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SOCIAL AUDIT REPORT

2022



PHALABORWA FOSKOR MINE

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BACKGROUND

Phalaborwa is a town located in the Ba-Phalaborwa Local Municipality, which is part of the Mopani District Municipality, in the Limpopo province. Mining activities started in 400 AD by the Sotho people, who mined and smelted copper and iron ore. Phalaborwa began as a mining town and still is home to Palabora Mining. The municipal area is surrounded by 5 traditional authorities, with communities who subscribe to African customary social structures and practices, where the local headmen are recognised as important social actors and decision-makers on behalf of the community as they did in ancient times. The current mining legislation regulates prospecting, extraction and other mining operations, and also protects mining communities and the environments from the impact of mineral extraction. Mining rights holders have a legal obligation to develop communities that are affected by their mining operations as per the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA).

Foskor in Ba-Phalaborwa

Foskor (Pty) Limited (Phalaborwa) is situated in the Ba-Phalaborwa Local Municipality and is an open cast mine that produces phosphate rock. The primary business is the beneficiation of phosphate rock concentrate to produce phosphoric acid and phosphate-based fertilizers, which are sold to the international and domestic markets. As of the publication of the SLP, Foskor employed 1219 workers from the Ba-Phalaborwa area.¹ The company claims that they are actively involved in the establishment of partnerships with affected parties to enable the fast-tracking of services in the Ba-Phalaborwa community. They accordingly claim that they have been involved in the development of areas around their operations through their company Corporate Social Initiatives annually in donations to the community.² These claims, it must be noted, are outside the Social Labour Plan (SLP) undertakings as per MPRDA requirements³ and should therefore be read as such.

This report aims to establish the validity and implementation of the claims and undertakings made by Foskor in an SLP submitted to the Department of Mineral Resources and Energy (DMRE) for the Ba-Phalaborwa community.

¹ Foskor Pty (Ltd). *Integrated Report 2013*: Midrand: Foskor Pty (Ltd). 2014.

² Ibid.

³ *Mineral and Petroleum Resources Development Act 28 of 2002: Mineral and Petroleum Resources Development Regulations*.

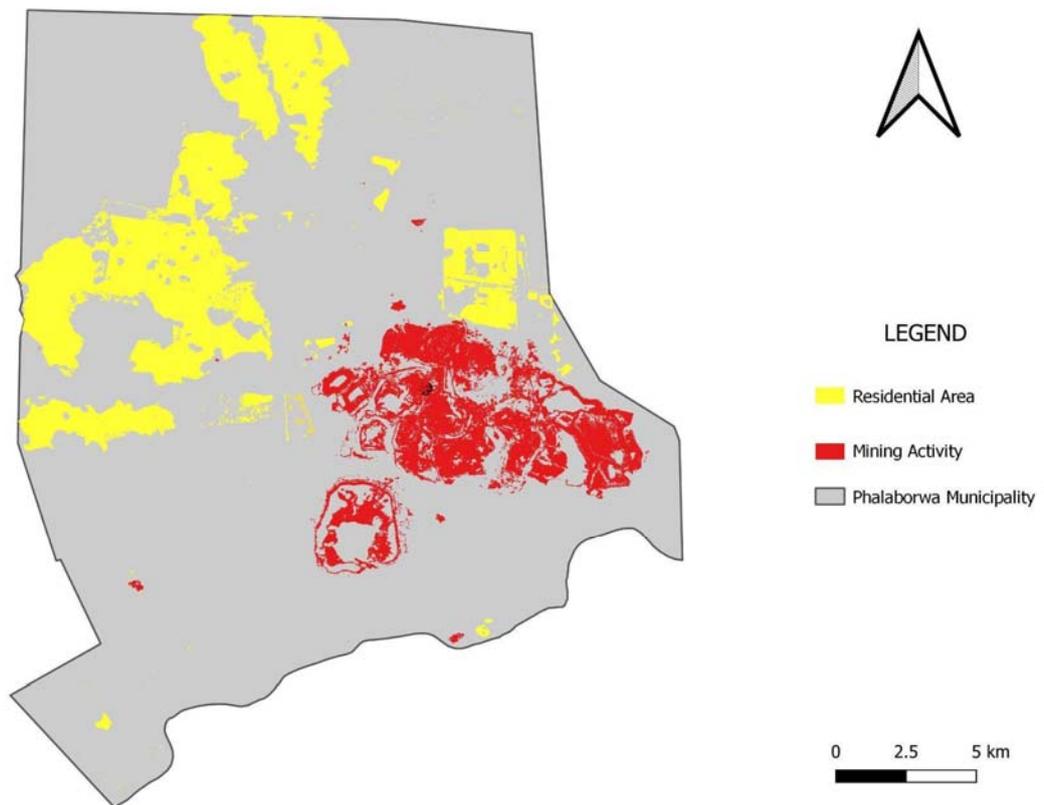


Figure 1: Map of Phalaborwa

Demographics

Despite hosting one of the largest phosphoric acid and phosphate-based fertilizer mines in the world, the Ba-Phalaborwa Local Municipality is poverty stricken. The municipality has an unemployment rate of 37.4% and a youth unemployment rate of 50.2%.⁴ This figure reflects the general despondency of young people who do not participate in the formal economy and therefore, cannot improve their lives. Young women are particularly affected by unemployment as they bear the brunt of a society filled with despair, often violence and other social ills. Female-headed households account for 39.5% of households, which are often sustained through participation in the informal sector, social welfare funding, and other alternative sources of income.⁵ Only 40.5% of households have flush toilets with

