of-Capture.pdf> https://www.sastatecapture.org.za/uploads/Terms_Of_Reference.pdf <https://www.corruptionwatch.org.za/cw-makes-parly-submissions-political-party-funding/>

7 MEJCON: Mining and Environmental Justice Community Network.

- The inclusion of business and local councillors and their supporters, fundamentally skewed the nature of the consultations, which were supposed to be directed at communities and their organisations.
- During the consultations the Minister constantly, mis-represented the Mining Charter's aims and objectives. The Minister constantly promoted the erroneous idea that the Mining Charter 3 was specifically for Capitalists and those who wanted to be Capitalists and not for communities. This insistent refrain by the Minister often confused the consultation process rather than clarify its objectives.

After the “consultations” the Minister released a Draft Mining Charter 3 and published it for comment. The Minister also called a summit of stakeholders to discuss the draft charter on the 7th and the 8th of July 2018.

After having been side-lined by the Minister of Mineral Resources and the Department of Mineral Resources during the consultations on Mining Charter 3, despite a court order directing the Minister to engage MACUA, WAMUA and MEJCON as interested and affected stakeholders, **over 100 community representatives from these organisations gathered in Johannesburg on the 2nd and 3rd of July to consider the Mining Charter gazetted by the Minister.**

During two days of deliberation, which included a presentation by the DMR, **communities overwhelmingly rejected the current Mining Charter 3 as gazetted by the Minister.**

At the centre of their rejection, stood the way the DMR refused to include MACUA, WAMUA and MEJCON in negotiations on the Charter despite a court directing the DMR to do so. Participants viewed this approach by the Minister and the DMR as patronising and as a direct assault on their agency and legitimacy as interested and affected stakeholders.

Communities expressed their anger and disappointment that the Minister and the DMR had shown a complete disregard for their fundamental human right to be treated as equals and the manner in which the Minister ignored the express commitment of the Constitution to foster inclusive and participatory forms of democracy, and instead the DMR treated communities as if they had no rights and were a problem to be overcome rather than as citizens and humans with dignity and deserving of respect.

The way the Minister continues to view communities in paternalistic terms which ignores and undermines their human dignity, was again highlighted recently when the Minister unilaterally proposed to the Minerals Portfolio Committee of the 5th Parliament of South Africa, that the current amendment Bill on the MPRDA be withdrawn from the legislative process without consulting MACUA or WAMUA or taking into consideration that many aspects of **the current MPRDA is specifically harmful to the interests of mining affected communities and is in dire need of improvement.**

The perception that the Minister and the consultative process has only been about engaging business and organised labour has persisted throughout the Mining Charter 3 process and the full realisation of the Court Order and the Constitutional imperative for participatory democracy remains a point of contention.

This report which is derived from a process of participatory community driven Social Audits, conducted in eight communities affected by mining in seven provinces, aims partly to debunk the paternalistic notions prevalent among the key stakeholders who control the sector, that communities affected by mining, who are mainly rural and who are generally characterised

by their lack of formal education and who are generally regarded as subjects of Traditional Authorities, are not able to participate in their own governance.

The upshot of paternalistic top down development, is that the developmental outcomes, are more often than not, the type of outcomes that deepen inequality. We argue, along the lines of Theories on Structural Violence, that **the unequal share of power that resides with government and corporate investment interests to decide over developmental paths for communities and consequent distribution of resources remains the pivotal causal factor of these avoidable structural inequalities.**

The development of the surveys and the collection of information which we share in this report, was undertaken by the affected communities in conjunction with ActionAid South Africa (AASA) and in collaboration with our social movement partners, Mining Affected Communities United in Action (MACUA) and Women Affected by Mining United in Action (WAMUA.)

The process of developing and collecting the data for this report was aimed at enhancing the agency of the communities we worked with and has affirmed our belief that the agency and capacity of communities can be augmented through processes that affirm their agency.

Using participatory learning as pedagogy, the process and methodology of social audits acts as a means by which a community can deal critically with their own lived reality and discover how to participate in the issues that directly affect them.

The greater part of the value of this report, lies not so much in the data that seeks to render the lived reality of mining affected communities visible, but in the process of building community agency which produced the knowledge.

This report uses ActionAid's Human Rights Based Approach⁸ to contextualise the lived experiences of communities on the ground and shows the clear relationship and interconnected impacts of mining's socioeconomic, gender, environmental, cultural, symbolic, and structural power dynamics.

The aim of this report is to bring into focus the particular living conditions of mining-affected communities at the local level while connecting the seemingly isolated reality of each community to the national scale of the experiences faced by communities, using a Social Audit Methodology.

⁸ A summary of our human rights based approach

Poverty is a violation of human rights and a terrible injustice. Poverty arises because of the marginalisation and discrimination associated with human rights violations. ActionAid has a distinctive human rights based approach¹ to development that centres on active agency: supporting people living in poverty to become conscious of their rights, organise and claim their rights and hold duty bearers to account. Our HRBA flows from our values and our strategy, builds on international human rights law, but goes beyond a legal or technical approach to rights. We support people to analyse and confront power imbalances and we take sides with people living in poverty. This sets our HRBA apart from the approach many other agencies take, using rights-based language but failing to challenge abuses of power at local, national or international level.

<https://hive.actionaid.org/ActionAid%20Shared%20Library/peoplesactioninpractice.pdf>

This baseline report, the first report of a series of two, foreshadows the results of the 2nd planned report on community Social Audits which were conducted in each of the communities identified in this report.

In this study, the following questions were asked:

- What are the demographics and socio-economic living conditions of those living near mining?
- What are the main challenges faced by those living near mining?
- To what extent have communities benefited from mining with the introduction of the MPRDA and Mining Charter?
- To what extent are communities aware of the legislative obligations on mining companies to develop communities (e.g. SLP process).
- To what extent have communities been included in decision making process from local, to regional, to national levels?

The categories below provide a lens through which we have studied the micro-factors at play in mining-affected communities:

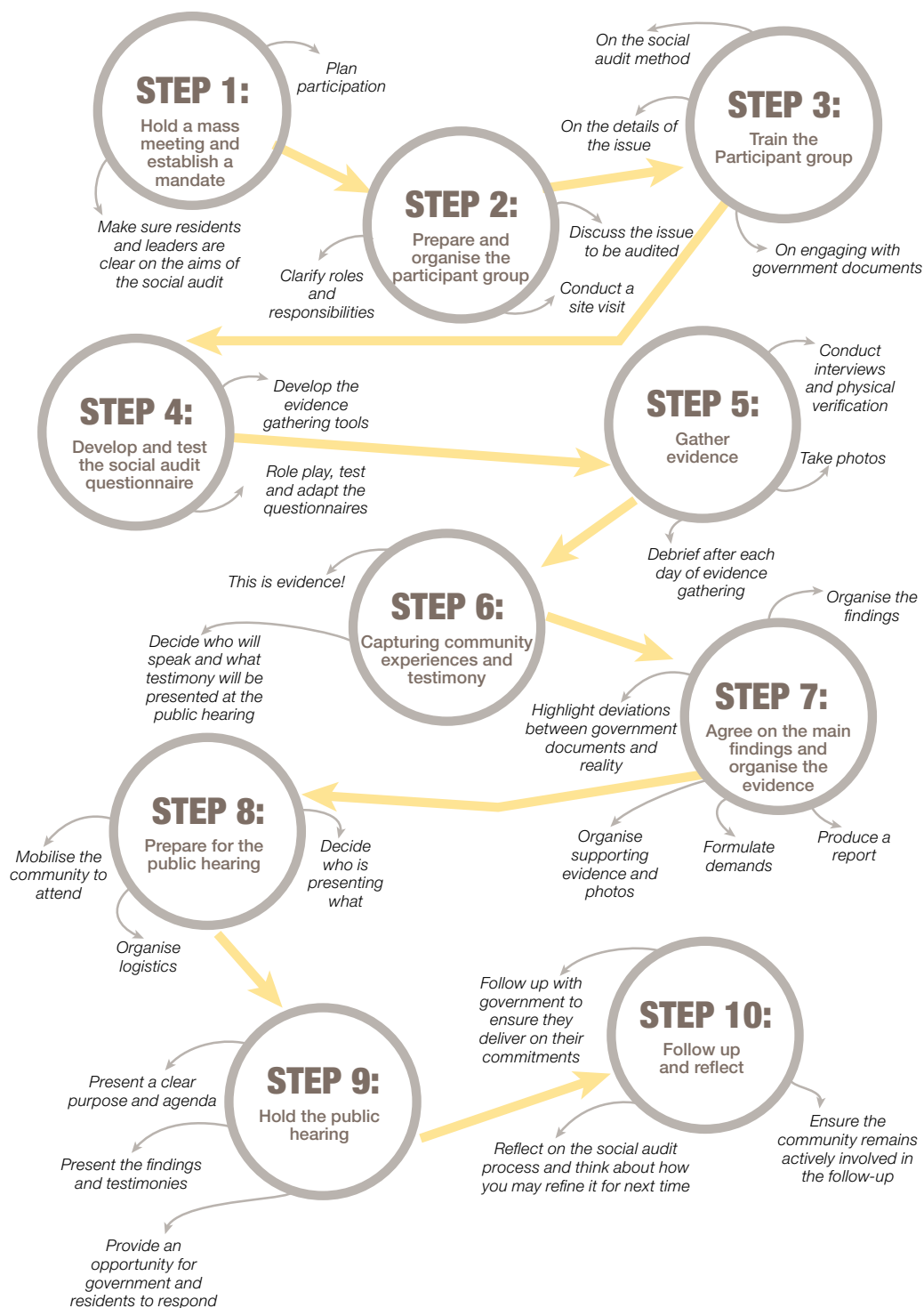
- Systemic inequalities
- Structural inequalities
- Structural violence
- Poverty
- Participatory democracy
- Marginalisation
- Gender inequalities and violence

SOCIAL AUDIT PROCESS

PHASE 1: Preparing and Planning a Social Audit



PHASE 2: Conducting a Social Audit



9 The Guide to Social Audits has served as a broad outline of the process but has been adapted according to the context of each community.

In keeping with the intention of engaging in a process of participatory learning, the first phase of the Social Audit process was to establish a baseline understanding of the current social and economic aspects of those who live near mines and to ensure that the process was informed by the issues that are most critical to the lived reality of the community.

The baseline research questionnaires, which were collected by community activists, through door to door visits helped to identify the issues that were most important to the community and deliberately ensured the participation of women.

This effort to produce knowledge of the socio-economic and political conditions of communities affected by mining was underpinned by a popular process of obtaining a mandate from the community to conduct the Social Audits and to enlist their participation and ownership of the process.

After a mandate was obtained from the community to conduct the social audits, core groups of volunteers, underwent training on the social audit methodology and worked with AASA facilitators to develop questions for the surveys.

This organic process of bottom up development of the survey's questions meant that each community developed questions particular to context. The common areas of each individual community's questionnaires were used to bring together this report.

The organic development and community ownership of the process and outcomes has been a hallmark of its participatory nature.

The methodology of Social Audits lends itself to the goal of developing the agency of marginalised communities in that; ***“Social audits seek to engage citizens and communities directly in monitoring the delivery of public services and holding government to account for poor performance, mismanagement or, in some cases, outright corruption.”***

Furthermore social audits help communities to understand how to access information, while demystifying official records and providing a collective platform for sharing and reflecting on information.

A central element of the social audit methodology is that mining affected communities become the producers of knowledge. Through this process, communities are able to present evidence based arguments around the issues that affect them. Each new process in which community agency is affirmed helps to grow a society in which a community can deal critically with their own lived reality and discover how to participate in the issues that directly affect them and through taking control of their own lives, to rebuild the dignity of a society still struggling to overcome the legacy of colonialism.

A social audit is a community-led process that facilitates public participation in the monitoring of government and duty bearers' service delivery and expenditure and where conditions exist to expand beyond holding government and duty bearers to account by taking actions to advance their collective interests.

During the social audit process, communities study government and corporate entity documents and compare them to their experiences as recipients of public services. Evidence and experiences are collected, presented, and then discussed with government and corporate officials at a public hearing.

The need for social audits, in which communities are able to organise themselves in collective structures to gather evidence to affirm their claims and to claim their agency as active citizens, is acutely apparent in South Africa, which has one of the most unequal societies in the world and where the state is often unable to monitor and regulate industry for the benefit of its most vulnerable citizens.

Those in living in poverty, generally lack access to basic services which impact on their Human Rights and Dignity such as the right to access clean drinking water, a healthy environment and the right to security of tenure.

CONSTITUTIONAL RELEVANCE

In the Constitutional Court ruling relating to the matter between the Bengwenyama community and Genorah Resources and the Minister of Mineral Resources, handed down by Justice Froneman, the court affirmed that “[e]quality, together with dignity and freedom, lie at the heart of the Constitution. Equality includes the full and equal enjoyment of all rights and freedoms”.¹⁰

In a separate but related ruling by the same Constitutional Court, in the matter between Doctors for Life and the Speaker of the Assembly and others, handed down by Justice Ngcobo, the Court clarified that “[t]he right to political participation is a fundamental human right, which is set out in a number of international and regional human rights instruments”¹¹

The Doctors for Life judgement, which remains a benchmark in articulating the Constitutional imperative for public participation argues that;

“In our country, the right to political participation is given effect not only through the political rights guaranteed in section 19 of the Bill of Rights, as supported by the right to freedom of expression but also by imposing a constitutional obligation on legislatures to facilitate public participation in the law-making process”

The Judgement states further that;

“... the Constitutional Assembly, in framing our Constitution, was not content only with the right to vote as an expression of the right to political participation. It opted for a more expansive role of the public in the conduct of public affairs by placing a higher value on public participation in the law-making process...The international law right to political participation reflects a shared notion that a nation’s sovereign authority is one that belongs to its citizens, who “themselves should participate in government – though their participation may vary in degree.” This notion is expressed in the preamble of the Constitution, which states that the Constitution lays “the foundations for a democratic and open society in which government is based on the will of the people.” It is also expressed in constitutional provisions that require national and provincial legislatures to facilitate public involvement in their processes. Through these provisions, the people of South Africa reserved for themselves part of the sovereign legislative authority that they otherwise delegated to the representative bodies they created.”

10 Constitutional Court of South Africa. Case Cct 39/10. [2010] ZACC 26

11 Constitutional Court of South Africa. Case Cct 12/05

In concluding the judgement for more participatory forms of democratic engagements the court declares that;

“In the overall scheme of our Constitution, the representative and participatory elements of our democracy should not be seen as being in tension with each other. They must be seen as mutually supportive...because of its open and public character it acts as a counterweight to secret lobbying and influence peddling. Participatory democracy is of special importance to those who are relatively disempowered in a country like ours where great disparities of wealth and influence exist.”

It is thus in light of the Constitutional framework which compels our society to foster and nurture elements of participation within the governance of society, that the social audits undertaken by communities should be located. More than simply a process to collect data, the social audits aim to foster and advance the elements of participation which build community agency and secures human dignity.

“Social audits seek to engage citizens and communities directly in monitoring the delivery of public services and holding government to account for poor performance, mismanagement or, in some cases, outright corruption”



BACKGROUND AND CONTEXT

Up to the 1860's, South Africa was a mining and agricultural economy, but this all changed with the discovery of diamonds in Kimberly. It was, however, the discovery of gold on the Witwatersrand in 1886 that launched South Africa as the biggest and richest gold producer in the world. By 1925, South Africa supplied 50% of all the gold produced in the world. It however soon became clear that the only way of realizing mining profitably on the Witwatersrand was by securing a large pool of cheap unskilled labour.

In the years between 1890 and 1899 the number of African mineworkers rose from 14 000 to 100 000. The development of a cheap labour pool was, however, achieved through a systematic process of impoverishment via a number of taxes which were imposed on Africans, which forced them to seek work in order to pay the taxes, and the 1913 land act, which with the stroke of a pen, reduced indigenous African land ownership (80% of the population) to less than 13% of the land on a patchwork of reserves or 'homelands'.

Unable to eke out a living in the homelands and forced to pay taxes, African males were forced to avail themselves as cheap migrant labour on the mines. South African mining is still structurally based on migrant labour and this played a significant role in the events that left 44 people dead at Marikana in the North West Province of South Africa, during August 2012 when mineworkers



embarked on a wildcat strike and which brought the platinum mining industry to a complete shut-down.

South Africa's total reserves remain some of the world's most valuable, with an estimated worth of R30-trillion (\$3-trillion). Overall, the country is estimated to have the world's fifth-largest mining sector in terms of GDP value.

Mining houses and corporate investment interests occupy a strategically important part of the South African economy and wield enormous power and influence over the political structures of government and are able to effectively influence the Policy and Regulatory frameworks within the mining sector.

The recent announcement by Minister Gwede Mantashe and the Cabinet that they have withdrawn the Minerals and Petroleum Resources Development Act (MPRDA) Amendment Bill from the parliamentary process while simultaneously watering down the provisions of the Mining Charter have been underpinned by a deepening rapprochement between the South African Government, mining sector investors and mining houses.

For many years **prior to the first democratic elections in South Africa in 1994, the labour unions, who were highly organized and militant, and the broad mass democratic movement** who were represented in virtually every town across South Africa including mining towns, **formed the main counter balance to the combined power of the mining houses and the Apartheid regime.**

After 1994 with the dawn of a new democratic dispensation the main shapers of the mining regime has been government, mining houses and organised labour. **Communities, largely unorganised at a national level were broadly excluded both from the process of legislative and policy development, but also excluded from the benefits derived from the mining sector.**

Amidst successive governments, fluctuating economies and erratic commodity cycles, **communities and particularly women in affected communities remain the disproportionate bearers of the negative impacts of mining with none of the benefits accruing to them.** The promises of top down development and distribution have fallen far short and **evidence has begun to emerge of systemic inequalities¹² and deepening poverty undergirded by a systemic programme of legislative dispossession¹³.** The pivotal laws which seeks to enact this dispossession are the MPRDA, and the Traditional Leadership and Governance Framework Act 41 of 2003 (TLGFA).

According to the evidence emerging, these laws were developed as separate but interconnected pieces of legislation. **Their central aim was to enable politically connected business and traditional leaders to use the framework of the Apartheid homelands and their political connections to access South Africa's most significant source of wealth, the mining industry.** They would do this on terms that exclude the people who own and occupy the land on which mining takes place.

¹² Precious Metals II - A systemic Inequality.

¹³ Aninka Claasens- UCT - from a forthcoming MISTRA publication on Traditional Leadership and Customs in a Constitutional Democracy, due to launch early 2019.

This process has recently received a significant setback with the ruling by the Pretoria High Court which affirmed the rights of communities not to be deprived of their land without their consent.

The Interim Protection of Informal Land Rights Act (IPILRA) of 1996 provides that people with customary rights to land, amongst others, have “informal rights” for the purposes of the Act and that no-one with an informal right to land can lose that right without their consent.

The government and mining companies have rejected and opposed this legal provision for years. They say that the MPRDA only requires that a land owner be consulted about the impact of the mining prior to the granting of a mining right. Consultation does not give the land owner the right to say no they argue. It merely entitles the land owner to be notified of the planned mining and to raise objections – objections that may and which is almost always ignored.

The High Court rejected the argument of the Minister of Mineral Resources and found that the Minister must seek the consent of the affected land rights holders before granting a mining right.

The effects of **this judgement**, while it is more than likely that the Minister will appeal the ruling, **reaffirms the central proposition of the Constitution that citizens are given the right to participate in their own governance.**

Nonetheless, despite the many court rulings affirming the rights of citizens, the embedded and institutionalised processes between mining communities and mines have generally left communities disenfranchised and denied agency in formulating their own development paths.

MACUA and WAMUA's immutable call for “**nothing about us without us**” has articulated the simple yet profound demand by mining affected communities to be included as legitimate stakeholders in decisions that affect communities at risk.

STRUCTURAL INEQUALITY, STRUCTURAL VIOLENCE AND BUILDING AGENCY IN RESPONSE

Paul Farmer¹⁴ articulates a useful conception of structural violence. Farmer suggests that;

“structural violence is one way of describing social arrangements that put individuals and populations in harm’s way... The arrangements are structural because they are embedded in the political and economic organization of our social world; they are violent because they cause injury to people ... historically given (and often economically driven) processes and forces conspire to constrain individual agency. Structural violence is visited upon all those whose social status denies them access to the fruits of scientific and social progress.”