⁴ Statistics South Africa, "Ba-Phalaborwa", 2011, accessed on 12 January 2022, http://beta2.statssa.gov.za/?page_id=993&id=ba-phalaborwa-municipality.

⁵ Ibid.

connection to sewage, while only 37.1%⁶ have piped water inside the dwelling.⁷ These figures paint a bleak picture of the living conditions of most Ba-Phalaborwa families and display the abject poverty that the community members experience in the vicinity of a record-breaking open pit mine.⁸ Therefore, any local development plan must include poverty alleviation interventions that are holistic, empowering and women-centred in order to provide meaningful change in community members lives.

WHAT IS A SOCIAL AUDIT?

A social audit is a community-led process whereby the cogency of the promises made by the mining companies affecting communities is put to the test. This process empowers communities to gather and legitimise evidence of their experiences of service delivery, and through this process enables them to claim and realise their constitutional rights to transparent and accountable mining operations. During a social audit, the expenditure and service delivery outcomes promised in the Social and Labour Plan (SLP) of a mine are tested to determine whether community experiences regarding those outcomes reflect the vision of implementation as stated in the SLP.

An SLP contains proposed programmes that should be directed at the host mining-affected communities and labour sending areas, to offset the negative impact of mining and improve the quality of life for both the mine employees and the mining-affected communities. Members of the community collectively participate in the process of verifying an SLP of a particular mine by comparing the stated outcomes with the lived experiences of people on the ground. Evidence collected during a social audit is reported to the responsible stakeholders at a public meeting and used as a vehicle for advocacy by the host community. Community testimony, knowledge and experiences are a legitimate and central part of this evidence. A social audit provides a way to build effective and meaningful participation in poor and working-class communities by providing a means for a community to engage with the mining processes that affect their lives.

⁶ Ibid.

⁷ Ibid.

⁸ Earth Observatory, "South Africa's Largest Open-Pit Mine" 2019, accessed on 10 January 2022, [https://earthobservatory.nasa.gov/images/145366/south-africas-largest-open-pit-mine#:~:text=The%20Operational%20Land%20Imager%20\(OLI,at%20Bingham%20Canyon%20in%20Utah.](https://earthobservatory.nasa.gov/images/145366/south-africas-largest-open-pit-mine#:~:text=The%20Operational%20Land%20Imager%20(OLI,at%20Bingham%20Canyon%20in%20Utah.)

Social audits further empower communities, deepening the culture of participatory democracy and public deliberations. They provide an opportunity for poor mining communities to be heard, and a platform for people who have been excluded, deceived, and deprived of benefits and opportunities.

WHAT IS A SOCIAL AND LABOUR PLAN?

In terms of the MPRDA, the mineral resources of the country are the common heritage of all who live in the country. Section 2 (d) further states that its objectives are to ‘substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to enter the mining and petroleum industries and to benefit from the exploration of the nation’s mineral and petroleum resources’.⁹ This emphasises the role of mineral resource extraction and operations as a pivotal means towards community development and women empowerment. Social and Labour Plans, therefore, are the means by which mineral and petroleum exploration benefit communities.

An SLP is a document that mining companies are required to submit to the Department of Mineral Resources and Energy (DMRE) as part of their application for mining rights. According to section 23 (1) (e) of the MPRDA, (as amended by section 19b of Act 49 of 2008), the Minister must grant mining right 'if the applicant has provided financially and otherwise for the prescribed social and labour plan. The MPRDA further place duties on mining right holders:

- Section 25 (2) (f) - Duty of holder of the mining right to comply with SLP;
- Section 25 (2) (h), read with Section 28 (2) (c) - Duty of mining right holder to report annually on compliance with SLP.

Part II of the Mineral and Petroleum Resources Development Regulations (Regulations) further provides for the regulations of SLPs. Section 41 (c) states that the objective of the SLP is to ‘ensure that the holder of mining rights contribute towards the development of the areas in which they are in operation’. Further, section 46 (c) regulates the contents of the SLP and requires that they must include a Local Economic Development (LED) Programme comprising; (ii) the key economic activities of the area in which the mine operates and (iii) the infrastructure and poverty eradication projects that the mine would support in line with the Integrated Development Plan (IDP) of a local municipality and major labour sending areas. This report is limited to the contents of the LED section of the SLP and the social audit focused on investigating this section.