According to Kathleen Ho¹⁵, structural violence is evidenced by “**structural inequalities that systematically deny some people their basic human needs.**” This constitutes “**a structural violation of human rights in that structural violence yields a complex picture of inequality as it considers economic, political and social factors.**”

14 Farmer PE, Nizeye B, Stulac S, Keshavjee S (2006) Structural Violence and Clinical Medicine. PLoS Med 3(10): e449. doi:10.1371/journal.pmed.0030449

15 Ho, K. (2007). Structural Violence as a Human Rights Violation. Essex Human Rights Review Vol. 4.2.



Ho states that;

“structural violence theorists define violence as the avoidable disparity between the potential ability to fulfil basic needs and their actual fulfilment. The theory further locates the unequal share of power to decide over the distribution of resources as the pivotal causal factor of these avoidable structural inequalities. Recognizing that structural causes are responsible for constrained agency is pivotal in making the transition from structural violence to structural violations of human rights. It is the effect of structures on individual agency that results in this gap between potential and actual fulfilment of rights.”

This report highlights and brings into focus the systemic nature of the structural violence of exclusion and denial of agency, which has characterised the lived reality of mining affected communities.

This report is thus an extension of the findings of the Precious Metals II report, undertaken by the Society Work and Development Institute (SWOP), one of the University of Witwatersrand’s most enduring research organisations¹⁶, and AASA, which was published in 2015. In that report, which focused on one community, the community of Mapela in Limpopo, the researchers sought to consider evidence over a 7 year period between our first study in 2008 and the follow up study in 2015. The study found that:

¹⁶ <https://www.wits.ac.za/swop/>

The affected communities were in a systemic trap of inequality:

- The Communities are less food secure and less able to claim human rights than in 2008.
- That “the mining regime in South Africa is grossly skewed against the interests of communities who host mining operations, but also confirms that over the intervening period, the conditions of Mapela were not improved”
- Violations experienced by host communities were of a systemic and institutional nature.
- People have lost access to land due to mining (ploughing and grazing, firewood, herbs, trees, etc.).
- They were exposed to acute environmental problems such as water pollution and air pollution.
- Community water sources had been dried up due to excessive use by mining operations which led to severe water shortages and intermittent access to water.
- Families were separated from the graves of family members and loved ones through relocation.
- The relocation of communities has further marginalised social categories such as youth and women – where the mining company has dealt with household heads only and this favoured elders and males as per customary tradition.
- Mining has undermined local food security.

PARTICIPATION, DEMOCRACY AND MORE JUST OUTCOMES

Evidence presented from research conducted in the state of Kerala in India by Patrick Keller of Brown University, K.N. Hiralal of the Centre for Development Studies, Trivandrum, India and Shubham Chaudhuri of the World bank suggests that :

“Participation can improve the quality of governance both by providing better inputs (information and ideas) and by holding politicians and bureaucrats more accountable. Accountability can increase both as a result of a system of checks and balances (as in constitutional–legal theories of democracy) and as a result of cooperation between state and civil society actors”¹⁷

The campaign in Kerala India, to de-centralise governance of local government through ensuring broad-based participation among communities and marginalised groups led to some overwhelming conclusions. The research reported that *“our sample of local political and civil society elites overwhelmingly judged the campaign to have reduced existing levels of corruption and to have increased transparency and accountability of both representatives and officials.”*

Not only did the campaign to involve more people in their daily governance, reduce corruption and increase transparency and accountability, it also found that *“there is little doubt that our key respondents believe the campaign has indeed improved the efficacy of local development”* and *“a vast majority of respondents felt that development projects under the campaign were more appropriate than before.”*

¹⁷ https://www.patrickheller.com/uploads/1/5/3/7/15377686/building_local_democracy_wd.pdf

One of the most respected and sceptical commentators on the Kerala campaign, Kannan, offered a succinct assessment: *the campaign has not only created a “public platform for a vigilant civil society,” but has also ensured an “enabling environment for development.”*¹⁸

The experiences documented in the Kerala research, echoes similar outcomes of the social audits undertaken in mining affected communities of South Africa. **The process of building agency through evidence based methodologies has added weight to campaigns of local community based organisations and have allowed these organisations to engage powerful companies on a more equal footing.**

The social audits project also puts into practice the ideas encapsulated by the Peoples Mining Charter in which the central demand of mining affected communities, collected over a period of more than 18 months and involving over 150 mining affected communities across South Africa for the right to determine their own developmental paths. This central theme is captured in the slogan of WAMUA and MACUA *“Nothing About Us Without Us.”*¹⁹

Mining Legislation & Access to Information - CALS

MPRDA

The Constitutional Court²⁰ sets out the following explanation of the legal framework under which mining operates within the South African jurisdiction as follows:

“Equality, together with dignity and freedom, lie at the heart of the Constitution. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of substantive equality the Constitution provides for legislative and other measures to be made to protect and advance persons disadvantaged by unfair discrimination. The Constitution also furnishes the foundation for measures to redress inequalities in respect of access to the natural resources of the country. The Mineral and Petroleum Resources Development Act (MPRDA) was enacted amongst other things to give effect to those constitutional norms. It contains provisions that have a material impact on each of the levels referred to, namely that of individual ownership of land, community ownership of land and the empowerment of previously disadvantaged people to gain access to this country’s bounteous mineral resources.”

Amongst the objects of the Act are:

- a. The promotion of equitable access to the nation’s mineral and petroleum resources to all the people of South Africa;
- b. substantially and meaningfully expand opportunities for historically disadvantaged persons, including women and communities, to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation’s mineral and petroleum resources; and
- c. To ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.

18 Kannan, K. P., & Pillai, V. N. (2004). Development as freedom: an interpretation of the “Kerala model” No. Working Paper 361. Centre for Development Studies, Thiruvananthapuram

19 <https://www.facebook.com/groups/MACUASA/>

20 Bengwenyama CONSTITUTIONAL COURT OF SOUTH AFRICA Case CCT 39/10 [2010] ZACC 26

MINING CHARTER

The Mining Charter is in turn derived from the MPRDA in section 100 and is developed in order to:

- Ensure the attainment of Government's objectives of redressing historical, social and economic inequalities as stated in the Constitution,
- Develop a broad-based socio-economic empowerment Charter that will set the framework for targets and time table for effecting the entry into and active participation of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources and the beneficiation of such mineral resources

SLP

The Social Labour Plan which derives from Section 23 of the MPRDA which relates to the granting and duration of a mining right. Any applicant for a mining right must satisfy the Minister that the applicant is able to financially provide for the SLP and that granting the application will further the transformative objectives of the Act through measures such as the SLP.

Compliance with the SLP is both a requirement for the renewal of a mining right and an obligation of a mining rights holder. The holder is further obligated to submit annual reports to DMR on its compliance with its SLP.

The 2018 Mining Charter prescribes that: a Mining Rights Holder must in consultation with municipalities, mine communities, Traditional Authorities and affected stakeholders, identify development priorities of mine communities and should be completed in full unless they consult communities on any proposed changes.

Social Audits Process

Social audit methodology has a number of distinct steps which communities are encouraged to follow. These include:

- Step 1: Holding a Mass Meeting and Establishing a Mandate.
- Step 2: Preparing and Organising the Participant Group.
- Step 3: Training the Participant Group.
- Step 4: Developing and Testing Social Audit Questionnaires.
- Step 5: Gathering Evidence in the Community.
- Step 6: Capturing Community Experiences and Testimony for the Public Hearing.
- Step 7: Agreeing on the Main Findings and Organising the Evidence.
- Step 8: Preparing for the Public Hearing.
- Step 9: Holding the Public Hearing.
- Step 10: Reflecting and Following up.

BASELINES

As part of the steps outlined above, which are meant to serve as a guideline for communities when undertaking the process of social audits, the AASA/MACUA/WAMUA social audit process adapted the steps to include a baseline survey which was conducted at the start of every social audit.

The baseline process was used to obtain a community mandate from the community by obtaining community input through door to door visits and interviews with community members.

This ensured that the mandate to conduct the social audit was obtained using first hand interviews in which the community outlined the issues that they are most concerned about.

The baseline surveys were then used as a means to narrow down the issues to be audited and to present the findings to the community as part of step 1 to hold mass meetings to establish a mandate.

This additional step was a critical element in ensuring that the social audits did not inadvertently impose an agenda on the community and to help ensure that the social audit was focused on the issues that were most important to the community.

A Note on CALS' Experience in Accessing SLPs for Social Audits - Robert Krause

AIM OF THIS SECTION

This section is intended to recount the process we followed in obtaining social and labour plans in order that mine-affected communities could carry out their planned social audits of companies' compliance with their SLPs. CALS has undertaken to support the audits of five communities of SLPs by the following mines:

- a. Somkhele Coal Mine operated by Petmin near Mtubatuba, KZN;
- b. Grootgeluk Mine operated by Exarro near Lephalale, Limpopo;
- c. Bokoni Platinum Mine operated by Bokoni Platinum near Monametse, Limpopo;
- d. Orkney Mine by China Africa Resources in Orkney, North West; and
- e. several mines in close proximity to the community of Maremane, Northern Cape.²¹

CALS further drafted and lodged PAIA requests for social audits other than the identified five and which included Kutula and Klipspruit Mines near Ogies, Mpumalanga; and Lonmin Refinery, Ergo Mine and Marievale Mine near Brakpan, Gauteng.

LEGAL FRAMEWORK

SLPs as required by the Mineral and Petroleum Resources Development Act, 2002 (MPRDA), comprise binding legal commitments by mining companies with respect to developmental benefits for workers and community members.²²

All applicants for a mining right are required to submit an SLP as part of the application and need to satisfy the Minister that they have 'provided financially and otherwise for the prescribed social and labour plan.'²³ Once the mining right has been granted the company must comply with the SLP.²⁴ Further, the company must report annually to the regulator on its compliance with the SLP.²⁵

21 The SLPs sought by the community were for: Kitso Mine; Sedibeng iron ore; Lomoteng Manganese; Emmang Manganese; PMG Mining; Kolomela Iron Ore; Beeshoek mine operated by Assmang; and Morokwa Mine

22 Act No. 28 of 2002

23 Section 23 (1) (e) of the MPRDA

24 Section 25 (2) (f) of the MPRDA

25 Section 25 (2) (h) of the MPRDA



The objectives of SLPs are listed in regulation 41 of the MPRD regulations:

- a. 'Promote employment and advance the social and economic welfare of all South Africans;
- b. Contribute to the transformation of the mining industry; and
- c. Ensure that holders of mining rights contribute towards the socio-economic development of the areas in which they are operating.'

It has always been the position of mining-affected communities and partner organisations, that SLPs are public documents.

First, the intended beneficiaries of SLPs are mining-affected communities and workers. In order to meaningfully benefit it is vital to know what the obligations and budgetary allocations are, as well as the actual record of compliance and patterns of expenditure. This would be very difficult to achieve were SLPs and supporting documents (annual compliance reports, implementation plans etc) were confidential.

Second, the obligation for companies to comply with SLPs is a public statutory obligation in terms of Section 25 (2) (f) of the MPRDA. Such obligations are therefore owed to the beneficiaries (communities and workers) but also the public as a whole.

Third, the MPRDA enshrines the principle of custodianship, recognising that the minerals belong to the people as a whole and the state's role is to act as custodian.²⁶ The owners of the - (the whole public) have a right to know how their minerals are being managed and this requires accessing information pertaining to the benefits streams from mining, including SLPs and supporting documents.

However, in the absence of explicit provisions in law about SLPs being publicly available, companies often treat the documents as confidential and refuse access. The DMR has in recent years granted access to the documents but only through the cumbersome PAIA process which is the subject of this section, one which is especially burdensome to the intended beneficiaries of SLPs.

It is hoped that this situation will change now that the Mining Charter, 2018 is in force, with its explicit provision that SLPs are to be published and in predominant languages of the areas in which the mine operates.²⁷

²⁶ Section 3 of the MPRDA

²⁷ 2.5.2 of the Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018 (Mining Charter, 2018).

OBTAINING ACCESS TO SLPs

OBTAINING ACCESS TO SOMKHELE COAL MINE SLP, KZN

Stage 1: Lodging request

For all the PAIA requests discussed in this section, the standard process preferred by the DMR was followed.

CALS filled in the DMR's departmental PAIA form and specified the documents we were requesting (SLPs and annual compliance reports for the mining operations in question). For the ease of the officials we used separate forms for the SLP/s in different provinces so that they technically become separate requests.

In each case, hard copies of the forms completed were submitted at the DMR's national offices in Tshwane. This is a very difficult process for most members of mine-affected communities who reside far from Pretoria, and it is vital that the department allow other methods of submitting requests.

What this entails is going to reception before paying the prescribed request fee (R35 per separate PAIA form submitted) at the cashier's office. It must be noted that there is provision on the form for exemption from the request fee, which mine-affected communities can use when they make requests in their own name. After payment one is presented with a receipt. One then goes to reception and the receptionists will call a departmental official to receive the request from you on showing of the receipt. One receives a request reference number should one need to follow up if there are delays.

Stage 2: Decision

PAIA requires that the department communicate its decision to the requestor within 30 days of lodging the request, though they can extend the period by 30 days on a number of grounds and if they notify the person lodging the request.

As was the case for all the SLP requests lodged for the social audit project, we received a decision from the DMR (legal) on the request within a period close to the prescribed 30 days. Like the vast majority of our requests for SLP and/or annual compliance reports, the decision of the department was to grant access.

Stage 3: Obtaining access

While the national office of the DMR is the decision-making authority on whether to grant access, the SLPs themselves are stored in the departments regional offices (corresponding with the 9 provinces). What is meant to happen is that the region contact the requestor once a decision has been made to grant access to all or some of the records requested. In practice, only a single region of the DMR has done so. The requestor therefore needs to take the initiative to contact the region to find out when the document will be printed and the collection fee to be charged (unless the requestor has obtained an exemption from paying the collection fee).

As was the case for the SLPs held in the Northern Cape region, the Durban office is too far from CALS' office in Johannesburg to drive there and back on the same day. We therefore arranged with a member of the core community group residing nearby to collect the documents and courier them to CALS.

Somkhele was one of the batch of SLPs in four provinces that we were granted access to by the national DMR on 11 January 2018.

In March CALS engaged with the DMR KZN region. We tried contacting them by email and phoning the number provided for the office on the DMR website. We did not obtain a response to the email and the phone lines for the KZN region in Durban were down for several week.

The Centre for Environmental Rights (CER) assisted us by providing us with a document providing the contact details of DMR regional managers, which included cellphone as well as landline details. We were able to establish communication via the cell number. The documents were soon printed and we were provided with the collection fee. We also arranged with the Department that Billy Mnqondo from the community core group would collect the document for us.

Once the document was couriered to us, we, as for all the SLPs, wrote a brief document summarising the commitments. When we arrived in the community for the pre-audit meeting we brought along about 35 copies of the SLP summary along with roughly 5 copies of the SLP.

OBTAINING ACCESS TO BOKONI COAL MINE, SEKHUKHUNE, LIMPOPO

Stage 1: Lodging request

Unlike the other SLPs, CALS had already obtained the Bokoni SLP prior to the social auditing project. A community member had requested the SLP and CALS submitted its request on 4 April 2017 using the same procedure discussed above (for Somkhele Coal Mine)

Stage 2: Decision

The request was successful. Access was granted by the National DMR soon afterwards on the 5 May 2017. Stage 3: Obtaining Access

On the 30 May 2017 CALS obtained from Limpopo DMR confirmation that the SLP had been printed and the access fee. On 8 June 2018, CALS travelled to collect the SLP.

Note that this SLP was obtained prior to the retirement in February 2018 of Mr Robert Munyadziwa (Mineral Regulation) who was the contact person for accessing SLPs in the Limpopo regional office. Since his retirement access has been rendered more difficult.



OBTAINING ACCESS TO EXARRO GROOTGELUK SLP, LEPHALALE, LIMPOPO

Stage 1: Lodging request

The request was submitted in August 2017 using the same procedure discussed above (under the write up on the Somkhele request)

Stage 2: Decision

The request was successful. The decision to grant access was made by national DMR, soon afterwards, on 6 September 2017.

Stage 3: Obtaining Access

About a month later, on 11 October we were able to obtain confirmation from the Limpopo DMR that the SLP had been printed. We collected the documents in November. At that point the region refused to provide the financial provision.

OBTAINING ACCESS TO SLPS IN NORTHERN CAPE (KITSO, ETC)

Stage 1: Lodging Request

Like the other cases, we followed the procedure of physical lodgement of PAIA forms at the national DMR office in Pretoria. The request was submitted, along with a batch of requests from other provinces in November 2017. This request was unique in that the community (Maremane) were surrounded by multiple mines and they were therefore interested in auditing as many as 8 mines (they sent a list to ActionAid) namely Kitso Mine; Sedibeng iron ore; Lomoteng Manganese; Emmang Manganese; PMG Mining; Kolomela Iron Ore; Beeshoek mine operated by Assmang; Morokwa Mine.

Stage 2: Decision

The request was successful. The decision to grant access was made by national DMR on 11 January 2018.

Stage 3: Obtaining Access

Like the case of Somkhele in the KZN, the documents (held at the DMR's region in Kimberley) were very remote so we arranged with members of the community participating in social audits, Maramane, to collect the SLPs.

The Northern Cape was unique in that the official contacted me pro-actively (calling me on my phone). The region where SLPs are held are meant to contact the successful requestor to arrange access but this has not been our experience of how it works in practice.

The SLP was collected by Lucky Seekoi who brought them to CALS when he attended an attorney client meeting in his capacity as a MACUA member.

Later, when CALS analysed the SLPS to present to the community pre-social audit workshop, it emerged that some of the SLPs like Kitso were not present and others PMG Mining Limited and Sedibeng were incomplete documents (sometimes tables and headings without the required content).

In our engagement with the region, they remained co-operative and we have arranged with Lucky to collect the outstanding documents. What also emerged (this is a common phenomenon) is that the Kitso mining operation was, at the time of the submission of the SLP, called Misty Falls 45 Pty Ltd.

OBTAINING SLPs IN THE NORTH WEST (ORKNEY MINE BY CHINA AFRICA RESOURCES, ORKNEY, NORTH WEST)

Stage 1: Lodging Request

Like the other cases, we followed the procedure of physical lodgement of PAIA forms at the national DMR office in Pretoria. The request was submitted in August 2017.

Stage 2: Decision

The request was successful. The decision to grant access was made by national DMR on 6 September 2017.

Stage 3: Obtaining Access

When we spoke to Mr Mandlazi of North West Regional Office on the telephone following the positive decision, we were informed that the SLP was still a draft and that the department would not provide drafts. We would, however, receive the SLP when it was finalised. On 21 February 2018 I wrote an email to Mr Mandlazi and Mr Modiselle (national DMR) enquiring firstly what the status of the SLP was, second whether if it was a draft whether we could still obtain it and third, whether we could obtain the prior SLP (the latest final SLP). After this I spoke to national DMR to assist with ensuring the North West office finalised the copying of the draft SLP and provided me with a collection fee. I was then able to arrange collection of the previous SLP from the North West.

After I collected the Orkney SLP I noticed that it was for a different company, Harmony Gold, though the name of the mine was the same.

When I phoned North West it emerged that there had been a transfer of the mining right to China Africa which had still not finalised its SLP. Online research however revealed that the transfer of the mining right to China Africa had occurred as early as 2012. This suggested that **China Africa resources had a mining right without an SLP for over five years.**

The community therefore had to proceed with the social audit based on Harmony Gold's SLP.

OVERALL TRENDS

Financial information treated as confidential

Limpopo Municipality were of the view that the financial provision had to be redacted as it was confidential information. **It is vital that beneficiaries of SLPs know how money intended for their benefit is spent and whether there is any irregular or wasteful expenditure.** This requires that all have access to information around how much is budgeted for each SLP deliverable and how the money was actually spent. **In more than one area in which CALS has worked with a community on SLPs, the community have pointed out that the particular structure built (e.g. community hall) was very small and basic relative to the amount budgeted for in the SLP.** It remains to be seen whether this will change with the coming into force of the Mining Charter, 2018, which provides that all SLPs must be published in English and languages spoken by communities and does not exclude the financial provision.

Communities could not access drafts of SLPs

In the case of the Orkney mine, we were informed that the current owner, China Africa Resources, did not have a current SLP but a draft that had not yet been approved by the DMR.

The department, however, refused to provide us with access to the document, on the basis that it is the department's policy not to provide the public with drafts. The

department were aware that the document was sought by a directly-affected community.

The practice of the department to deny communities access to draft SLPs is a major barrier to communities participating meaningfully in the design of the SLP.

This participation is required to ensure that SLPs contain projects that address the actual needs of the particular community who are the intended beneficiaries of the plan.

Dysfunctionality of DMR Regional Offices inhibits access to SLPs

It is in the public domain that there has been corruption and maladministration at regional DMR offices and that the Department has closed the offices of Limpopo and Mpumalanga for this reason.²⁸

In 2018 CALS has experienced particular difficulties in accessing SLPs from these two provinces along with the North West. An example was the attempt to access SLPs for Kutula and Klipspruit SLPs (for an audit by women CALS is not directly participating in).

Despite authorisation from the department to access these documents on 11 January 2018, attempts by CALS and ActionAid to access these documents by email and phone calls were met with a radio silence. For at least some of this time period, the lack of response would have been due to the fact that the office had been closed.

On other occasions it has appeared that **some regions have difficulties in finding the very SLPs they are responsible and have a poor record management system.** When attempting to access an SLP some time prior to this project, the same Mpumalanga office requested farm names in addition to the names of the company and the mining operation, information which the DMR were in a better position to know than a public interest law organisation. **These problems considerably lengthen the time and resources required for a community member to access SLPs.**

The logistical, administrative burden on communities seeking to access SLPs

The lack of a proactive dissemination programme, combined with the DMR's standard process for lodging PAIA requests and the problems in the regions outlined above, **imposes a considerable burden on communities seeking to access public documents like SLPs.**

The DMR prefers applications to be submitted physically at its headquarters in Pretoria that is far from where mining-affected communities reside and which therefore poses transport costs. **There are both request and access fee** (the latter at 60 cents per page).

While there is an option of waiving the fee using a motivation there is no guarantee that the department will accept each instance. Due in part to the problem within the regions, **multiple phone calls, often over several months are required to arrange access to the document,** even after the national office of the DMR (which is the decision-maker) has authorised access.

28 <https://www.iol.co.za/business-report/economy/gwede-mantashe-takes-strong-stance-against-mining-licences-fraud-16942475>.

CONCLUSION

Access to information is a right in terms of Section 32 of the Constitution. The obstacles to accessing SLPs (including drafts) and related documents that have been described above, are unjustifiably frustrating mining-affected communities realisation of this right.

For mining-affected communities **this remains a ‘paper right.’** SAHRC, in its report on the Underlying Challenges of Mining-Affected Communities, has ordered the DMR to put in place measures to ensure SLPs and other public documents are immediately made available to the public.²⁹

The Mining Charter, 2018 requires that SLPs are published and translated into the languages spoken by directly-affected communities. Pressure by communities and broader civil society will be critical to ensure that instant availability of SLPs becomes a reality for communities.



²⁹ South African Human Rights Commission Investigative Hearing Report on the Socio-economic Challenges of Mining-Affected Communities. At 94-95. <https://www.sahrc.org.za/home/21/files/SAHRC%20Mining%20communities%20report%20FINAL.pdf>

METHODOLOGIES

The Social Audits and the research emanating from the process was aimed at tracing the socio, political and economic conditions of mining-affected communities in South Africa using participatory research and the social audit methodology to build community agency.

The questions posed in the baseline survey prompted exploratory and descriptive answers from respondents giving insight into their lived realities.

The same methodology was followed to ensure data integrity.

Objectives

- To describe the demographics of mining communities.
- To build capacity of communities to conduct research for social audit purposes.
- To illuminate the social, political and economic challenges faced by communities affected by mining.
- To quantify the extent to which mining communities are aware of the SLP processes and other legislative and regulatory mechanisms which were aimed at benefiting them.

Data Collection

A purposive sampling process of selecting communities was arrived at through a collaborative process with the leaders of MACUA and WAMUA with the intention of identifying a broad range of communities, covering different provinces, mining companies and types of mining operations.

Upon selection of the communities the MACUA and WAMUA coordinators of the relevant province was tasked with identifying and selecting a core group of volunteers who were tasked with driving the process at local community level.

Each core group was immersed in extensive training workshops to unpack and understand the social audit methodology, and its potential for building local organisation, and for developing and affirming the agency of the community and community groups.

In most cases training of the core groups was conducted in partnership with the Social Audit Network³⁰ who have developed a guide to conducting social audits in South Africa³¹ and who have extensive experience in conducting social audits in various parts of South Africa. AASA is also a member of the Social Audits Network.

Following the extensive training over 3-5 days, during which the core group volunteers work on developing the survey questions, door-to-door visits are conducted in the community to gather data.

The data was then compiled and assessed by the core groups and evaluations and assessments of the processes were undertaken.

30 <https://socialaudits.org.za/>

31 <https://socialaudits.org.za/wp-content/uploads/2018/03/social-audit-epdf-july-2016.pdf>

The data was then compiled into survey reports by the AASA team and presented to the community for feedback and verification.

The data in this report was organised and counted according to community and category with a thematic analysis of qualitative data.

The Social Audit Process conducted in Phola Mpumalanga, was undertaken by a core group and volunteers made up entirely of women and the survey questions were directed mainly at women. These results have been incorporated into the broader findings and where significant outliers have emerged we deal with these separately.

Study areas: Mining-Affected Communities in South Africa and Mines

	PROVINCE	AREA	COMMUNITY	MINING COMPANY (EST)
1	Limpopo	Mokopane	Ga-Chaba	Anglo Platinum ³²
2	Limpopo	Lephalale	Maraphong	Exxaro - Grootgeluk ³³
3	Limpopo	Sekhukhune	Atok	Bokoni Platinum Mine ³⁴
4	Mpumalanga	Phola		South 32 ³⁵
5	Gauteng	Ekurhuleni	Springs	Ergo ³⁶
6	North West	Rustenburg		Orkney Mine by China Africa Resources
7	North West	Kanana	Matlosana	Harmony
8	Free State	Welkom	Thabong	Harmony Gold
9	KZN	Somkhhele	Mpukunyoni	Tendele Coal Mine)
10	Northern Cape	Postmasburg	Maremane	Samancor; Kitso; Sedibeng iron ore; Lomoteng Manganese; Emmang Manganese; PMG Mining; Kolomela Iron Ore; Beeshoek mine operated by Assmang; Morokwa Mine

32 https://www.angloamericanplatinum.com/site-services/mine_profile_mogalakwena.aspx

33 <http://www.miningweekly.com/print-version/grootegeeluk-coal-mine-2000-06-09>

34 The new mining right was converted from the old mining right
<http://www.atlatsaresources.co.za/our-assets/bokoni>

35 <https://mining-atlas.com/operation/Klipspruit-Thermal-Coal-Mine.php>

36 <http://www.drdgold.com/our-business/ergo>

FINDINGS

Baseline data has been collected across several communities in South Africa. The study in Phola, Mpumalanga was the pilot case where a women's only social audit will be carried out, and thus all respondents of the Phola baseline were female.

The data is presented per category presenting community results side-by-side.

Some respondents opted not to answer certain questions and this has meant that not all answers will reflect the total number of respondents.

Some studies are still being carried out, thus the following studies have completed their baseline studies.

Baseline studies were completed in:

PROVINCE	COMMUNITY	NO. OF RESPONDENTS
Limpopo	Lephalale	90
Limpopo	Sekhukhune	80
North West	Kanana	71
Gauteng	Ekurhuleni	80
Northern Cape	Postmasburg	107
KZN	Somkhele	111
Free State	Welkom	76
Mpumalanga	Phola	144

The data collected serves to answer the following questions:

1. What are the current living conditions of communities near mining?
2. What are the main challenges faced by communities living near mining?
3. To what extent do communities know about the SLP process?



Demographics

Survey results highlighting the demographic data of the respondents points to important observations of the socioeconomic conditions of the different areas surveyed as well as the similarities across the different communities who participated in the surveys.

1. SEX

The data was collected from a total of 758 respondents of which **64% or 483 were women and 36% or 275 respondents were men**. The Phola survey was conducted by women and all respondents from this survey were women.

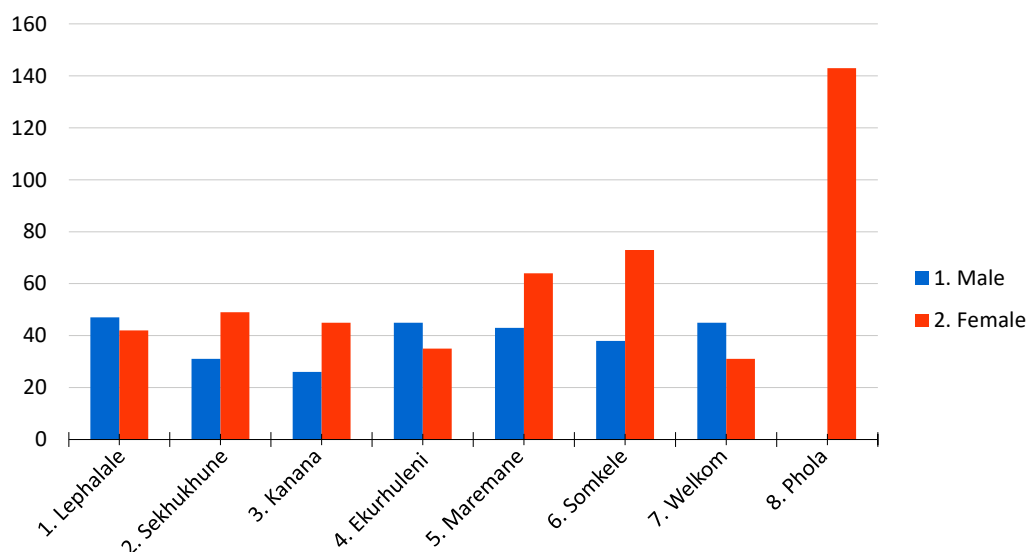


Figure 1.1. Sex of respondents

2. MARITAL STATUS

Of the 759 respondents who chose to respond to the question, **62% or 470 respondents indicated that they were single, 26% or 198 respondents indicated they were married, 10% or 74 respondents were widowed and 2% indicated that they were divorced or separated**.

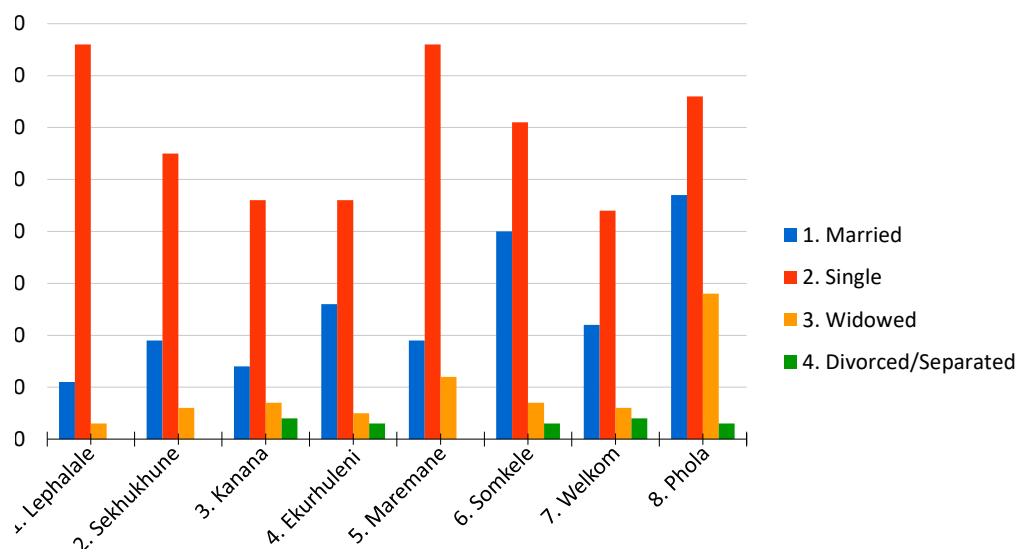


Figure 2.1. Marital status of respondents across 8 communities

3. HIGHEST EDUCATIONAL ATTAINMENT

Of the 759 respondents who answered this question, **64% or 487 people indicated that their highest level of formal education was up to secondary level.** 102 Respondents or **13% indicated tertiary level attainment while 1% or 10 respondents indicated some level of vocational training. 21% of respondents or 160 respondents obtained primary level or had no formal education.**

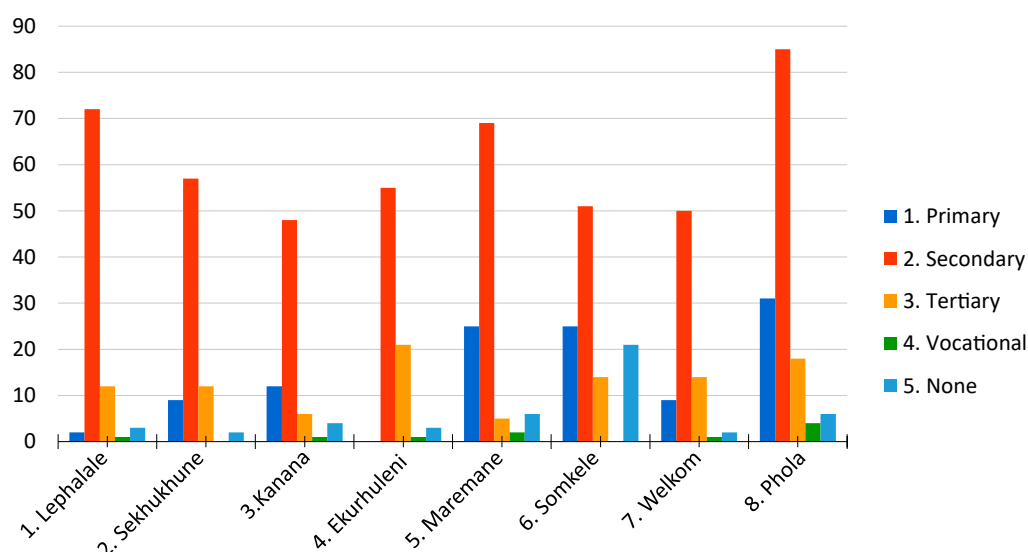


Figure 3.1. Highest educational attainment

4. HOUSEHOLD BREADWINNER AND SOURCE OF LIVELIHOOD

Of the 704 respondents who chose to answer this question, **32% or 225 people indicated that the parent of the home was the main breadwinner, while 224 (32%) indicated that they were the main breadwinner in the home.** 109 (15%) respondents indicated that their spouse was the main breadwinner, 60 (9%) indicated a grandmother as the main breadwinner and 86 (12%) indicated that the main breadwinner was either a son, daughter or other relative.

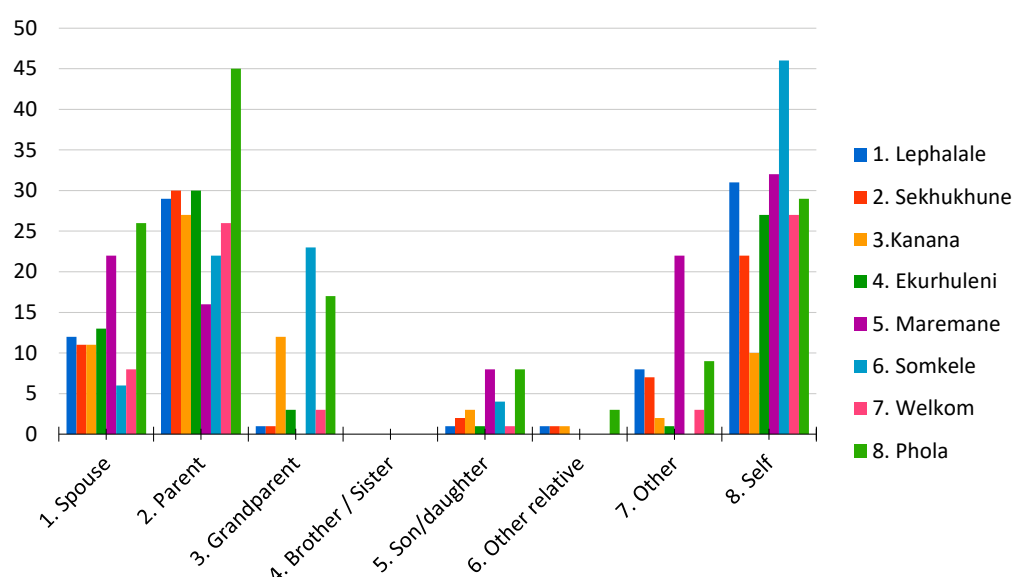


Figure 4.1. Household breadwinners

5. SOURCES OF LIVELIHOOD

The main sources of livelihood for the 730 respondents who answered this question indicates a significant reliance on **social grants with 322 (44%) respondents indicating this as their main source of livelihood**. This is particularly notable in Phola (Mpumalanga) and Somkhele (Kwazulu Natal) where over 50% of those that responded to this question are reliant on social grants.

Other sources of livelihoods includes; **employment, whether formal or informal, at 30%** or 223 respondents, **Self employed at 12%** or 84 respondents and livelihoods sources described as other or **petty trade at 12%** or 74 respondents.

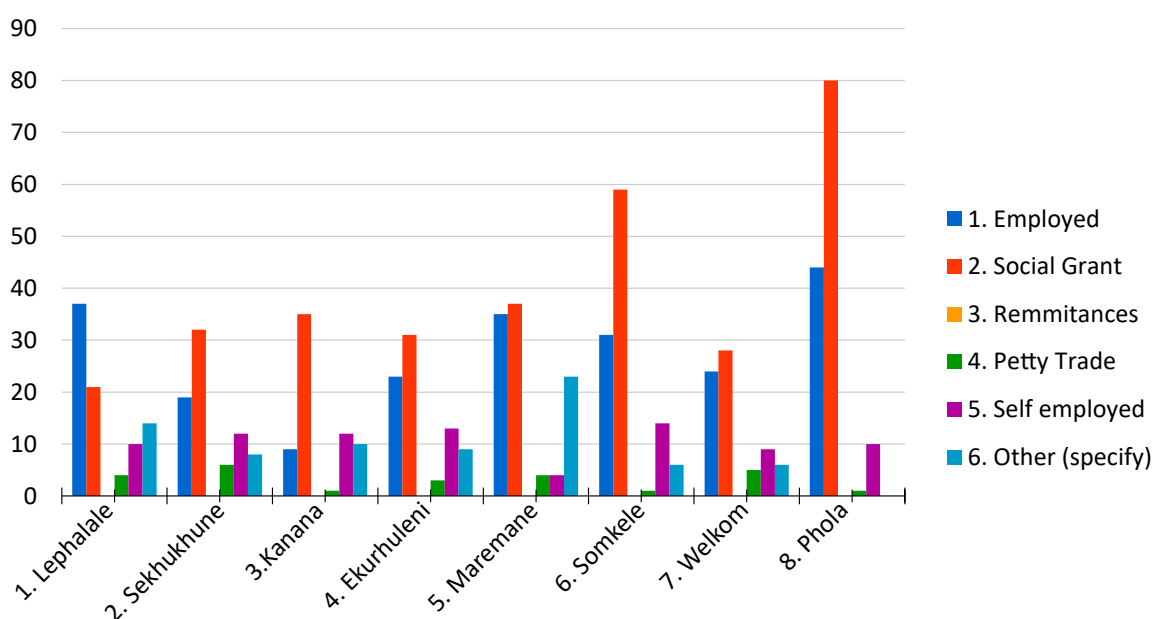


Figure 5.1. Household sources of livelihood

6. EMPLOYMENT AT THE MINE

Respondents were asked if anyone in their household was or had ever been employed by the local mining company. If there were individuals with jobs, the type of job was noted. These results have excluded the option "n/a" from the results, in order to showcase the types of jobs that are held by those in the community.

Of the 759 respondents who chose to answer this question, **73% or 553 respondents indicated that there were no individuals in their household who either held a job at the mine or who was previously employed by the mine.**

Of the 27% or 206 respondents who indicated that there were individuals from their household who had either previously been or currently are employed at the mine only 184 respondents indicated which type of employment.

Of the 184 respondents who did indicate the type of employment opportunities occupied by individuals in their household, 76 or **41% indicated that they were casual manual jobs on a piecemeal or contract basis**, with a further 60 respondents or **33% describing the employment as other**. 36 respondents 20% indicated some form of professional employment and 12 respondents or 6% indicated employment as clerical work.