⁹ *Mineral and Petroleum Resources Development Amendment Act 49 of 2008: Sec 2.*

An SLP becomes a legally binding document once it is approved by the DMRE. It contains commitments made by the company on what it will do for both communities and workers. It also stipulates how and when commitments will be executed, as well as what the budgets are for promised interventions or activities.¹⁰ It is, therefore, one of the instruments to address South Africa's long history of inequality in the mining sector. The purpose of the SLP is to promote employment, advance social and economic welfare, contribute towards transforming the mining industry and ensure that mining companies contribute to the development of the areas where they operate.

In principle, SLPs should be drafted in consultation with communities, however, that is not always the case. In terms of Regulation 45, a mining right holder must convene a minimum of three meetings per annum with mining affected communities, as well as interested and affected persons to update these stakeholders about the progress made with the implementation of the approved SLP and the outcome of these meetings must form part of the annual reports.¹¹ Despite the comprehensive and progressive laws in place, the reality is that although the SLP system has been in force for over 12 years, most communities affected by mining still experience abject poverty and underdevelopment. This is partly because SLPs are often designed without adequate consultation with the communities that stand to benefit from the mining operations on their land. Mining companies often neglect to deliver on all the SLP commitments, and the DMRE often does not follow up on these commitments or enforce them, to the detriment of mining-affected communities.

¹⁰ *Mineral and Petroleum Resources Development Act Regulations, 2020.*

¹¹ *Ibid* at Sec 45.

WOMEN IN MINING IN MINING-AFFECTED COMMUNITIES

Women who are not formally employed are the backbone of the functioning of mining-affected communities.¹² The sustained employment of men and operation of the mine is indirectly dependent on women as they are heavily involved in social reproductive Activities Social reproductive activities refer to activities that enable their male counterparts to attend work in the mines. This includes activities such as house cleaning, cooking, maternal duties, et cetera. Although social reproduction is pivotal to the functioning of mining-affected communities (and, indirectly, the operation of mines), women are often excluded from decision-making processes as they are not formally employed by mining companies and there is a dominant belief that women are subservient to men in South African culture.

Men in mining-affected communities as such become the primary beneficiaries of mining Activities. This is a norm in rural South African communities, as patriarchal structures are a mainstay in South African culture. In mining-affected communities, men are heavily involved in the operation of the mine itself, which provides them with employment and income. As a result, women in mining-affected communities become dependent on their male counterparts due to the lack of employment opportunities available to them. This impedes women's ability to accrue wealth and status in mining-affected communities. In some communities, such as in mining-affected communities in the Limpopo region, women can derive their independence from men through agricultural activities.¹³ Produce can be farmed and sold, with the surplus earned being used as an income for women. This may be difficult in regions where mining operations have caused a loss of land. Women in these regions may find it difficult to find alternative income and therefore, remain dependant on males who are employed by the mine, and may resort to sex work - major economic activity is taken up by women in mining-affected communities. Sex work exacerbates the spread of diseases such as Tuberculosis (TB) and HIV/AIDS which thrive in mining-affected communities. Women in sex work also are largely vulnerable to violence and exploitation by clients, and to social stigma due to the lack of regulation and the discreet nature of sex work.

¹² Asanda Benya, "The invisible hands: women in Marikana", *Review of African Political Economy* 42, no. 146 (2015) at 545-560.

¹³ Mark Curtis, *Precious Metal: The Impact of Anglo Platinum on poor communities in Limpopo, South Africa* (South Africa: ActionAid, 2008).

METHODOLOGY

Data collection included both door-to-door surveying and physical verification. The survey was conducted through a 35-item household questionnaire with closed and open-ended questions. Any adult member of the household was eligible for an interview. Seven communities within Ba-Phalaborwa were surveyed as part of the social audit. These communities were represented by participants as shown below:

Community Phalaborwa	Number participants
Tshubje	12
Phatamashako	19
Machidi	19
Mosemang	20
Matshelapata	36
Tlapeng	22
Soweto	27
Total	155

Of the total number of participants, 80 were women (52%) and 75 were men (48%). While 71 households (46%) had at least one person who was working, only four households (3%) had someone who was working at Foskor. In addition, physical inspections of four sites where Foskor was supposed to have implemented infrastructure projects were conducted.

Community members were trained on SLP interpretation, social audit methodologies, and designing surveys. The questionnaire was designed in collaboration with a social audit team and trained community members. During the training, the community organisers had an opportunity to test the questionnaire and agree on ways to probe questions. The training, which was facilitated by ActionAid South Africa (AASA) and MACUA WAMUA Advice Office (MWAO), was also used to solicit the community views on what future inquiries would focus on. The training was

conducted from 21 – 22 April; data collection occurred on 23 April, and preliminary analysis was done on 24 April. Following the fieldwork, a de-briefing meeting was conducted where all data collectors discussed issues arising from the survey, challenges, and strategies for making future community inquiries more effective.