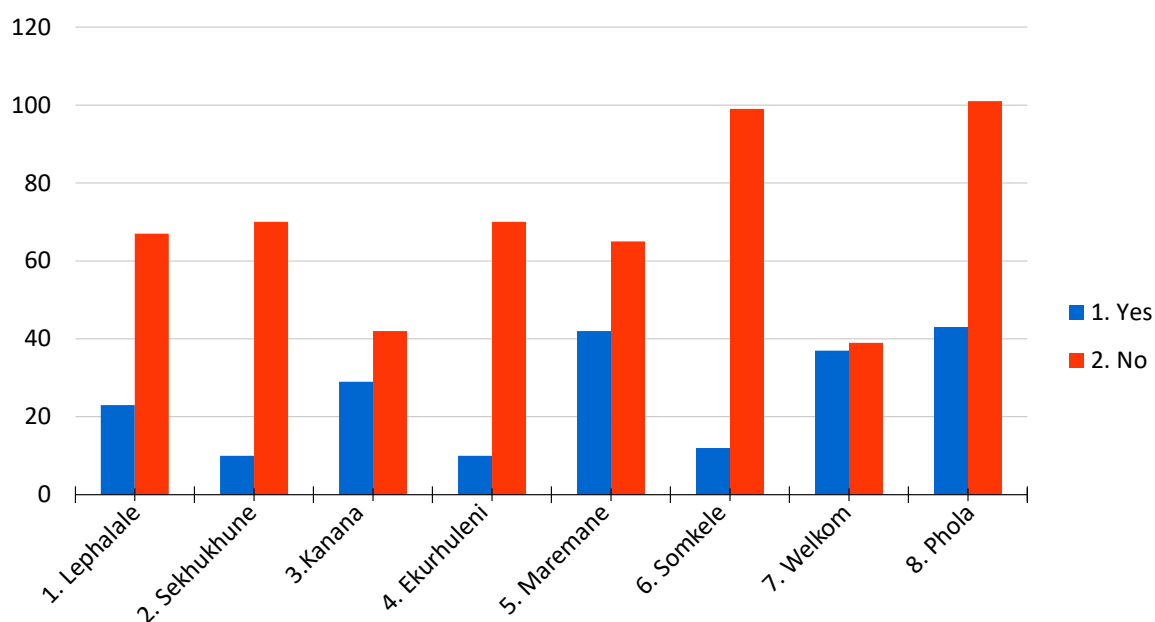


Figure 6.1. Mine employment in communities

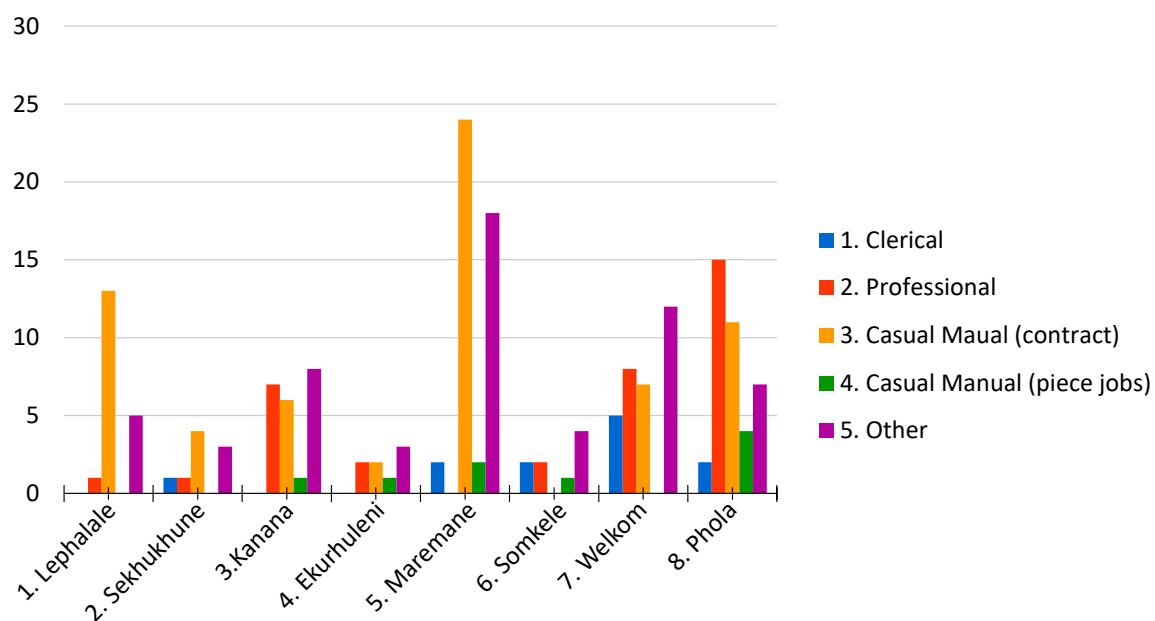


Figure 6.2 Type of mine employment for those employed

7. SLP AWARENESS

In testing the level of community involvement and awareness with regards to issues that directly affected them, the baseline survey asked respondents if they knew what a Social and Labour Plan was.

The overwhelming response **91% or 690 respondents did not know what an SLP was.** Of the 66 respondents (9%) who did know about or heard about an SLP, many indicated that it was an agreement between the mine and local government to allow the mine to operate.

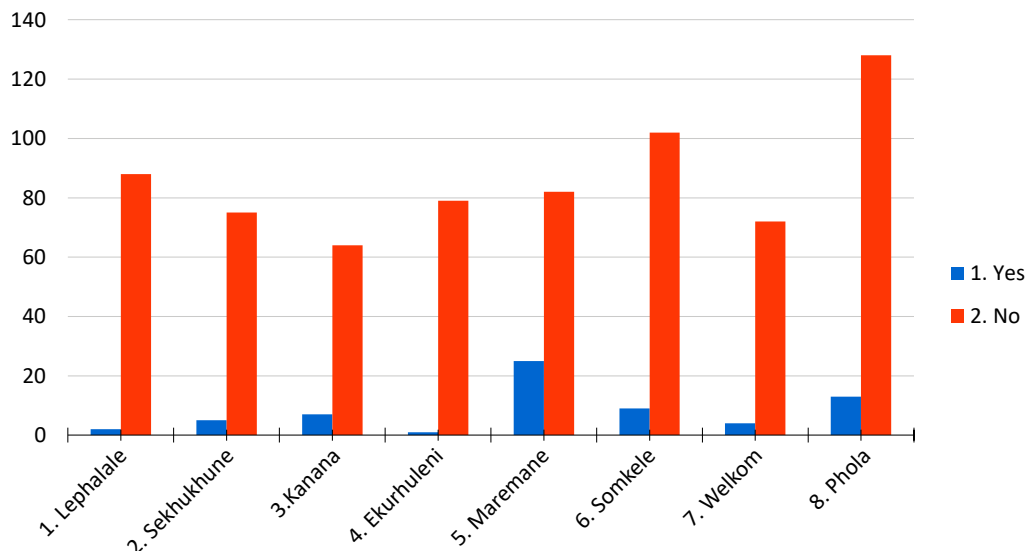


Figure 7.1. Do you know what an SLP is?

8. COMMUNITY ENGAGEMENT

Respondents were asked if they knew of community structures in their area that engaged with the mine. Of those who chose to answer the question **85% did not know of any structures engaging with the mine and 95% had not seen an SLP document before.**

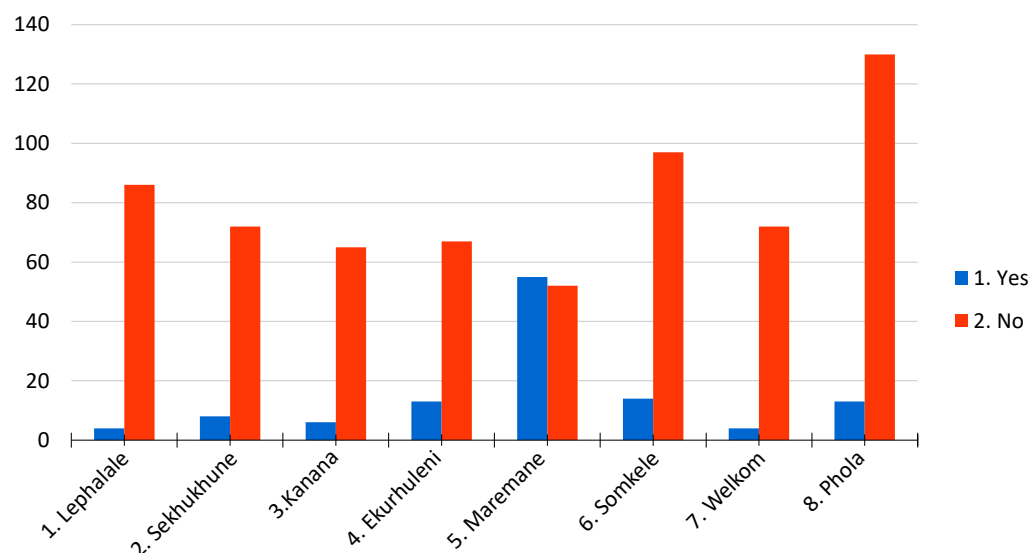


Figure 8.1. Do you know of Community Structures with the mine?

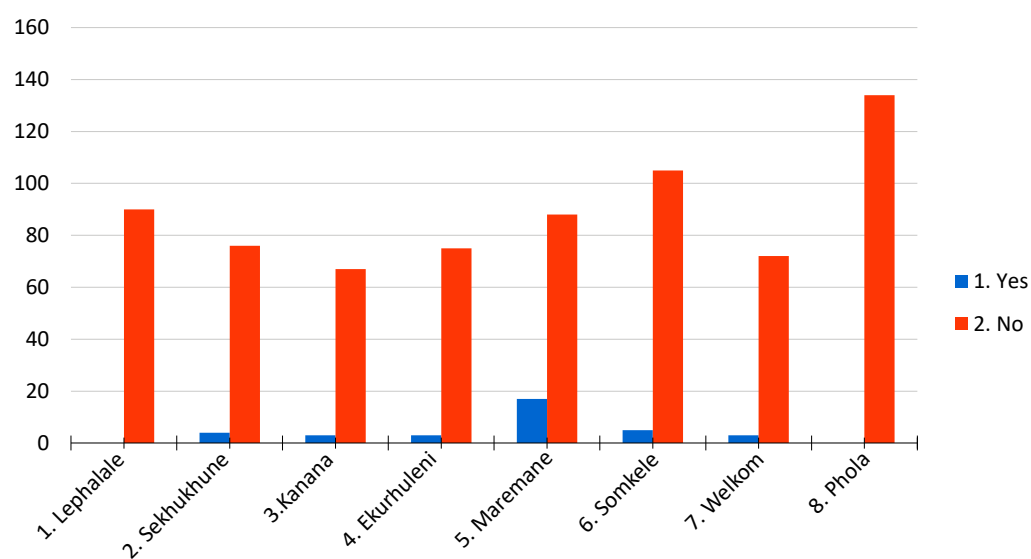


Figure 8.2. Have you seen the local SLP?



COMMUNITY NARRATIVES

CORE THEMES

Qualitative data explores the challenges perceived by those living near mining areas. While each community had specific concerns which were directly related to their lived reality and context, the aggregate themes which emerged from the 543 respondents indicate that **environmental issues, such as air, land and water pollution**, which impacts on human and livestock health, soil and water quality, **were by far the greatest concern across the mining communities surveyed.**

Concerns about environmental impacts were closely **followed by concerns around the unsafe environment produced by mining activities.** These relate to concerns about blasting tremors and damage to houses caused by the blasting as well as rising crime within communities.

Following from the environmental concerns and to some extent the concerns about a generally unsafe environment, **the issue of health, ranging from TB and HIV to rash and skin infections and concerns about asthma, silicosis and chest and lung problems and cancer are some of the issues highlighted by respondents.**

The data and responses from respondents suggest that immediate health and safety concerns outweighed issues of corruption and accountability even though the theme of corruption, nepotism and lack of accountability was consistent throughout the surveyed communities.



Figure 9. Issues facing the community



LOCAL THEMES

LEPHALALE

The central issues that emerged from respondent answers related to **Unemployment** (47 responses).

A closer inspection of the respondent responses highlight a lack of employment opportunities for locals, as well as **resentment at the nepotism and bribery that is perceived to be at play for those jobs that do become available**. One respondent explained that: *“the water we drink is not clean we get sick, our leaders are bribed and they are filling up their pockets, the mine caused the informal settlement and they should not hire in contracts because local people are left unemployed.”*

The second most prominent concern is air pollution, followed by access to basic services like safe water and housing.

The poor environmental conditions are believed to be the cause of sickness in the area including TB.

What is described as overpopulation in the region because of migrants seeking work opportunities near and around mines, is linked to the establishment of informal settlements, the rise of HIV/AIDS, sex work and teenage pregnancy.

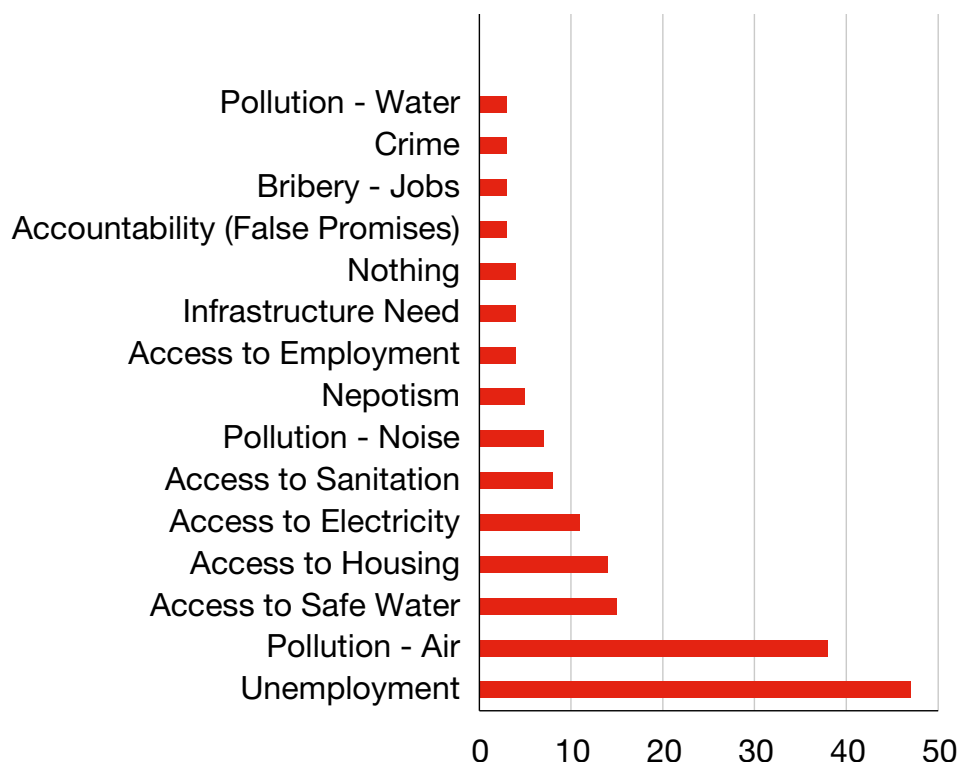


Figure 10. Local themes - Lephalale

SEKHUKHUNE

The biggest problem faced by this community is air pollution according to the respondents of the baseline surveys. This includes the dust and smoke generated by the mine. Numerous forms of pollution are a primary concern for the community including noise and water pollution. This has impacted on the community's access to sufficient, safe water.

Unemployment is another core concern (21 responses). Respondents stated that in order to secure jobs, locals are required to pay bribes. Bribes are usually paid to members of local employment forums who act as gatekeepers to accessing employment opportunities with the mines.

Along with this influx of job seekers and the growth of informal settlements around the mining areas, has been the rise of pathologies which includes issues of teenage pregnancy, drugs and crime.

One respondent explained the community challenges thus: *"They do not employ people permanently, they do not provide toilets and water or electricity, they bribe the community leaders about issues related to the community."*

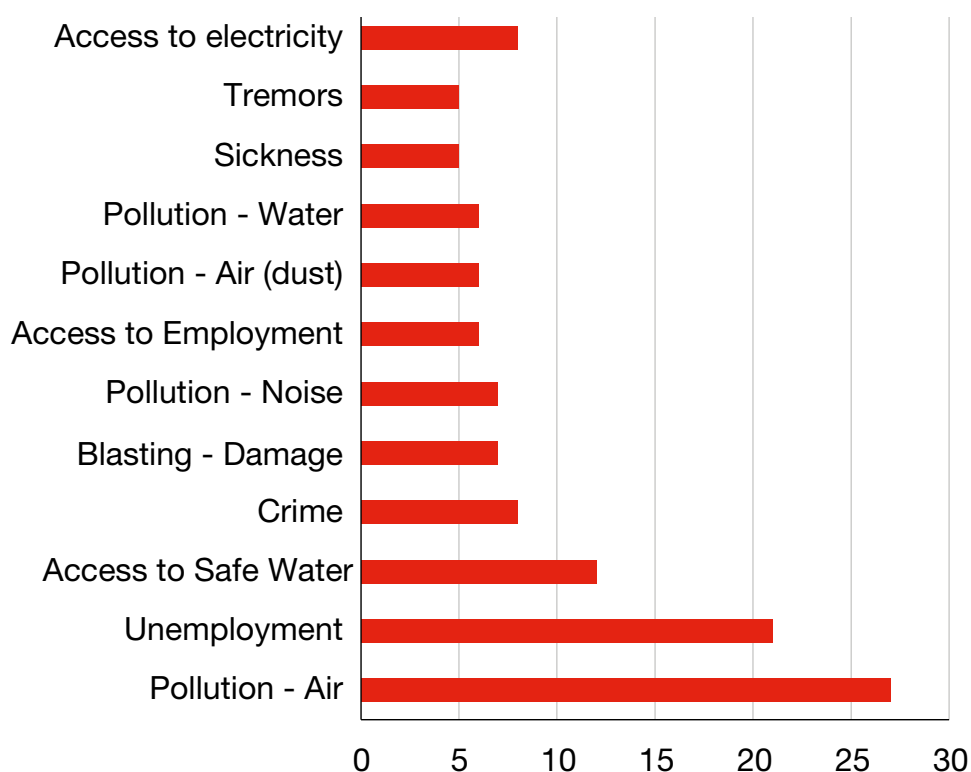


Figure 11. Local themes - Sekhukhune

KANANA

Respondents (28) in Kanana highlighted the challenges they are facing in terms of **cracked and damaged houses due to blasting and tremors as a result of mining.**

Unemployment is the second most prevalent issue faced by the community, matched by air pollution. One respondent claimed that sickness due to air pollution has limited the ability of residents to acquire employment. *“They do not employ the community and also our community is now medically unfit due to chemicals that our mine is using and they do not even supply us with skills development centres - People are unable to independently access livelihood opportunities after getting sick at the mines.”*

Pollution is commonly referred to among respondents, ranging from land to water pollution, which is linked by the respondents to a generally unsafe and unhealthy environment.

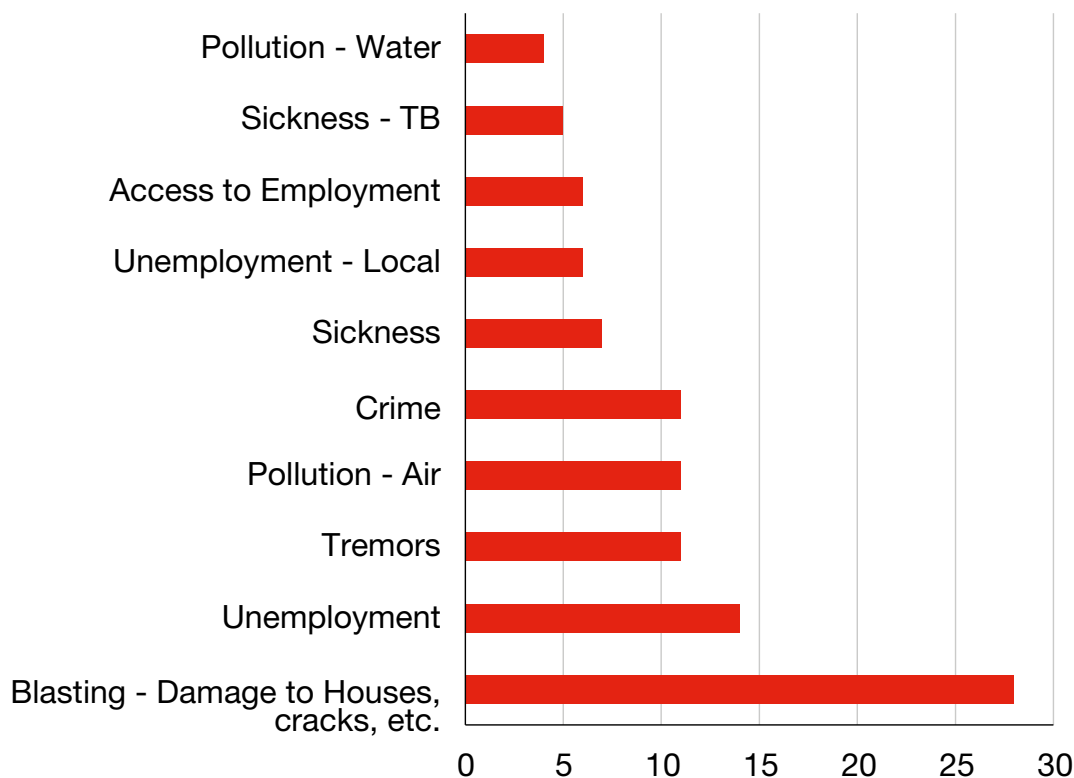


Figure 12. Local themes - Kanana

EKURHULENI.

Air pollution is a significant concern in the community with the most prevalent response (63).

This is described as dangerous air pollution, toxic air that is inhaled, or fumes and gasses from the mine. Respondents claimed that children were especially very sick with illnesses ranging from Asthma to TB and severe chest pains. One respondent expressed their concerns as follows: *"We inhale something that we do not know of, affecting our health and the soil is contaminated as we can not grow any crops"*

Furthermore it was noted that the level of chemicals and toxicity in the environment causes rust damage to the roofs of houses.

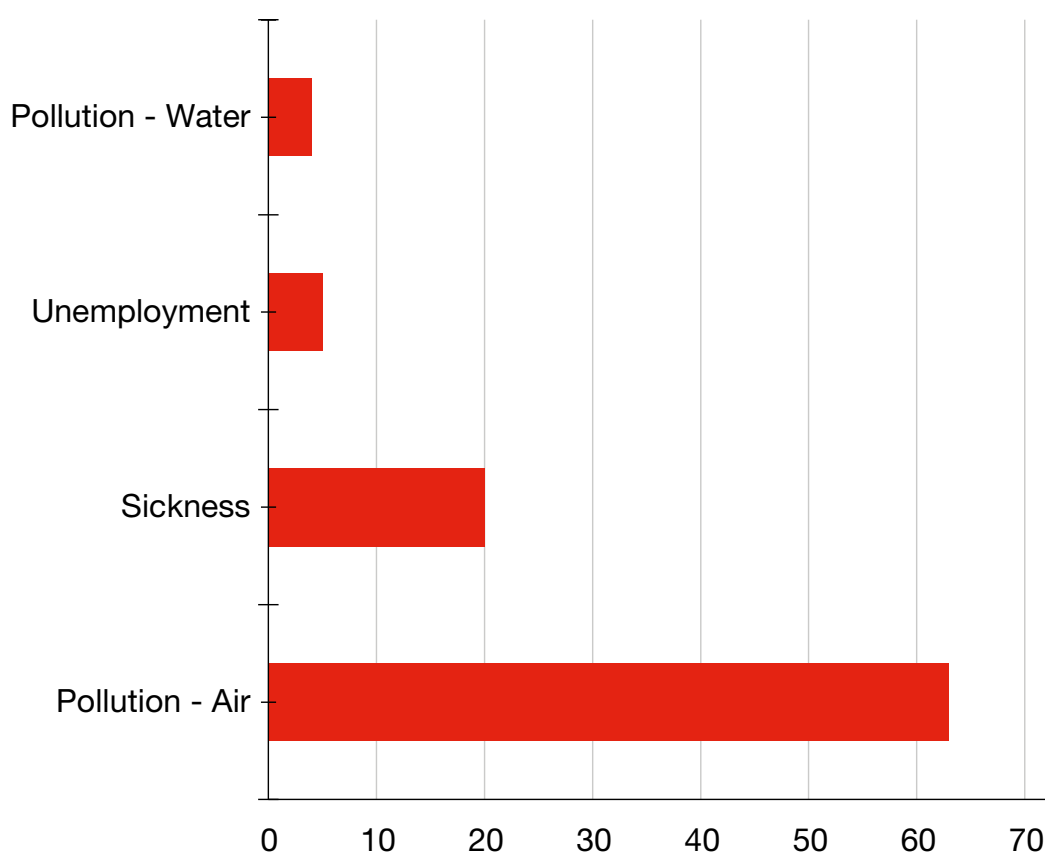


Figure 13. Local themes Ekurhuleni

MAREMANE

A significant community **concern (42 mentions) is the dust**. This is a result of mining operations, machinery on poor untarred roads, and a lack of adequate rehabilitation of the surrounding mined areas. The dust results in significant health concerns for the community.

There are a variety of illnesses experienced by the community, most likely exacerbated by the lack of access to basic infrastructure such as housing, water, electricity and a safe environment.

Mentioned by two respondents, was the aggressiveness shown by the mine in response to significant community concerns. *“The mine attacks the community. When the community address the mine they are attacked, so that means the issues mustn’t be addressed.”*

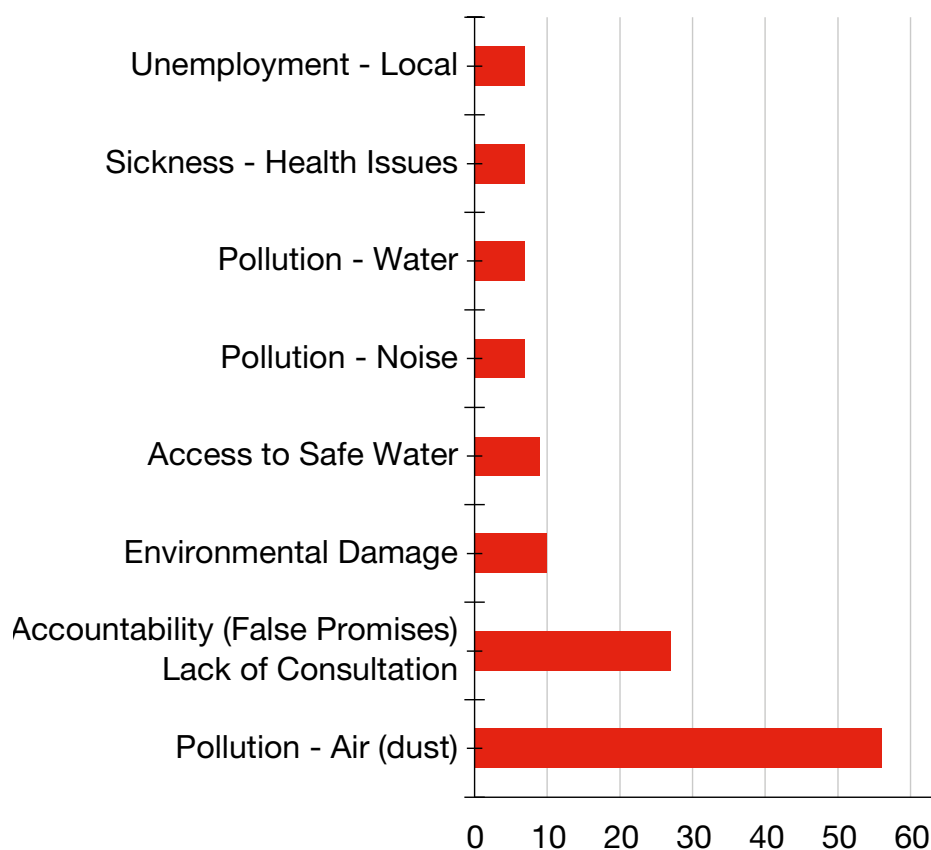


Figure 14. Local themes - Maremane

SOMKELE

Safe housing has been a significant issue in the community, with houses being damaged through mining activities.

According to residents, extensive environmental impact has occurred, through water, air, and noise pollution from mining activities, with a serious issue of dust.

An environment damaged through pollution has had a negative impact on livestock. This impacts livelihood opportunities for community members, as well as their access to food.

Water pollution appears to have severely inhibited access to safe water for residents.

One Respondent captured community concerns as follows: “*The problems we have would be better solved by removing the mines from our area.*”

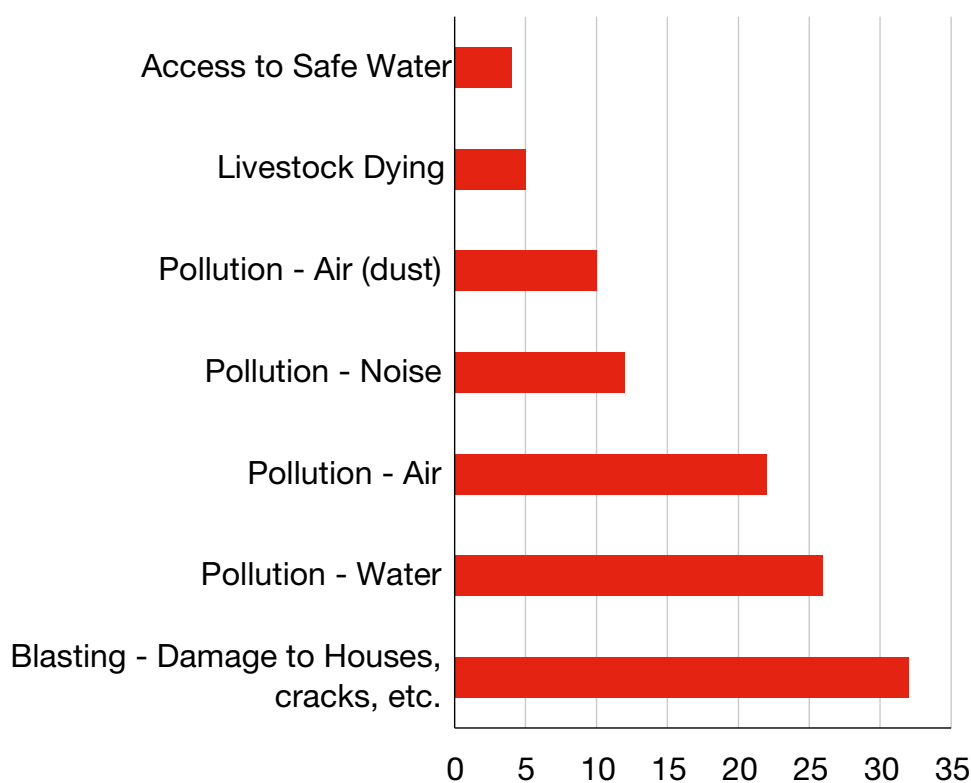


Figure 15. Local themes - Somkele

WELKOM

The foremost issue mentioned by respondents in Welkom was that of **illegal mining**. There appears to be a perception that those who are illegally mining are also illegal immigrants. This has been linked to the serious concern of **unemployment in the local community**.

One respondent framed it as follows: *“It has provide people from outside with the jobs to do the illegal mining.”*

Air pollution is the second most referred to issue in the community. As per the responses, there is a high rate of sicknesses relating to the pollution. **There are several claims that the mine did not compensate for those who had contracted illnesses, or those who had died.**

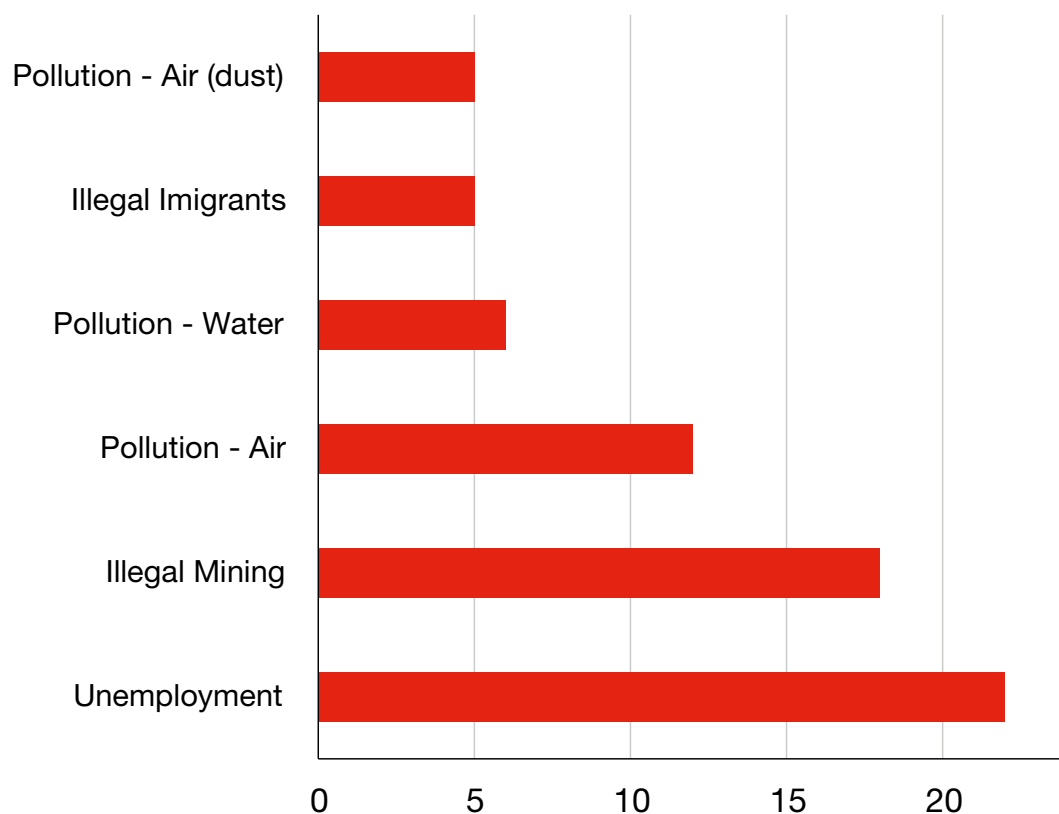


Figure 16. Local themes - Welkom

PHOLA

The most referred to challenge faced by the community in Phola are the **damages caused by mine blasting (69 responses)**. This results in damages to houses, cracks in the foundations and immense dust. The second most referred to concern of the community related to the pollution in the area due to mining (55 responses). This has left the community with severe health concerns ranging from asthma, sinus, and eye problems. In addition to air, water pollution poses a further threat to overall health and wellness. Access to safe water and electricity is limited or non-existent to most community members.

Furthermore, community members are challenged with unemployment and a lack of skills. This results in community members remaining in a state poverty and, as expressed by residents, impacts future generations who have little opportunity to gain skills or employment. Those living in poverty are in a significantly higher state of vulnerability when living in unsafe environments; *“When they blast our houses are cracking, the dust affect us all and our children often get sick they got asthma, eye problem and sinus”*

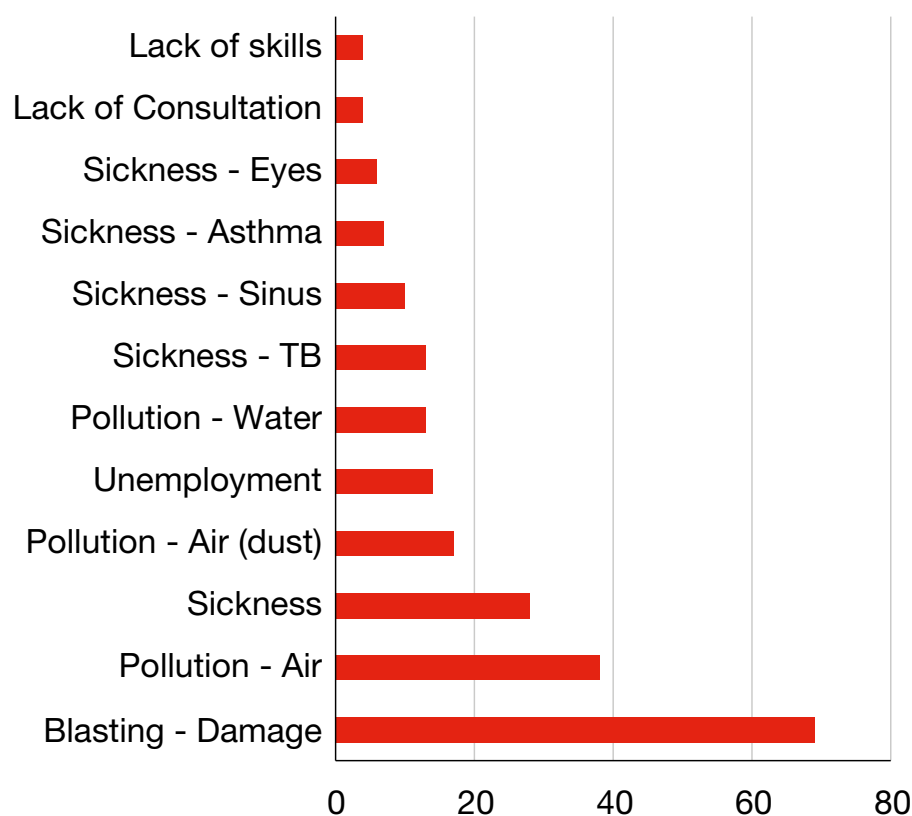


Figure 17. Local themes - Phola

As the only women's focussed social audit, the surveys included aspects and perceptions of violence in many forms and permutations. Based on the results, the prevalence of gender based violence was staggering. As stated by several respondents, the presence of the mine has attracted many men from outside the community, with **85% of women stating that violence has increased**.

The significant influx has been linked with a steep rise in murder, sexual abuse and rape, drug abuse, alcohol abuse and a rise in prostitution and unwanted pregnancies. **Furthermore, sexual harassment and abuse occurs in the workplace through sexual favours when women are attempting to access employment.**

In most facets of daily life, women are at a disproportionately higher risk of harm. Women are the primary caregivers in households, and are responsible for domestic chores. Due to the impacts of mining, houses have become unsafe to live in, and the pollutions results in higher rates of sickness. The gendered impacts of mining are detailed in the section below.

COMMUNITY BENEFIT

When the respondents were asked what they (personal and household) benefit from having the mine in the community **the broad consensus (79%) was that they had not benefited from the mine at all**. However 13% of respondents felt that there were positive benefits and they listed clinics, roads, employment, and a range of other benefits in their responses. A further 8% of respondents felt that the mine had only brought negative benefits such as sickness, damages and loss of livelihoods.

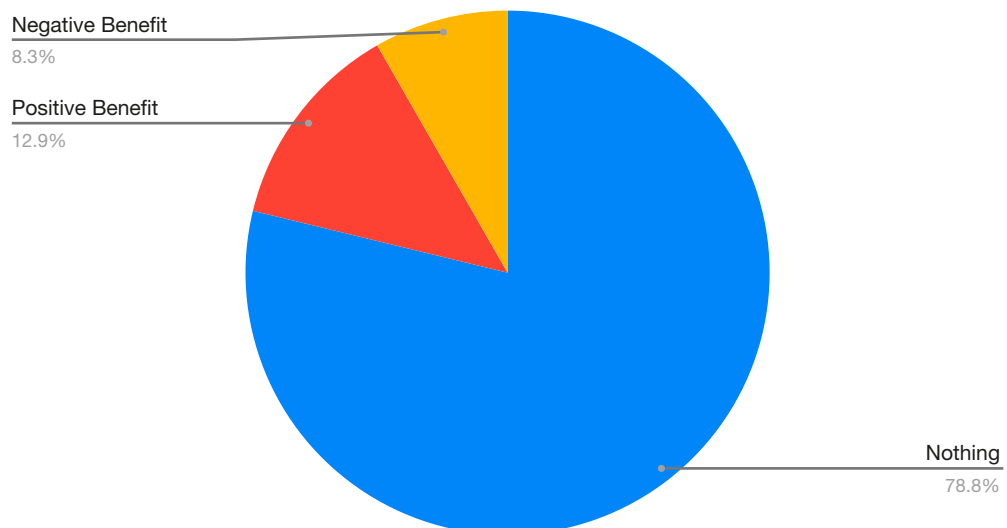


Figure 18. Community benefits

COMMUNITY NEEDS

When the respondents were asked about what they would want to change in the relationship between the mine and the community, **four clear themes were highlighted**. The themes are all interrelated and some of the issues highlighted by respondents overlap across the four themes identified in this report, these were; **Employment, Skills and Livelihood options (39%), Accountability, Consultation and Communication by the Mine (35%), Basic Services and Infrastructure (20%) and Some Form of Compensation (6%).**



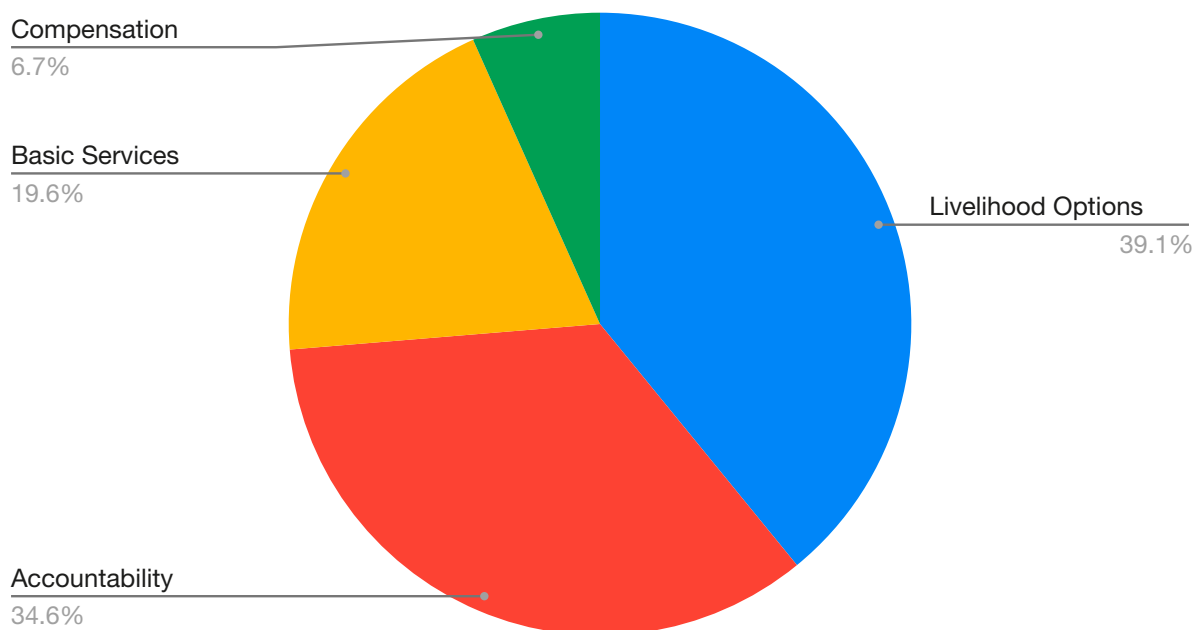


Figure 19. Community needs

The responses, when read through the lens of agency, and structural exclusion, suggests to us that **the communities surveyed have consistently preferred outcomes that allow them to develop and act on their own agency** through either gainful employment or other livelihood options, and through engagements with entities that impact on their lives, that embody accountability, consultation and communication. These preferred outcomes points to a very strong bias by communities to build their agency against the background of what we have often refer to as structural impediments to development.