Data entry for completed surveys was conducted by MWAO for the analysis of the quantitative variables. Theme analysis and quantifying common responses was conducted for the qualitative variables.

The approach for this social audit included the following steps:

1. Holding a mass meeting and establishing a mandate
2. Preparing and organising the participants
3. Training participants
4. Analysing the Social Labour Plan
5. Developing and testing the social audits questionnaire
6. Gathering evidence
7. Capturing community experiences and testimonies
8. Agreeing on the main findings and organising evidence
9. Meeting with the mine
10. Meeting with the municipality
11. Reflecting and follow up

FOSKOR MINE COMMITTED TO UNDERTAKE THE FOLLOWING DURING THE SLP YEARS AUDITED (2013-2018): LOCAL ECONOMIC DEVELOPMENT SECTION¹⁴

1. Establishing a New Landfill Site

- a. Budget allocation was R4 000 000.00.
- b. Foskor will relinquish its surface use right 332/80 to farm Schiettocht measuring 50Ha for the establishment of sustainable waste management (recycling) in Ba-Phalaborwa Local Municipality
- c. Foskor will identify the following:
 - i. How much waste is currently produced in Ba-Phalaborwa Local Municipality
 - ii. Quantity of future waste
 - iii. The kind of equipment needed to make the project work
 - iv. How many jobs will be created by this initiative
- d. Foskor committed to hire a trainer, who can issue certificates, to train the people that will be working on the landfill sites.
- e. The project aims were to create awareness about the importance of recycling.
- f. Foskor committed to design a storm water drainage system to avoid flooding in the rainy season, monitor water pollution, create well-designed slopes, establish a weighbridge, and set up the general infrastructure needed.
- g. Foskor committed to identify a service provider that will provide a buy-back service for people who recycle.

2. Upgrade and Refurbishment of Electricity Network

- a. Budget allocation was R10 000 000.00.
- b. Foskor along with other stakeholders commissioned a report on the Eskom Selati 33/11kV Main Intake Substation which found that the following need urgent attention:
 - i. Eskom Incomer 1 Line Isolator is misaligned resulting in the insufficient main contact area and resulting in contact burning.
 - ii. Eskom Incomer 2 protection Current Transformer is removed and bypassed, resulting in no protection on the Municipal Incomer.

¹⁴ Foskor Pty (Ltd). Foskor Social and Labour Plan 5-year Plan: Midrand: Foskor Pty (Ltd). 2013.

- iii. 33kV Line and Busbar Earth Switch mechanical interlocks are broken or bypassed and therefore pose a risk to operators.
 - iv. Transformer 1 33kV Circuit Breaker is removed and bypassed resulting in no protection for the transformer. Isolation of the transformer on load is therefore also not possible.
 - v. Transformer 2 33kV Circuit Breaker spring charge mechanism is faulty, and the circuit breaker must be operated by hand.
 - vi. The condition of the substation earth mat and equipment earthing is suspect since there is evidence that the earthing conductors have been stolen in the past.
- c. As a result Foskor committed to funding maintenance and refurbishment of some parts in conjunction with other stakeholders.

3. Rehabilitation of Streets

- a. Budget allocation was R13 000 000.00 (reduced from R18 000 000.00 as per amendment).
- b. Project was due to be handled with the Department of Public Works to establish reliable, safe streets in town.
- c. Assessment of the extent of damage to road infrastructure and scope of works required was due to be done by the Municipality.
- d. Streets identified:
 - i. Naboom
 - ii. Moengraaf
 - iii. Essenhout
 - iv. Harlem
 - v. President Steyn
 - vi. President Kruger
 - vii. Bataleur
 - viii. Grosvenor
 - ix. Alex Du Toit
 - x. Tambotie
- e. Foskor committed to ensure the following maintenance and upgrades are done to the roads:
 - i. Edge breaking repairs.
 - ii. Reseal of the tar roads.

- iii. Fog spray of the resealed roads.
- iv. Painting of road marks.
- v. Refurbish or replace road signs.
- vi. Repairing and patching of potholes.
- vii. Construction of edge beams.

4. Upgrading of Bollanoto

- a. Budget allocation was R3 000 000.00.
- b. Foskor committed to developing a tree park opposite Hendrick van Eck Avenue where people can sit, relax, view indigenous plants etc., jog, cycle, play, gym etc.
- c. Link the Tourist Information Centre, Gateway Airport, Forever Resorts, Safari Park, Kruger National Park and Accommodation establishments within walking distance via a pedestrian boulevard.
- d. The following objectives were identified for the design of open spaces along Hendricks van Eck:
 - i. Bins, benches, lighting and drinking fountains;
 - ii. Paving, street furniture, benches, sculptures etc;
 - iii. More shade trees;
 - iv. Pedestrian crossings;
 - v. Traffic calming measures;
 - vi. Pedestrian bridge over Haarlem Street to link the 2 parks; and
- e. Foskor further committee to undertake consultations with all stakeholders (neighbourhood residents, local municipality, civic organisations, community policing forums).