GENDERED IMPACTS OF MINING

The Social Audit in Phola, Mpumalanga, which involved women volunteers interviewing only women respondents, highlights the gendered impacts of mining. This differentiation lends to interrogating the various challenges faced by women.

ACCESSING EMPLOYMENT

With pressing unemployment in the community, women in Phola were asked what the process is in order to secure employment. Almost **40%** of women responded that **jobs are only accessible through sexual favours** or through suffering sexual harassment. **24%** mentioned that the mine wanted skills, experience or qualifications that the women did not have. Another **14%** of women explained that **some sort of payment, fee, or bribe was needed in order to secure a job**. Further comments from the women highlighted that the mine prefers male labourers as “*Women (are) less likely to get hired because of pregnancy*”. This gives more insight as to why **59% of the women in the survey indicated that they relied on social grants as a source of income**. The structural exclusion of women from mining jobs has a dire impact on the ability of women to assert their own agency and often keeps women dependent on men to access opportunities and income and entrenches the cycle of oppression and abuse suffered by many women in mining affected communities.

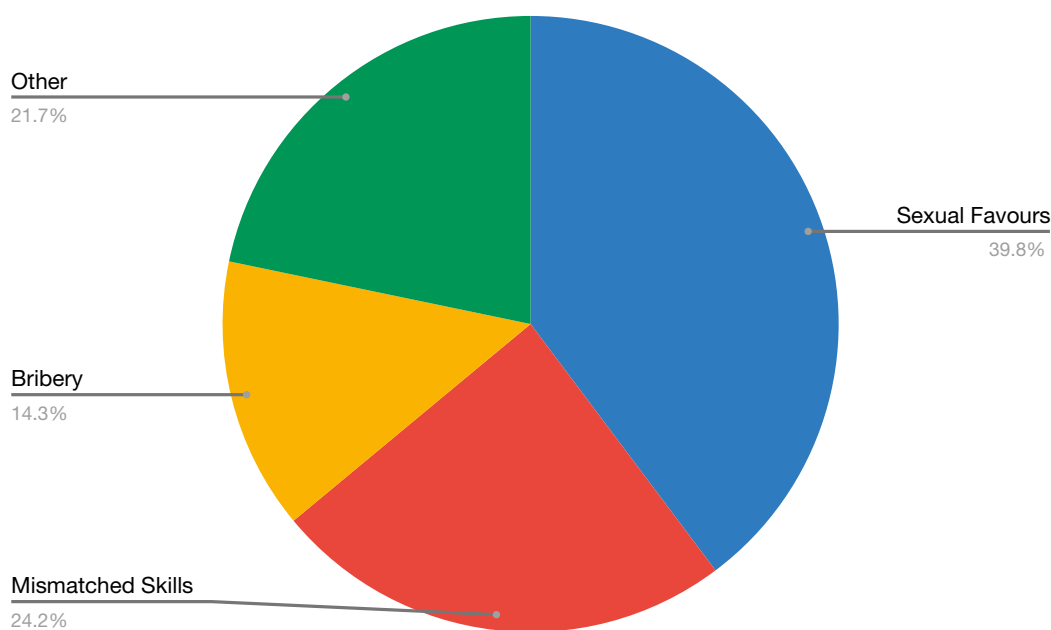


Figure 20. Women - Accessing employment

BENEFITS

When asked how women in particular have benefited from the mine, **the majority of women (73%) reported no benefit at all.** Besides having to deal with the general problems faced by mining affected communities, women also have the added burden of overcoming gender discrimination and abuse that serves to hinder any potential opportunities to have a better quality of life.

Accessing supposed benefits of mining, such as **employment opportunities, are tainted with the risk of sexual exploitation.** Alternative forms of livelihood opportunities, such as farming, are negatively impacted and often completely denuded of sustainability, due to mining activities.

With limited opportunities available to women to access sustainable livelihood outcomes, women have resorted to sex-work both as an informal occupation but also as transactional opportunities to access a form of income.

The report's findings confirm the findings of various local and international studies³⁷, that mining not only has little to no benefits for women, but also negatively impacts any other forms of livelihood opportunities for safe, dignified employment. One respondent described it thus; *"Women are now desperate and they end up selling their bodies to the outsider in order to put food on the table for their children"*

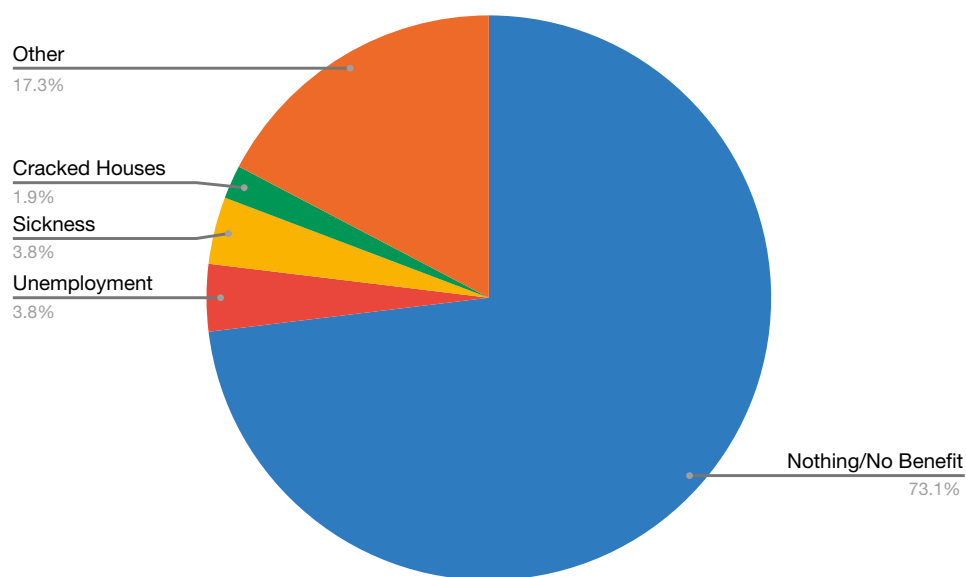


Figure 21. Women - Benefits from mining

37 https://www.researchgate.net/publication/310434249_Women_in_mining_still_exploited_and_sexually_harassed

<http://www.customcontested.co.za/prostitution-sexual-abuse-women-marikana/>

http://www.bench-marks.org.za/press/gap10/women_still%20treated_as_sex_objects_in_the_mining_industry.pdf

GENDER BASED VIOLENCE IN MINING AFFECTED COMMUNITIES

Women were asked to describe how violence manifests in their community. This also presented an opportunity to reflect on whether or not this violence has increased with the presence of mining. **Strong links were drawn between the influx of men into the community looking for employment and the rapid rise in gender based violence in various forms.** 25% of women are in agreement that the community experiences a substantial amount of violence. This is prevalent **in the form of rape, murder and abuse (sexual, physical, emotional, verbal, etc.)** Women also explained how **domestic abuse in the home is common** in addition to growing population of migrant labourers which contributes to an **unsettled community** in which violence becomes exacerbated and further erodes the social fabric of a community.

One respondent described the deep rooted impacts of violence; *“Violence will be always be violence, it always degrades women. Women are having fear in participating in most events that involves men. Being violent is another thing because most women are traumatised by abuse physically and emotionally and so on”*

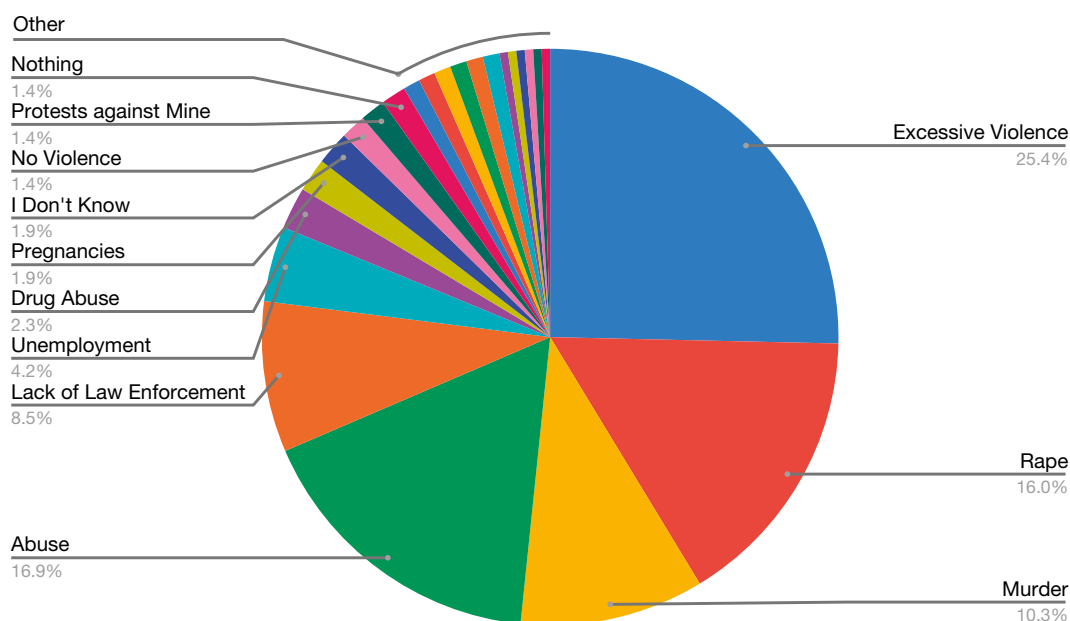


Figure 22. Women - Manifestation of violence

85% of women are in agreement that violence has increased with the development of mines.

The mines presence in and around the community attracts a large influx of job seekers and those looking to exploit economic opportunities around the mine. However, partly due to the large number of job seekers and partly due to the limited employment opportunities offered by mines, **high levels of unemployment remains prevalent in the community.**

Most women who participated in the survey suggested that there are **high levels of substance abuse and most associated an increase in rape and murders with the increasing number of people coming into the community from outside.**

The types of violence experienced by women range from direct personal cases of abuse, to the indirect violence of damage to health, houses and the environment.

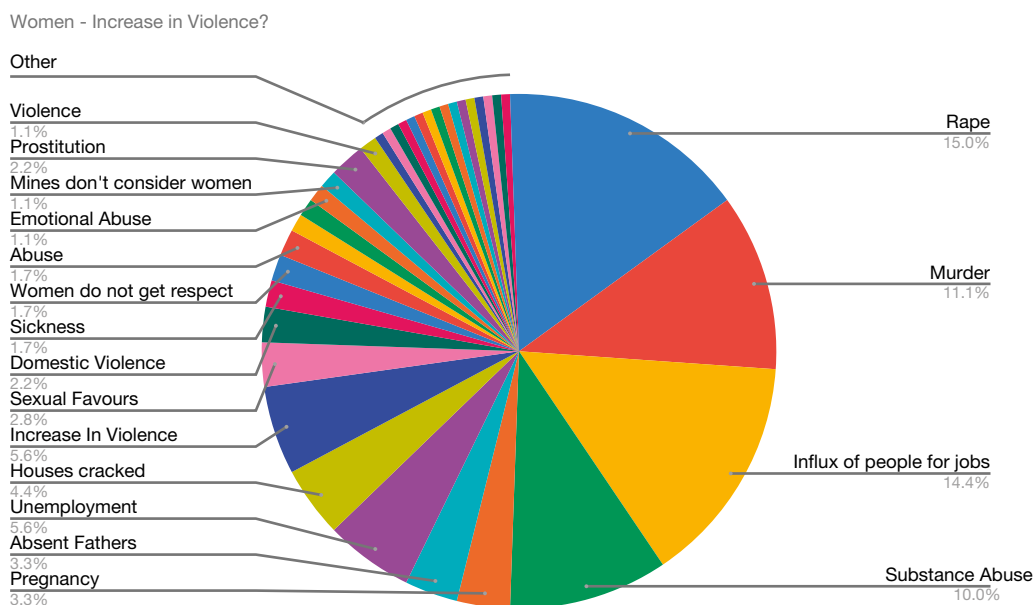


Figure 23. Women - Increase in violence?

The daily experiences of the women of Phola illustrate the violent impacts of a deeply patriarchal and exploitative mining sector in South Africa. Women, who are shown to carry a disproportionate burden of mining, suffer at multiple levels. At a primary level, **women's basic rights are denied in the form of enduring a harmful environment** with record high levels of air pollution. Furthermore, **their existence as women in the community mean they are systematically denied fair access to employment having to resort to sexual favours to be considered for jobs.**

The epidemic levels of social, structural and personal violence further hinders the ability of women to live dignified lives having, instead, to constantly negotiate and avoid unsafe spaces in their communities or even in their homes.

These challenges, directly or indirectly linked to the development of mining in the area, have an eroding impact on the ability of women to act or rely on their own agency.

ANALYSIS

Political Economy of Mining in South Africa

The approach to mining in South Africa has consistently been a violent, masculine and exploitative project to concentrate benefits for a few at the expense of the majority. Historically and contemporaneously colonial centres and market investment centres have reaped the riches of minerals extracted in periphery countries at the expense of local communities.

The potential wealth in mining has had a significant influence over the political arrangements of South Africa, and has historically been the main driver underpinning the Apartheid economic model of wealth accumulation. This model saw the development and rise of a Mineral-Energy-Complex (MEC)³⁸ that brought together various key players in the extractive, electricity and downstream industries to systematically exploit the mineral wealth while catalysing the development of the rest of the South African economy.

With a determining role on the rest of the economy, it had powerful implications for the relationship between the government and the private sector players in the industry. While the centrality of the MEC to the South African Economy has declined significantly after 1994, the Mining Sector remains a critical driver of economic opportunity in South Africa today. The Mining Sector has also been closely linked to the rapid economic development of key individuals and families connected to the governing party and extensive links have been made between the governing party's investment vehicle, Chancellor House, and the mining industry.³⁹

According to PWC reports that have been compiled for Johannesburg Stock Exchange listed corporate entities within the South African Mining Industry **since 2008 and incorporating financial results from 2007 to June 2018, the South African Mining Industry has**, despite a consistent media narrative in which the mining industry corporates are cast as victims struggling to make a profit, **accumulated net profits of R221 Billion rands over this period**⁴⁰.

The declared profits do not include the undeclared illicit financial flows which the African Monitor claims peaked at R237 Billion per annum in 2011. According to the African Monitor, South Africa has lost a cumulative R1,007 Billion to illicit outflows between 2002 and 2011.⁴¹

38 Fine, B. & Rustonjee, Z., 1996. The Political Economy of South Africa: From Minerals-Energy Complex to Industrialisation, London, United Kingdom: C. Hurst & Co. Ltd.

39 <https://www.tandfonline.com/doi/pdf/10.1080/03056240802196336> & <http://www.africafiles.org/article.asp?ID=16992>

40 <https://www.pwc.co.za/en/publications/sa-mine.html>

41 <http://www.africanmonitor.org/wp-content/uploads/2017/04/IFF-Report-1.pdf>

In their submission to the Davis Tax Commission the Alternative Information Development Centre (AIDC) argued that;

“In the mining industry the depletion of the funds of the local mining companies that are subsidiaries of MNEs (Multinational Enterprises) cripples their ability to fulfil their social investment obligations according to the Mining Charter. It is the local subsidiaries that have these obligations. Capital flight and unacceptable transfer pricing arrangements damage the South African economy and the economy of the whole of Africa. It is not going away. It is a growing problem. It poses a great danger to the future of South African democracy.”

In the same submission AIDC present research which suggests that close to an average of U\$12 Billion per annum is shifted out of the country annually. In the case of Lonmin, a prominent Mining company at the centre of the Marikana Massacre in 2012, the AIDC submitted to the Marikana Commission that at least R2.3 Billion of illicit flows had emanated from Lonmin during the period between 2008 and 2012⁴².

In another report, [South Africa: Potential Revenue Losses Associated with Trade Misinvoicing](https://www.gfintegrity.org/report/south-africa-potential-revenue-losses-associated-with-trade-misinvoicing/?fbclid=IwAR0EAX3osAz1ImmsFCYxJhDCZYUcaliS9aE5ZEnKglMD6f5ZpPRoZo2Znws), which analyses South Africa’s bilateral trade statistics for 2010–2014 (the most recent years for which sufficient data are available) which are published by the United Nations (Comtrade), the report found that *“Analysis of trade misinvoicing in South Africa from 2010–2014 shows that the potential loss of revenue to the government is \$7.4 billion annually or, a total of \$37 billion during the period.”* The report also suggests that

*“the practice of trade misinvoicing has become normalized in many categories of international trade. It is a major contributor to poverty, inequality, and insecurity in emerging market and developing economies. The social cost attendant to trade misinvoicing undermines sustainable growth in living standards and exacerbates inequities and social divisions, issues which are critical in South Africa today.”*⁴³

These are significant amounts that has a direct impact on whether communities are able to escape their poverty traps or not. In the Lonmin case a submission by the Centre for Applied Legal Studies (CALS) to the Marikana Commission the legal researchers who had studied the Lonmin case specifically reported that:

“ A number of programmes suffered from poor planning with resulting problems of implementation. These programmes include brick-making factory, the agricultural farm project and most importantly, the construction of 5,500 houses as committed in the 2006 SLPs. The failure of these projects points to non-compliance that requires further investigation.”

42 <https://mg.co.za/article/2014-09-20-inquiry-into-lonmin-fee-transfers-to-tax-haven>

43 <https://www.gfintegrity.org/report/south-africa-potential-revenue-losses-associated-with-trade-misinvoicing/?fbclid=IwAR0EAX3osAz1ImmsFCYxJhDCZYUcaliS9aE5ZEnKglMD6f5ZpPRoZo2Znws>

They further conclude that:

“The lack of delivery under these projects and the resultant lack of impact on the lived reality of the mine-affected communities, including workers and their families, could constitute a significant factor precipitating the events in Marikana of 09 to 16 August 2012.”⁴⁴

The corporate income tax in SA has been 28% since 2008/9, but mining companies get a special tax treatment, in that all investments are immediately deductible from the profit.

The state on the other hand, remains a significant beneficiary of the mining regime as it is currently configured and the same PWC report series from 2009 to June 2018, suggests that the state has received R160 billion in direct tax revenues during this period. An additional amount of approximately R45 billion is estimated to be paid to government as Royalties. In all, the PWC reports (which do not factor in any potential misinvoicing and/or illicit financial flows) estimate that **government takes approximately 24% of value reported** among the listed JSE mining corporates, **employees 47% of value reported and shareholders, 29% of value reported. Community investments by contrast has only amounted to 0.9% over the same period**⁴⁵. But, as has been shown in this report, none of the value from these community investments are experienced in the lived realities of communities who participated in this survey. **Up to 79% of respondents, those to whom these benefits are meant to accrue, have not participated in or benefited from the claimed investments.**

By our calculations, this implies that close to R5.92 billion of the estimated R7.5 billion earmarked for community development did not reach its intended beneficiaries.⁴⁶

The extent of the unaccounted for expenditure on community development no doubt plays a significant role in the cycles of poverty that continues to manifest in mining affected communities and must certainly contribute to the high levels of corruption experienced both at local and national level.