5. Construction of School

- a. Budget allocation was R5 000 000.00 (included in amended SLP).
- b. Foskor committed to plan and construct a new school which would be named Makatikele Andries Malatji in Boelang.

DISCUSSION

The results of the Social Audit (See Appendix A) were analysed in accordance with the commitments made by Foskor Mine in the SLP audited. This includes an analysis of awareness amongst respondents about the projects that were to take place in their communities as well as their knowledge in relation to what an SLP is and how it operates in binding the mine to certain obligations. The specific projects audited in Ba-Phalaborwa were the Bollanoto Tourism Centre, Boelang Makatikele Andries Malatji School, Street Rehabilitation project, and Landfill project.

Consultation

When asked what an SLP is, only 2 of the 155 people surveyed in Ba-Phalaborwa noted that they knew, although they were unable to elaborate further on their knowledge. Those who stated that they knew, based their knowledge on their membership at the Phalaborwa Foundation, and not from the mine. Once the core group informed the community members about what an SLP is, 91.9% expressed that they would be interested in seeing an SLP. Furthermore, when asked about whether they had ever seen an SLP and whether they were aware of their right to request the document from mining companies, community members largely answered 'no', indicating that they were not aware of their right to access the document. Only 25 people knew that they had this right, while the rest did not. None of those who knew of it had seen it, nor attempted to retrieve it from the mining company, but for 1 person. This suggests that the mines in the area failed to make their SLPs accessible and to inform community members of their existence, as this would empower them to hold the mines to account for their commitments.

When asked about how they access information about projects underway in their community, most participants (88) responded that 'they just see things happening' in their community. Had Foskor been invested in a proper consultation process, then community members would be aware of projects done by the mine in their communities. The only person who had attended a community meeting with Foskor had attended it at the traditional leadership's base (*moshate*) and noted that the meeting was regarding jobs and services and not the SLP projects due to be conducted by the mine in the community. If claims by the survey participants are correct, then the one meeting between the mine and the community is not sufficient to constitute proper consultation in terms of the provisions of the MPRDA.

Bollanoto Tourism Centre

The Bollanoto Tourism Centre is a tourist attraction site that was already in existence and Foskor Mine committed to upgrading it in various ways as stipulated in the SLP. When asked about the proposed upgrades, which included a tree park, most people stated that they had never seen any such tree park. It was also determined that none had ever used the park due to its location, away from the community. According to the results of the survey and observations made by the Social Audit Team, no upgrades were done to the Tourism Centre between 2013 and 2018.

Boelang Makatikele Andries Malatji School

Although 87.1% of the respondents were from Boelang, only 26 people (19.3%) knew of the Makatikele Andries Malatji School in Boelang, while 109 people (80.7%) did not know of the school. None of the people that were aware of the school knew of any children that went to the school. When asked when the school was completed, 2 people asserted that the school was unfinished, while others thought the school had been finished in 2017 or 2018. However, when the Social Audit Team visited the site of the school in 2021, they found the school still unfinished with no children attending the school and a sign stating that the project would be complete in approximately 12 months.

Street Rehabilitation

Foskor committed to upgrading roads in the central business district (town) between 2013 and 2018. When asked about the quality of the streets, most respondents (56.8%) said that the quality of roads in town was 'bad'. If there had been upgrades to the roads between 2013 and 2018, the quality of those upgrades is questionable. Further probing on who was responsible for upgrading these roads and whether proper oversight and protocol was followed, is therefore, necessary.

Secondly, Foskor's choice to upgrade the roads in town excludes the most vulnerable communities in the municipality because SLPs are informed by the Integrated Development Plan (IDP) of the local municipality. An IDP is informed by political and bureaucratic considerations rather than meaningful consultative processes. This results in tensions between the communities and local authorities since communities, such as Mashishimale, often cannot effectively bring the responsible authorities to account for specific projects. When asked about the quality of roads in their communities, 98.1% of people rated the quality of roads as 'bad', and 87.1% noted that there is a stark difference between the

roads in town and the roads in their communities. While the roads in town are tarred albeit dilapidated, roads in the communities are not at all tarred.

General

Most, 68.4%, of the participants did not know that host communities must benefit from the mines around them, with only 47 people (30.3%) knowing of this obligation on mining companies. When asked what developments and opportunities they want in their community, 47 people said water, 30 people said tar roads in their communities and 13 people wanted jobs from the mine as their top three things. This speaks to how a thorough process of consultation undertaken by the mine would go further in benefiting the community, rather than arbitrarily aligning of community projects with the Integrated Development Plan without prior investigations through consultation.