The mining sector today, continues the tradition of market-centered, trickle down economics which has unequally benefited the elite troika of mining investors and corporates, government and organised labour.

“In the mining industry the depletion of the funds of the local mining companies that are subsidiaries of MNEs (Multinational Enterprises) cripples their ability to fulfil their social investment obligations according to the Mining Charter.

It is the local subsidiaries that have these obligations. Capital flight and unacceptable transfer pricing arrangements damage the South African economy and the economy of the whole of Africa.

It is not going away. It is a growing problem. It poses a great danger to the future of South African democracy.”

44 [https://www.sahrc.org.za/home/21/files/Lonmin%20Social%20and%20Labour%20Plan%20Analysis%20Qualitative%20and%20Quantitative%20Assessment%20\(Final\)%5B1%5D.pdf](https://www.sahrc.org.za/home/21/files/Lonmin%20Social%20and%20Labour%20Plan%20Analysis%20Qualitative%20and%20Quantitative%20Assessment%20(Final)%5B1%5D.pdf)

45 <https://www.pwc.co.za/en/assets/pdf/sa-mine-outlook-2018.pdf> pg 19

46 Taking the R237 Billion Profit, plus the R205 Billion Government revenue as 53% of value created, we were able to calculate 79% of the 0.9% of Value created which were not realised by the intended beneficiaries.



The same troika who has set policy and legislation in the sector are also the ones who have extracted the most benefit from the sector, while the very people whom the Constitution and Legislation purports to benefit, has languished in deepening pools of poverty.

Agency, Participation and Development

The Constitution, the MPRDA and the Mining Charter propose a transformed country through broad-based trickle down beneficiation. However, the unrelenting **paternalistic approaches to the idea of development** has entrenched the very inequalities that a new mining regime was aimed at overcoming.

On the one hand, government is keenly aware of the systemic nature of the ongoing inequalities and resultant public discontent. Government has in its National Development Plan (NDP)⁴⁷, which *“aims to eliminate poverty and reduce inequality by 2030”*, acknowledged that achieving the goal of eliminating poverty and reducing inequality can only be achieved through the *“transformation of the economy and focused efforts to build the country’s capabilities”*...while *“ensuring that the the economy must grow faster and in ways that benefit all South Africans.”*⁴⁸

The NDP goes further to prescribe that government must *“make it easier for citizens to hold public servants and politicians accountable, particularly for the quality of service delivery”* and to... *“mainstream citizen participation”*.⁴⁹

The NDP also calls for *“An inclusive society and economy. This means tackling the factors that sustain inequality of opportunity and outcomes by building capabilities and redressing the wrongs of the past”*. This it says can be achieved by an *“active and responsible citizenry”*.⁵⁰ According to the NDP, *“participatory governance is a central tenet of post-apartheid legislation on local governance”* and *“encourages municipalities to find ways of structuring participation to enhance, rather than impede the delivery process”*ensuring that *“the state should focus on*

47 https://www.gov.za/sites/default/files/NDP-2030-Our-future-make-it-work_r.pdf

48 Ibid Pg 24

49 Ibid Pg 410

50 Ibid Pg 464

engaging with people in their own forums rather than expecting citizens to engage with forums created by the state.”⁵¹

In a recent parliamentary session in the National Assembly where President Ramaphosa responded to oral questions, the United Democratic Movement (UDM) President Bantu Holomisa had asked the President whether, with the recurrence of violent service delivery protests, where anger is directed at the local sphere, he had any plans to coordinate the entire government machinery to visit affected communities to present them with detailed responses to their concerns.

The President responded that *“If we are to effectively address the causes of community protests and improve the conditions under which people in these communities live, it is necessary to proceed in a systematic manner.”*

“It is necessary to ensure intergovernmental alignment since the issues at hand cut across national, provincial and local competencies.”

“At the same time, it is necessary for public representatives – including MPs and Ministers – to engage with communities on an ongoing basis to ensure that their needs and concerns are being addressed,” he said.

The President said there are several reasons that spark community protests - ranging from local service delivery failures to broader concerns around crime, municipal demarcation, corruption and failure of governance.

He said most of these protests - **both those that are peaceful and those that turn violent - reflect the severe weaknesses in local governance, poor consultation with communities, and a perceived distance between communities and their public representatives at all levels.**⁵²

On the other hand, being fully aware of the democratic, social and economic deficit at the local level, the government remains committed to policies that place corporate interests above those of the citizens on the assumption that value will eventually trickle down to communities.

In the same parliamentary session, when asked about what government would do differently in terms of attracting investment, the President responded that:

“Government has prioritised a number of key reforms in these sectors to ensure policy certainty.”

“The revised Mining Charter has been finalised. This is the outcome of extensive and meaningful consultation between government, community, labour and business, and it represents evidence of our commitment to solving the challenges in the sector collaboratively...”

This response by the President comes despite the fact that organised community groups such as MACUA and WAMUA had rejected Mining Charter 3 for its lack of consultation.⁵³

51 Ibid Pg 474

52 <https://www.sanews.gov.za/south-africa/systemic-approach-tackle-service-delivery-protests>

53 <https://mg.co.za/article/2018-09-27-communities-reject-mantashes-mining-charter>



The two divergent responses by the President suggests a **deep dissonance within the corridors of government** and the rhetoric of inclusivity and consultation is not supported by the evidence of systematic and deliberate exclusion built into mining legislation and regulation.

As we suggest above, the upshot of paternalistic top down development, is that the developmental outcomes, are more often than not, the type of outcomes that deepen inequality.

When examining the human-centered results of the baseline studies, the promise of progress and development are not evident and the evidence points to a far more systemic process of excluding the voices of affected communities. This type of exclusion, which the baseline survey points to, produces a structure within which **the social and economic outcomes are experienced as a violation against the person of those affected.**

According to Kathleen Ho⁵⁴, structural violence is evidenced by **“structural inequalities that systematically deny some people their basic human needs.”** This constitutes **“a structural violation of human rights in that structural violence yields a complex picture of inequality as it considers economic, political and social factors.”**

Ho states that;

“structural violence theorists define violence as the avoidable disparity between the potential ability to fulfil basic needs and their actual fulfilment. The theory further locates the unequal share of power to decide over the distribution of resources as the pivotal causal factor of these avoidable structural inequalities.”

The social audit process, through the baseline phase, has centered the voices of those who are structurally excluded from the power to decide on developmental trajectories, in order to deliberately undermine the causal factors which allow structural violence to manifest and to participate in developing an alternative structural answer to more inclusive developmental strategies.



54 Ho, K. (2007). Structural Violence as a Human Rights Violation. Essex Human Rights Review Vol. 4.2.

This phase of the study was aimed at articulating the social, economic and political challenges faced by communities affected by mining who are trapped in the structural vortex of inequality. The categories below are those most commonly referred to by the respondents across 7 mining affected communities.

Direct impacts of mining

The social audit baselines surveys, indicate **a strong correlation between mining and excessive or severe environmental impacts on communities living around mines**. The impacts of a generally unsafe environment, both social, in the form of high levels of crime, corruption, blasting and exposure to heavy equipment, and natural, in the form of various pollutants in the air, water and soil, has emerged as a significant factor in the lives of those impacted by mining.

The extensive nature and types of negative impacts experienced and the apparent visceral sense of damage expressed by communities living close to mines suggests some correlation with the findings of scholars such as those of Cari Runciman Senior Researcher at the Centre for Social Change at the University of Johannesburg who has studied the rising tide of protests in South Africa.

In a 2017 article in *The Conversation*⁵⁵, Carin Runciman draws a comparison between the lack of democratic practise at local level with the rising tide of protests on the national level;

“As part of research by the Centre for Social Change we spoke to protesters all over the country. A new book from the centre highlights the extent to which protesters are raising not just concerns about the quality of service delivery but also about the quality of post-apartheid democracy. As Shirley Zwane, from Khayelitsha, near Cape Town, explains:

We don't have democracy!... We [are] still struggling... you see if we are in democracy there's no more shacks here... No more bucket system... we supposed to have roads, everything! A better education... There is a democracy?.... No, this is not a democracy! They have, these people in Constantia, Tableview, Parklands, they have a democracy, not for us!”

The visceral way in which poverty and exclusion is felt by affected communities is compounded by the way in which mining companies and mining regulators generally deny or ignore the lived experiences of mining affected communities.

Any attempt to advance social cohesion and any efforts to undercut the rising tide of protests will have to grapple with a mining policy that does not address the fundamental weakness of excluding people from participating in their own governance.

55 <http://theconversation.com/south-african-protesters-echo-a-global-cry-democracy-isnt-making-peoples-lives-better-77639>

Development and the Human Condition

The respondents concerns in this survey with air pollution and other types of pollution appears to correlate with other findings, such as the most recent report by GreenPeace International⁵⁶ which found that Mpumalanga province has the highest levels of air pollution in the world, topping nitrogen dioxide levels across six continents. According to Greenpeace, coal mines, transport and Eskom's 12 coal-fired power stations have been identified as the biggest sources of air pollution in the province.

According to the [World Health Organisation](#), **4.2 million people die every year as a result of exposure to outdoor air pollution**. This type of pollution contributed to 7.6% of all deaths in 2016. **The WHO calls it a silent Killer, accounting for 29% of deaths from Lung Cancer, 24% of deaths from Stroke, 25% if deaths from Heart Disease and 43% of deaths from Lung Disease.**

According to a paper written by Dr. Marjorie Jobson of the Khulumani Support Group in Johannesburg, October 2015⁵⁷, **Public health consumes around 11% of the government's total budget and is allocated mostly to nine provincial departments. This is higher than the 5% of GDP recommended by the World Health Organisation (WHO) and reflects the major burden of disease management and treatment carried by the public sector in South Africa.**

The Council for Scientific and Industrial Research (CSIR) in a briefing note prepared by Dr Caradee Wright⁵⁸ suggests that;

"There is a clear link between the state of the environment and human health and well-being. According to the World Health Organization (WHO) an estimated 23% of all deaths in Africa are the result of avoidable environmental hazards such as contaminated water, poor hygiene, inadequate sanitation, poor water resource management, use of unsafe fuels, atmospheric pollution and poor infrastructure. According to the same WHO report South Africa is "strongly underestimating" its own environmental burden of disease: currently 16% of all deaths in the country are related to the state of the environment."

Other research studies, such as the article published in the International Journal for Equity in Health by John E Ataguba, James Akazili, and Di McIntyre⁵⁹ in which they argue that their report;

"Demonstrates the existence of socio-economic gradients in self-reported ill-health in South Africa. The burden of the major categories of ill-health and disability is greater among lower than higher socio-economic groups."

There is sufficient evidence to suggest that **poverty and poor health are inextricably linked**.

The causes of poor health are rooted in political, social and economic decisions that are seldom take adequate account of the interests, needs and realities of those most directly impacted.

Poverty is both a cause and a consequence of poor health. Poverty increases the chances of poor health. Poor health in turn traps communities in poverty.

This baseline survey outcomes corresponds in significant ways with this view.

56 <https://www.greenpeace.org/africa/en/issues/inspirethemovement/4202/new-satellite-data-reveals-the-worlds-largest-air-pollution-hotspot-is-mpumalanga-south-africa/>

57 https://www.khulumani.net/active-citizens/item/download/225_30267364dfc1416597dcad919c37ac71.html

58 http://www.ehrn.co.za/lowerolifants/download/briefingnote_2009_04.pdf

59 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3229518/>

Employment & Other Benefits of Mining

In response to the recent court judgement in the Pretoria High Court referred to above regarding the Court's order that the Minister must receive the consent of the community before approving a mining right, Minister Mantashe lamented the ruling, claiming that *"the community of Xolobeni needs mining in order to bring about much-needed development in the area"* and that *"mining is being treated like a curse rather than a blessing. It is not treated as a wealth, it is treated as more of a negative. It is a polluter, it is a deprivation and all that. That worries me a great deal because the mining we have, we are endowed with it naturally. We should just be forced to mine responsibly."*⁶⁰

Minister Mantashe's comments capture in a few short sentences the essence of why conflict between mining companies and communities have become so pervasive and why communities have been forced to resort to the courts or the streets in protest.

There appears to be a deep chasm of understanding about the benefit of mining between government and the people, whose interest's government is supposed to represent.

The assertion by the Minister that mining will bring development, employment and other benefits to communities is not supported by the findings from this report and points instead to burden rather than benefit.

The DMR's main focus has been on speeding up the process of investment with the Minister declaring in his Budget Speech that; *"to unleash our economy, we must overcome this to ensure that prospectors can prospect and those with the legal permits and the means to mine can do so."*

In line with this commitment to speeding up the rate of exploitation of mineral reserves, **the DMR has increased the budget to be spent on the Mineral Promotion and International Coordination subprogramme, within the Mineral Policy and Promotion programme, to R239.1m in the medium term.** This is interesting when comparing that this sub programme is being allocated just less than 50% of what is allocated to rehabilitate Derelict and Ownerless Mines (R540m), a problem which has widely been acknowledged as a serious health and safety risk to communities. **The number of derelict and ownerless mines rehabilitated per year has decreased from 50 per year in both 2014/15 and 2015/16, to 45 per year at present** and going forward while **the number of investment promotion events/forums/workshops is on the increase**, indicating the increased focus on attracting investment while deferring the toxic and dangerous legacy of mining.⁶¹

By the same token, the number of SLP verification inspections (those inspections which are supposed to ensure that the intended beneficiaries of the SLP's are benefiting) per year, has **decreased from a high of 285 in 2013/14 to 212 at present** while the number of **environmental verification inspections per year has decreased from a high of 1889 in 2015/16 to 1275 at present.**⁶²

60 <https://ewn.co.za/2018/11/22/mantashe-says-xolobeni-ruling-could-pose-threat-to-mining-in-sa> <https://citypress.news24.com/Business/mantashe-xolobeni-ruling-means-we-could-have-no-mining-in-sa-20181122>

61 Analysis of the 2018 DMR Budget vote is reproduced courtesy of Sally Hurt of Centre for Environmental Rights.

62 Ibid



MINTEK and the Council for Geosciences account for 50.1% of the DMR's annual budget and salaries at these institutions account for 33% (which is "due to the labour intensive nature of the department's work, particularly with regards to enforcement, compliance monitoring, and the inspections of mines across the country.") Personnel numbers are expected to decrease though, from 1122 in 2016/17 to 1040 in 2019/20 indicating **reduced capacity to monitor compliance and enforcement.**⁶³

The disjuncture between communities who are reporting that their experience is one of burden, not benefit and that of the government who seems intent on continuing to pursue a strategy which preferences investors over social and environmental impacts, suggests that the sector is on a course for deepening poverty and increased conflict.

Gender

The Minerals Petroleum Resources Development Act (MPRDA) **mentions women as a specific category only once.** This is surprising considering that the South African Constitution sets out in its founding provisions, the two social contradictions which have historically been at the centre of our Apartheid Past, namely anti-racism and anti-sexism.

⁶³ Ibid

While much attention is paid in the act to the broader category of “historically disadvantaged persons”, women are broadly omitted from special consideration in the main act.

This is astonishing given the general agreement in government and within civil society that women are generally and specifically oppressed and discriminated against and specifically in legislation dealing with a sector whose dominant frame of reference has been patriarchal, exploitative and unequal social and economic relations.

According to the Chamber of Mines, the number of women working in the industry has increased from 11 400 in 2002 to 57 800 in 2015. As such, women now make up 13.2% of the overall workforce, with black women comprising 10.2%. When broken down by category of work, women make up 29.6% of top/senior management, 21.5% of middle management and 17.4% of skilled/technical workers.⁶⁴

While these changes in the employment profile of the industry are certainly to be welcomed, the first thing to note is that the biggest beneficiaries have clearly been upper/middle class and professional women. As is the case with South Africa's macro-employment picture, poor/working class black women occupy the lowest rungs of the job ladder, where the work is the hardest and the pay is the lowest.

This surfaces a fundamental contradiction in respect of seeing employment numbers and specified quotas as the dominant affirmation of successful gender equity, transformation and positively gendered redistribution of opportunity and benefit. As Thandi Dlamini has so succinctly pointed out, *'something seems amiss when a government, through legislation, encourages women to take up objectively harsh work in mines but does not also simultaneously provide them with a proper social wage for their role in reproducing society, thus enabling their refusal of such work'*.⁶⁵

Arguably the biggest gender blind-spot of the overall approach to women and the mining industry as framed by the MPRDA is that the position, place, space and socio-economic relevance of women are seen solely in relation to formal employment. As a result, the vast majority of women who are, in one way or another, part of or linked to the mining & extractives industry (i.e., those who live and work - whatever the form of that work - in/around the communities where mining takes place) remain unseen and thus left out of the 'gender equation'.

The indifference to women's experiences and rights is exemplified in the series of Mining Charters and specifically in Mining Charter 3.

Issues of Gender and specifically with reference to **Women and Girls** have been largely ignored in Mining Charter 3. Where women are included they are interchangeably mentioned with youth. Instead of a mining company having to ensure that they procure from women owned companies for example, they could instead procure from youth owned companies. This interchangeability occurs throughout the Mining Charter, leaving specific targets for women and girls unquantifiable and unenforceable.

64 Chamber of Mines, 2017. 'Women in Mining: Fact Sheet 2017' - <http://www.chamberofmines.org.za/industry-news/publications/fact-sheets/send/3-fact-sheets/424-women-in-mining> Accessed 18 December 2017

65 Thandi Dlamini, 2016. 'Gender in the Mining Industry' - <http://roape.net/2016/02/10/gender-in-the-mining-industry/> Accessed, 2 January 2018

Targets aimed at improving the socio-economic condition of women are not included extensively enough to shift the patriarchal nature of the sector and the targets for women's empowerment need to be significantly increased in all areas of the Charter.

Without specifying interventions to benefit local women, the Charters minimal provisions for women serves only to benefit women who are already economically empowered. All the Charter obliquely offers to poor black women is that a mining rights holder, 'must identify what goods and services are available within the community where its mining operation takes place and, where feasible, give preference to suppliers within that community'. The same lack of legally binding specifics applies to the Charter's platitudes in relation to mine community development as well as housing and safety-security.

The cumulative outcome is that mining companies more or less pick and choose what aspects of the law they comply with, 'while women in mining communities bear the brunt of the negative impact of mining operations'.

Notwithstanding the narrow focus on formal employment within the mines as an indicator of women's progression, providing employment opportunities remains an important avenue for women to obtain some level of independence from the patriarchal strictures of society.

In this case it was noted that Mining Charter 3 does not provide **targets for employment of women** as mine workers. Most women who experience the gendered impacts of mining, including the denial of their land rights and the concomitant reduction in food security that inevitably follows a mining project, and who will most likely not be employed on the mine, further impacts on women economically and socially, leaving them more vulnerable to abuse and exploitation.

Furthermore, progressive targets for employing women will assist in reaching a critical mass of women on the mine site, which could decrease the likelihood of violence or harassment.

According to a 2013 study conducted by 'Women in Mining South Africa', *'most women ... still feel excluded from the industry and that they are not treated equally by their male colleagues.'*⁶⁶

Further, the *'quota-driven mentality' that characterises the MPRDA's dominant approach to inclusivity and participation of women in the industry, 'can be destructive' in the longer term since companies end up appointing women 'only to meet [the] requirement'*⁶⁷.

*Given the very small gender quota percentage required, the generalised lack of safety and security measures for women and a 'lack of policies around gender-based violence in mining', especially in relation to underground workers, women are thus 'extremely vulnerable to sexual violence.'*⁶⁸

66 Carina Borralho, 2014. 'Study shows that several challenges remain for women in mining', 17 January -http://www.miningweekly.com/article/study-shows-that-several-challenges-remain-for-women-in-mining-2014-01-17/rep_id:3650 Accessed, 3 January 2017

67 Ibid.

68 Centre for Applied Legal Studies, 2015. 'Submissions to the Special Rapporteur on Violence Against Women: Country Visit to the Republic of South Africa December 2015': 7 -<https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-manage>



When it comes to services and facilities that are of particular importance to women the picture is just as ugly. Whether as applied to women as mineworkers, wives/partners, mothers or community members, mining corporates have consciously and consistently managed to largely avoid the associated social and labour plan requirements and pledges as contained in the MPRDA.

For example, in agreements negotiated with the main unions, most mining companies now pay a 'living out allowance' to a majority of their workforces. Besides the resultant personalised 'outsourcing' of basic services and needs such as water, sanitation, energy and transportation (in a context in which the state is mostly absent), *'the burden of responsibility to manage the reproduction of labour and life [thus] principally falls to women in the dense informal Peri-urban settlements that surround the industrial mines'*.⁶⁹ AS WoMin has pointed out,

'women's concentration in the more risky and manual jobs in the mine[s] ... is directly linked to their limited access to and control over resources such as land, credit, decision-making, political power and education'.⁷⁰

The baseline survey - shows that the limited attempts at gender mainstreaming, with respect to the Mining Charter and MPRDA have not been realised in any significant way. The vast majority of women in Phola, while holding up to secondary level school education, remain unemployed and have not significantly benefited from any SLP projects. In fact women not only experience violence, in varied ways, because of the structure of the industry but have indicated that they are now poorer as a result of mining in their communities.

'Various legislative and SLP initiatives, although well intended, have failed to resolve gender inequalities because they lack a gender sensitive approach. The understanding of gender equality should not only be seen as an increase in the proportions of women in relation to men.

It is not enough just to 'bring women in' to the mining industry or promote greater participation in unjust conditions. Rather there is a need to rethink structures and practices that perpetuate these inequalities. More attention needs to be brought to engagements within and outside the

69 Samantha Hargreaves, 2013. 'Women's unpaid labour, corporate profiteering and state neglect: more misery in Marikana', Third World Resurgence, No. 271/272, March/April: 35-37 - <http://www.twn.my/title2/resurgence/2013/271-272/cover08.htm> Accessed, 21 December 2017

70 WOMIN, 'Transformation of Artisanal Mining', Paper Six of 'Women, Gender and Extractivism in Africa' collection of papers: 8 - <https://womin.org.za/images/papers/paper-six.pdf> Accessed, 20 December 2017

workplace, particularly in terms of gender roles, division of labour, access to and control over resources, and participation in decision-making.’

Large scale mining has significant social, environmental and economic impacts on local communities. These impacts disproportionately affect women. Some of the most significant ways that mining affects women negatively are:

- **Employment and Income:** The evidence in this report which aligns with other evidence in this regard⁷¹ suggests that among the jobs that extractive industries create, there are significant gender disparities in male and female access to jobs. Attempts to increase female participation in the mining sector have not always been accompanied by initiatives to make mine sites safe spaces where women can work free from sexual harassment and violence.
- **Water grabs and pollution:** Though this report does not clearly highlight the issue of access to water, most rural mining affected communities experience difficulty in accessing water.⁷² Women are typically providers of water to their families in rural communities. Mining is a major user of water and competes with communities for domestic use and subsistence agriculture. As a result, less water can be available to communities and their livestock, and what is available can be polluted by mining activities. Women’s workloads are increased because obtaining clean water becomes more difficult and when household members fall sick because of polluted water, it is often women who have to nurse them back to health.
- **Violence Against Women:** Industrial activity attracts large numbers of men as workers. As this report shows the loss of traditional or alternative livelihoods, can force some women to engage in transactional sex to earn an income - which can increase the risk for women of experiencing violence or contracting HIV/AIDS.

This report also highlights that the rapidly changing socio-economic conditions in mining affected communities contributes to increased gender-based violence. The violence experienced by women range from the direct personal abuse to the indirect violence of cracked houses, toxic environmental conditions and changing cultural norms due to increased influx of single men.

- **Community Consultations and Decision Making:** As a general rule, communities who participated in this research indicated that community consultations were often not public knowledge and where consultations did take place they were often with traditionally dominant men or politically connected men in the community. Women are generally excluded as a rule and often were the least impacted of any potential beneficiaries. As a result, women are stripped of the means of acquiring status and wealth. Research indicates that men and women often prioritize community investments differently, and frequently more sustainable development outcomes are planned where women have an equal engagement with men in setting priorities.⁷³

71 https://www.huffingtonpost.ca/lina-holguin/woman-and-mining_b_6762576.html

72 Precious Metals II http://www.actionaid.org/sites/files/actionaid/precious_metals_ii_lr.pdf
https://www.huffingtonpost.ca/lina-holguin/woman-and-mining_b_6762576.html

73 https://www.huffingtonpost.ca/lina-holguin/woman-and-mining_b_6762576.html

As we have suggested in this report, any kind of exclusion of vulnerable groups within society, especially with regard to decision making that impacts on the livelihoods of those groups produces and exacerbates the inequalities already prevalent within that society or community.

The exclusion of women in an already patriarchal society can never lead to a more just outcome for those women. As long as women remain on the margins of consultation and decision-making processes, the gender bias in benefits and costs of extractive projects will not be adequately addressed and will continue to disproportionately oppress women.



CONCLUSIONS & RECOMMENDATIONS

This report has suggested that the lived experiences of communities affected by mining do not coincide with the rhetorical and generic claims by government and corporations that mining has been a positive force for development in South Africa.

The nature of the unequal way that benefits have accrued to stakeholders of the sector have arguably outweighed the generic contribution that mining has played in the development of the economy as a whole.

From its earliest manifestation as a large scale exploitative project, contestation about ownership and wealth distribution has characterised the sector, with wars, deprivation and exploitation, featuring throughout its more than 150 years history.

As we have shown in this report, that contestation has not subsided and remains at the core of disputes and conflicts in the sector.

In **State of the Nation, South Africa 2016, Who is in Charge**, in a chapter entitled; **Inequality, poverty and the state: The case of South Africa 2006 – 2011** by Margaret Chitiga – Mabugu, Evans Mupela, Phindile Ngwenya and Precious Zikhali, the authors argue that “*empirically there is a disconnection between poverty and inequality in South Africa*”⁷⁴. They find in their paper that “*while South Africa has made notable progress in terms of aggregate poverty reduction...this has not been accompanied by a corresponding reduction in inequality*”.

They further make the argument that their research points to the fact that “*growth does not necessarily affect poverty and inequality either together or indeed at all*” while noting that “*it is highly likely that inequality drives much of the social unrest in South Africa....and has both a direct and indirect impact on dampening growth rates in the country*”.

It is noteworthy then that while this report points to a distinct lack of benefit accruing to affected communities, other research highlights the general failure of the South African economy to reduce inequality and its concomitant threat to social cohesion.

The disparity between government and corporate’s rosy view of the possibility that mining offers to the South African economy and the lived reality of deepening poverty and growing inequality suggests an increased threat of social conflict within the sector.

In an address to an assembly at the launch of Mistra’s recent publication; **The Future of Mining in South Africa, Sunset or Sunrise**, the Minister of Mineral Resources again placed the question of people, and how they experience mining, at the centre of his own analysis.⁷⁵ He however laments in the same speech, that government has not yet found the formula to ensure that mining benefits accrue to the affected communities.

This comment by the Minister and Chairperson of the Governing ANC, taken together with the contributions of Joel Netshitenzhe, a member of the National Executive of the ANC, in the same book, raises hopes that Government has internalised the central challenge facing efforts to realise a more inclusive and just mining regime.

⁷⁴ State of the Nation 2016: Who is in Charge? Chapter 7; Inequality, Poverty and the State: the Case of South Africa 2006 2011. Chitiga-Mabugu, Mupela, Ngwenya, & Zikhali Pg 200

⁷⁵ Personal participation at the Launch on the 13th of December 2018

In his Chapter, Towards Mining Vision 2030⁷⁶, Joel Netshitenzhe, among a range of suggestions and insights, and despite the overall paradigm of intensifying exploitation of natural resources and investor driven economic growth, points to the lack of “**social compacting**” among the key stakeholders, as being a central requirement of any project within the sector.

While the calls for greater levels of social compacting is to be welcomed, it remains evident, on a closer reading of the detail of the extensive analysis proffered by Mr Netshitenzhe and Minister Mantashe, that the governing party, and by extension government still approaches the question of development from a paternalistic point of view.

As an example, Mr Netshitenzhe suggests that while he acknowledges that the Marikana Massacre in 2012 was precipitated by the lack of infrastructure and what he calls “*related practises*”, he nonetheless proffers that the way to circumvent such outcomes in the future is to ensure that “*a long term vision should oblige mining companies to be more actively involved in the conceptualisation and implementation of municipal and provincial development strategies and plans.*”

To his credit Mr Netshitenzhe does belatedly acknowledge that “*structures of accountability to communities need to be improved and should involve the highest levels of the companies.*”

The manner in which mining companies are promoted as the drivers of developmental strategies not only continues to view communities as passive recipients of handouts who are not capable of determining their own developmental paths, but also entrenches the paradigm of paternalistic top-down development.

If anything, this report has highlighted that, left to their own devices, local and provincial governments, working in collaboration with mining corporations, are not able to deliver developmental outcomes without **acknowledging the developmental imperative of nurturing and fostering community initiated and controlled accountability mechanisms**. This means unlearning the paternalistic notions of top-down development and encouraging, as the NDP does, that **local government should engage and be held accountable by communities not in the invited spaces controlled by officials, but in the created spaces of community collectives**.

Not only will a deeper institutionalisation of community participation assist with ensuring that developmental projects are relevant to the community but community oversight can also assist in reducing corruption and ensuring that benefits accrue to those who it is meant to accrue to.

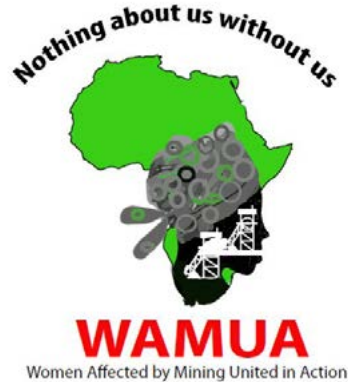
⁷⁶ The Future of Mining In South Africa, Sunset or Sunrise, edited by Salimah Valiani, Mupungubwe Institute for Strategic Reflection (MISTRA) 2018 Pg 17- 65

Our recommendations to Government include:

1. **Convening a Social Compact dialogue** to find common ground with communities in a way that is not instrumentalist or in a way that gives preference to those close to government political and economic circles.
2. Following the dialogue with communities to **convene a broader stakeholder social compact dialogue.**
3. Following the dialogues to propose developing a **New Mining Legislative regime which recognises communities are key stakeholders who should participate in all areas of governance.**
4. The New Legislative Framework should **Mandate a broad oversight forum which includes Community Movements such as MACUA, as well as civil society representatives to advance the transformative agenda as set out in the Constitution.**
5. As part of developing a New Legislative Framework for mining to **impose specific specifications for the development and realisation of SLP's.** These should include:
 - a. The adequacy of notice requirements to communities.
 - b. Community participation in the design of SLPs.
 - c. Community participation in the implementation of SLPs.
 - d. SLP's should be detailed in hard law and not only in guidelines and the Charter.
 - e. The law should clarify the roles of community, traditional authorities, local government, provincial government, DMR and Corporations.
 - f. Set in place a framework regulating the scale of social and labour plans in relation to the size and impact of mines.
 - g. Set in place clear penalties and sanctions for non-compliance.
6. The New Legislative Framework should **prioritise Women's participation and benefit.**
7. The New Legislative Framework should **prioritise and include environmental sustainability issues and concerns.**
8. The New Legislative Framework should **fulfil communities' right to free prior and informed consent to mining.**
9. The New Legislative Framework should **acknowledge and set as an aspiration, the Peoples Mining Charter.**



ANNEXURES



THE PEOPLES MINING CHARTER

We the mining communities here gathered reiterate our fundamental inalienable human rights and as such are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all our fundamental human freedoms and rights can be fully realized.

We affirm that Democracy is premised on the following:

That affected people must determine their own destinies. For us this means choosing for ourselves both our own developmental paths, and to participate in all decision making and manage or co-manage the utilisation of our resources if we so choose.

In all our struggles against colonialism and Apartheid we have struggled for these, and have insisted that no authority is greater than the will of the people. We have consistently told all the past rulers, that there can be nothing about us, without us.

MPRDA/Mining Legislation

Noting that the current mining laws as legislated in the MPRDA limits our democratic and inalienable right to self-determination, that amendments currently proposed to the Bill seeks to further reduce our right to self-determination and that in addition, many customary communities own their ancestral land although their ownership has not been formally recognized with title deeds of their mining and mineral rights, we reaffirm that it is the peoples, specifically occupiers of the land's, fundamental right to decide if any extractives / mining can take place on their land or not.

We reiterate that it must be the directly impacted and affected local community, who must have the greatest weight in determining whether extractives happen on their land and not only outside interests. The values and principles of our shared humanity,

our aspirations of collective prosperity and our legitimate concerns about future losses such as the erosion of our connection to ancestral lands, our heritage and livelihoods -govern our decision making.

We believe in self-reliance of communities and accordingly call on our democratic government to respect and support, with revenue from our taxes, the decisions made by communities for a non-fossil fuel and non-extractive driven path of development.

Our historical and recent experiences have taught us that whenever corporations and their allies seek to mine on our lands they will adopt “divide and rule” strategies which only serves to benefit them.

To resist these initiatives we commit to mobilise and build movements, coalitions and networks that will pool our resources and protect our integrity as people of the soil. These peoples formation will be governed by clear principles that leaders are accountable to a community and cannot take decisions outside a legitimate, representative community decision making bodies of all the affected people. When powerful groups seek to co-opt our leaders, who act on their own, we will disown them, and inform the world of their treachery. It follows that those decisions will not be binding on the community.

We note that the mining industry is cloaked in secrecy which runs contrary to our constitutional values and insist that both government and corporations have a duty to provide affected communities with transparent information and processes. We affirm that we will be guided by:

- Informed knowledge. The government as our elected representatives must ensure that an independent capacity development fund is accessible to such communities to source diverse sources of knowledge, geoscience, legal, psycho-social etc. which will help communities to make informed decisions
- Government departments responsible for various aspects of environmental protection must come to the communities immediately when an application for mining rights and water use licenses and the like are made to obtain directly our informed consent.
- Similarly, the same must apply to any authority responsible for extractives in particular mining and land
- We believe we are the owners of the land and not governments, and real reparations and compensation, which should be both individual and collective, must start with those living around the mines and who work in the mines who were relocated by mining activities,– as we feel the collective negative impacts of mining more directly than others.
- We Believe that the MPRDA must include provisions that direct no less than 50% of Royalties and tax allocations from mining

activities, for development of directly affected communities, to counteract the disproportionate losses suffered by mining communities and labour sending areas. These disproportionate losses must be recognized in terms of gender, environmental, health, spiritual and land use losses, which are in violation of basic international and national human rights law.

We, as united communities, call on all other mining communities not to entertain any corporation that has a track record of violating labour, human and environmental rights anywhere in the world.

In addition, we will refuse to give consent to any company that does not have a transparent community driven process of negotiation which has at its core the principles of Free Prior and Informed Consent.

We call for the inclusion in the MPRDA of an independent, accessible, speedy and effective grievance or redress policy and mechanism to address community concerns throughout the mining /extractive processes.

We insist that the exclusion of mining affected communities in having a direct say in the governance of their lives is unconstitutional and we commit to ending this colonial project of dispossession in our lifetime.

The Mining Communities gathered here commit to undertake a democratic process of collecting demands from mining affected communities across South Africa to bring all their demands together in a Peoples Mining Charter that should be included in the MPRDA.

The key declaration is based on the following Principles:

1. Community Voice in Decision Making through negotiation based on right of consent to determine what activities occur on one's land.
2. Democratic Community representation and customary decision making processes that are community based and not based on undemocratic traditional Authority.
3. Benefits from mining activities (profits, employment, procurement, and local economic development) should be shared equitably distributed to directly affected communities, near mining communities, workers and the public through a democratic process.
4. The public, specifically mining affected communities must have the right to Free and accessible access to information regarding all operations that affect the economic, social and environmental well-being of communities.

5. Communities bear a disproportionate burden of the costs of mining and there should be independent, accessible, speedy, and effective recourse mechanisms, before during and after mining.
6. Rehabilitation standards should ensure that the land is no worse than when mining started.
7. Restitution and Reparations should correct historical wrongs and should include environmental, social, cultural and heritage rights including spiritual connections to land, people and nature.
8. Compensation for loss of livelihoods and economic social, environmental, cultural and heritage resources should be based on full cost accounting **including future** losses of alternative development paths and value loss of minerals.
9. Women must have the right to Inherit Land and should be consulted on all issues affecting their bodies, families, land and lives in both customary traditional structures and community, local, provincial and national structures.
10. **Decriminalise, Legalise and Regulate Artisanal Mining**

Adopted on 26 June 2016 in Berea

QUESTIONNAIRE	
1. Respondent's Age	
2. Sex	
3. Marital Status	1. Married 2. Single 3. Widowed 4. Divorced/Separated
4. Highest educational attainment?	1. Primary 2. Secondary 3. Tertiary 4. Vocational 5. None
5. Who is the HH main Breadwinner?	1. Spouse 2. Parent 3. Grandparent 4. Brother/Sister 5. Son/Daughter 6. Other relative 7. Other 8. Self
6. Household main sources of livelihood	1. Employed 2. Social Grant 3. Remittances 4. Petty trade 5. Self Employed 6. Other
7. Is there anyone in the household who works/has worked at the mine?	1. Yes 2. No

QUESTIONNAIRE

8. If yes what type of work? (Clerical...)	1. Clerical work
	2. Professional eg Engineer
	3. Casual manual (contract)
	4. Casual manual (piece jobs)
	5. Other
9. Do you know what a Social Labour Plan is?	1. Yes
	2. No
10. Have you seen the local mine SLP?	1. Yes
	2. No
11. Do you know of any structure/committee between the mine and the community?	1. Yes
	2. No
12. If Yes, please explain	...
13. What do you (personal and household) benefit from having the mine in your community?	...
14. How has the community benefited from having the mine in the community?	...
15. What are the main problems/issues you face from the mine?	...
16. What have you or the community done about these issues?	...
17. How do you rate the mine's responsiveness to the community issues?	1. Very Poor
	2. Poor
	3. Neither Poor nor Good
	4. Good
	5. Very Good
18. Explain your answer	...
19. What would you want to change on the relationship between the mine and the community?	...

QUESTIONNAIRE – WOMEN'S SOCIAL AUDIT BASELINE:

1. Respondent's Age

2. Sex

3. Marital Status

- 1. Married
- 2. Single
- 3. Widowed
- 4. Divorced/Separated

4. Highest educational attainment?

- 1. Primary
- 2. Secondary
- 3. Tertiary
- 4. Vocational
- 5. None

5. Who is the HH main Breadwinner?

- 1. Spouse
- 2. Parent
- 3. Grandparent
- 4. Brother/Sister
- 5. Son/Daughter
- 6. Other relative
- 7. Other
- 8. Self

6. Household main sources of livelihood

- 1. Employed
- 2. Social Grant
- 3. Remittances
- 4. Petty trade
- 5. Self Employed
- 6. Other

7. Is there anyone in the household who works/has worked at the mine?

- 1. Yes
- 2. No

8. If yes what type of work? (Clerical...)

- 1. Clerical work
- 2. Professional eg Engineer
- 3. Casual manual (contract)
- 4. Casual manual (piece jobs)
- 5. Other

10. Please explain what the process is for a women to get a job at the mine?

...

11. Do you know what a Social Labour Plan is?

- 1. Yes
- 2. No

QUESTIONNAIRE – WOMEN'S SOCIAL AUDIT BASELINE:

12. Have you seen the local mine SLP?	1. Yes 2. No
13. Do you know of any structure/committee between the mine and the community?	1. Yes 2. No
14. If Yes, please explain	...
15. If yes, please explain who constitutes this structure?	...
16. If yes, please explain the role of women in this structure?	...
17. What do you (personal and household) benefit from having the mine in your community?	...
18. How has the community benefited from having the mine in the community?	...
19. How have women in the community benefited from the mine?	...
20. How does violence against women manifest in the community?	...
21. Has violence against women increased in the community with the development of the mines?	...
22. Explain your answer?	...
23. What are the main problems/issues you face from the mine?	...
24. What have you or the community done about these issues?	...
25. Has the community raised these issues with the mine?	...
26. How do you rate the mine's responsiveness to the community issues?	1. Very Poor 2. Poor 3. Neither Poor nor Good 4. Good 5. Very Good
27. Explain your answer	...
28. What would you want to change on the relationship between the mine and the community?	...

ActionAid South Africa COUNTRY OFFICE

PHYSICAL ADDRESS

4th floor West Wing
158 Jan Smuts Ave Building
Rosebank 2196
Tel: +27 (0) 11 731 4560
Fax: +27 (0) 11 492 0667

POSTAL ADDRESS

Postnet Suite 235
Private Bag X30500
Houghton 2041



<http://www.actionaid.org>



www.twitter.com/AA_SouthAfrica



www.facebook.com/actionaidsafrica/

ActionAid is a global movement of people working together to further human rights for all and defeat poverty.

act!onaid