PHYSICAL INSPECTIONS

Landfill Site



Image 1: Entrance to landfill site



Image 2: Inside the landfill site



Image 3: Inside the landfill site

No operational landfill site exists on the earmarked site. The area of land does not have signposts and is cordoned off by an unfinished cement fence. The fence stops abruptly at one point. If one drives into the fenced-off area, one only finds veld and further on, an unregulated dumpsite. There is no recycling system, no storm water drainage system, no system to monitor water pollution, no slopes, no weighbridge, and no other infrastructure. No service provider is operating there, and thus no buy-back service for people who recycle.

At the Ba-Phalaborwa Local Municipality, the social audit team was told that the landfill site is unfinished and was delayed due to the COVID-19 lockdown. However, the landfill project was supposed to be finished by 2016, long before the COVID-19 lockdown threatened project implementation.

Rehabilitation of Streets



Image 4: Alex du Toit Street



Image 5: Naboom Street



Image 6: Tabotie Street

Of the ten streets that were supposed to be upgraded, three were chosen randomly for inspection. The streets were in terrible condition, with large chunks of worn away tar, with visible sand and stones. They did not appear to have edge breaking repairs, fog-spray, painted road marks, refurbished road signs, sealed potholes, or edge beams.

The streets were supposed to have been rehabilitated by 2018, but hawkers working in the area had no recollection of any repair work being done in the past five years. Furthermore the Department of Road Works had no knowledge of the project or its implementation.

Bollanoto Tourism Centre Upgrades



Image 7: Area where bin should have been visible



Image 8: Road along Hendrick Van Eck street



Image 9: Grounds

The social audit team found no identifiable upgrades. There was no tree park outside the tourism centre, besides a single labelled tree, and the area outside the centre and along Hendrick Van Eck Street was not in any way upgraded for pedestrian use. There were no bins, benches, lighting, drinking fountains, street furniture, sculptures, shade trees, pedestrian crossings, or traffic calming measures. The audit team searched the length of Haarlem Street and did not find any pedestrian bridge.

Construction of school



Image 10: Toilet area



Image 11: Construction board



Image 12: Classrooms

The Social Audit Team visited the site of the school in 2021 and found that it was still under construction. The toilets and classrooms were not yet completed, and the inside of the classrooms still needed some work. Furthermore, the Department of Basic Education (DBE) was contacted and asked about their involvement and knowledge of the school, and they denied being part of any such project. The lack of endorsement by the DBE may mean that the structure will not accomplish its intention, and the community will not benefit from it.

ANALYSIS AND SUMMARY

A combination of the survey results and the findings from the physical inspections leads to three primary conclusions. Firstly, Foskor failed to fulfil its legally binding obligations under its 2013 – 2017 SLP. Far from a simple delay, or a single incomplete project, Foskor appears to have largely ignored its SLP commitments altogether. Secondly, rural communities in the greater Ba-Phalaborwa area have not benefited from Foskor's presence, although they are in the vicinity of the mining operations. The LED projects that were planned (but never implemented) were all in town, rendering the DMRE's decision to approve the SLP quite clearly against the interests of the most underdeveloped and poor communities in the area. The construction of the school in Boelang was only added to the plan after the commencement of the SLP period and seemed to have occurred without community consultation. Every single community member surveyed stated that they felt that their community had not benefited from Foskor between 2013 and 2017. This means that community members were either not comprehensively consulted, or that Foskor exercised a paternalistic role in deciding what was best for the community (essentially, what was least financially burdensome for them), under the guise of the IDP linkage requirement.

Thirdly, it is concerning that when asked what a priority in their community was, participants suggested urgent and practical projects that could have easily been supported by Foskor, if they laboured to consult with and determine the needs of communities around the mine to cater for their well-being. The most popular suggestions were water, tar roads, jobs, schools, clinics, libraries, streetlights and electricity (see Figure 2 below).

(MACUA/WAMUA, 2021)

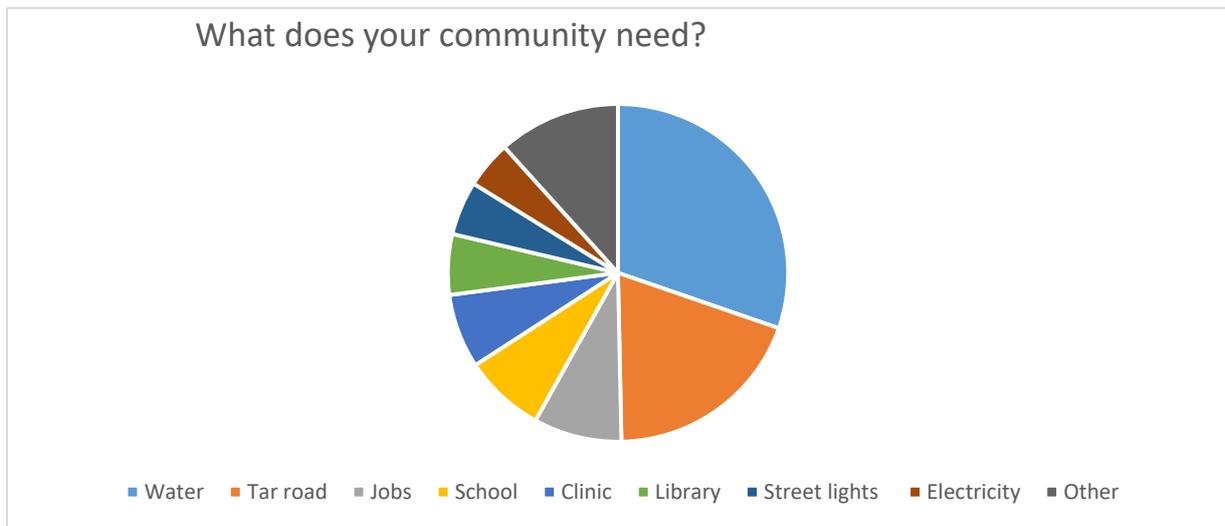


Figure 2 Answers to question on what development the Phalaborwa community needs

Foskor has failed to invest in and develop any relationship with community members. Only 1 of the 155 people surveyed has ever been in a meeting with Foskor and that meeting was about jobs and services, rather than community development and issues surrounding the SLP. When asked an open-ended question about how community members find out about projects taking place in the area, no participant suggested that Foskor or any other mine held a meeting with them. Most (88) said they are not told at all and that they merely see construction commencing in the area. Together, these results demonstrate that Foskor fell short in its duty to consult with communities, that is, to seek out a social license and legitimacy to operate on their and to operate in a way that ensures that the communities are empowered and benefit from the mining exploration.

INTEGRATED REPORT DISCUSSION

In terms of section 45 of the Regulations¹⁵, a mining right holder must submit annual reports on their compliance with the approved SLP to the relevant DMR regional manager¹⁶. Foskor published Integrated Reports (IR) during the second SLP period 2013 – 2018, explaining their business, how they are governed; their strategy and how they implemented it; and the results achieved during each reporting period. The IRs are primarily targeted at stakeholders which Foskor identifies as employees and trade unions; shareholders and board members; customers; contractors, partnerships and sharing agreements; suppliers and service providers; communities and community leaders, government, and regulatory bodies; media financial institutions and other lenders; insurers; special interest groups and peer groups. However the findings of this report indicate that communities are not considered important stakeholders by Foskor.

Financial Year 14

In the financial year 2014 (FY14), Foskor generated R5 086 billion in revenue, an increase of four percent from the previous financial year, of which they made R188 million in operating profit, an increase of 264 percent from the previous financial year¹⁷.

According to Foskor¹⁸ 26 percent shares were set aside for B-BBEE shareholders, of which five percent was held by the Ba-Phalaborwa and Umhlathuze Community Trusts, and six percent was held by the Kopano Foskor Employees Trust. They report that in terms of the respective Trust Deeds, 85 percent of economic interest must be accrued to local people residing in the surrounding communities.¹⁹

Under the transformation section, Foskor claims that they invest in communities within a 50 km radius of their operations. They report to have spent R5 million on CSI and LED projects thus far and will spend R35 million in the second cycle as part of SLP funding.²⁰

Financial year 15

¹⁵ Op cit. note 6.

¹⁶ Ibid.

¹⁷ Foskor Pty (Ltd). *Integrated Report 2014*.Midrand: Foskor Pty (Ltd). 2015, at 50.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid, at 86.

In FY15 Foskor generated R5297 billion in revenue, another four percent increase from the previous year, with a R419 million loss in operational profit. The number of employees increased to 1913, with women accounting for 16.6 percent overall²¹.

Foskor reported that they communicate with communities by holding public and personal meetings, quarterly meetings with local authorities and hold community open days. LED, SLPs and Community Trusts are also reported as community strategies²².

Under ‘socio-economic development’, Foskor did not report directly regarding the LED projects that they committed to in the SLP, instead, they repeated the same statement from FY14 in the IR that they will be making a minimum of R35 million direct investment for funding SLP projects for the next five-year period and pledged a further R2.2 million as part of fixed and ad hoc donations.²³

Financial year 16

In FY16 Foskor submitted a letter to the DMRE requesting permission to amend their LED projects, which was approved by the Regional Manager. According to the letter, this request followed visits and recommendations by the DMRE, which included reviewing the rehabilitation of the streets in Ba-Phalaborwa project. The amendments included a reduction of the R18 million budget for the rehabilitation of streets, to R13 million and the introduction of a new school in the rural development of Boelang, to be named after the local chief.²⁴

Revenue generated by Foskor amounted to R5 918, with a 12 percent increase from FY15. The number of employees increased to 2003.²⁵ Under the socio-economic development section of the same report, Foskor reported extensively on CSI projects and further restated their R35 million SLP commitment for funding LED projects for the next 5 years. A further R3 million was pledged for fixed and ad hoc donations, and a total of R70 million towards SLP funding for the second cycle.

Despite these encouraging figures and commitments, Foskor did not report on any community engagements regarding LED projects, nor did they report on progress regarding any specific LED project. They did, however, report on several other projects not covered in the SLP such as the Priska Combined School conversion of a classroom into a library, a project at Nwasorinin primary

²¹ Foskor Pty (Ltd). *Integrated Report 2015*. Midrand: Foskor Pty (Ltd). 2016, at 1.

²² Ibid.

²³ Ibid, at 94.

²⁴ Foskor Pty (Ltd). *Integrated Report 2016*. Midrand: Foskor Pty (Ltd). 2017, at 85.

²⁵ Ibid, at 3.

School, A Nelson Mandela Day initiative, a borehole drilling project at Phakgamang Gardens, a donation of dictionaries, an agricultural project, and other projects, which may be part of their non-binding CSI programme in the area.²⁶

Financial year 17

This reporting trend continued into FY17 where Foskor recorded revenue of R5 614 billion, a five percent decline when compared to the previous year. The cash generated from operations amounted to R336 million for the financial year. The number of employees also declined by one percent from 2003 in FY16, to 1984²⁷.

Under the socio-economic section of the IR the now standard statement, that R35 million has been committed to LED projects over the next five years, was restated²⁸. Regarding SLP commitments, Foskor reported that the 2014 – 2018 SLP was submitted and approved by the DMRE (only during this financial year- and not at the beginning of the SLP cycle) and that it was supported by NUM, who is the majority union, the Ba-Phalaborwa Local Municipality and community representatives. Three employees were hired to oversee the implementation of the projects²⁹.

One year before the end of the second five-year SLP cycle, projects that were being implemented, according to the IR, included the procurement of a 30MVA transformer at a cost of R7.3 million for infrastructural development in Phalaborwa³⁰. Regarding street rehabilitation, Foskor reported that, “there is spending happening on the rehabilitation of streets and pothole repairs...”³¹ with R2.5 million already having been spent to date. However, this concerning statement is called into question based on the social audit site visits and survey data which found that no street rehabilitation was done, nor did any of the survey participants recount observing any such rehabilitation being done. A further claim was that Foskor conducted a rigorous community needs assessments and then put in place monitory and control systems, however, this claim is not supported by the social audit data regarding the consultation process.

Further reporting was done regarding projects outside the ambit of the SLP which included Nelson Mandela Day and Back to School initiatives, as well as a donation of baby scales to the Namakgale

²⁶ Ibid, at 86.

²⁷ Foskor Pty (Ltd). *Integrated Report 2017*.Midrand: Foskor Pty (Ltd). 2018, Page 3.

²⁸ Ibid, at 82.

²⁹ Ibid.

³⁰ Ibid, at 82.

³¹ Ibid, at 81.

B Clinic³². However, although these are commendable initiatives, the community cannot call Foskor to account. It still seems as though that in FY17, SLP LED projects were barely prioritised, and their implementation thus remains under question.

Financial Year 18

The final year for the implementation of the second SLP cycle was 2018, the completion of which was supposed to be during FY18. Revenue generated was R5 893 billion, a five percent increase from the previous financial year, with R344 million generated from operations³³. Foskor employed 1976 people, with women making up 21 percent of the total workforce³⁴.

Foskor reported in detail the progress of the projects that they did attempt to implement and admitted that they ‘would’ have spent R35 million over the five-year period on all the projects that they committed to in the SLP and provided a breakdown of the budget for each³⁵.

The budget for the construction of Makatikele School was R5 million, however, this report did not elaborate on the progress of this project, nor do financial statements indicate any specific budget towards this project. An amount of R4 million was budgeted for a new landfill site³⁶, however, the report does not expand any further on the project besides mentioning that it was in the second cycle SLP. For rehabilitating the streets in Ba-Phalaborwa Local Municipality, R13 million was budgeted, and Foskor reported that R1.3 million was spent on pothole repair³⁷, a far cry from the original budget. This vague admission of failure by Foskor can be corroborated by the social audit findings as elaborated above.

The IR elaborates on two of the five SLP commitments and provides pictures thereto:

- a. Installation of 30MVA transformer: Spent R7 626 912 in June 2017 and it was successfully commissioned. Foskor reported that the community requested the remainder of the budget to be used to refurbish the worn-out electric overhead lines.
- b. Pothole repairs as part of the rehabilitation of the streets of Ba-Phalaborwa Local Municipality: Of the 3 million budgets, Foskor reported that R212 509 was spent on this

³² Ibid, at83.

³³ Foskor Pty (Ltd). Integrated Report 2018: Midrand: Foskor Pty (Ltd). 2019, at 3.

³⁴ Ibid. at 3.

³⁵ Ibid, at 85.

³⁶ Ibid.

³⁷ Ibid.

part of the project and the balance of the total R13 million budget allocation, would be spent to complete the project in the 2019 financial year³⁸.

Concerning is that this final report does not account for the project to upgrade the Bollanoto Centre at all. Further, the landfill site project was not accounted for, instead, it was moved to be part of the third SLP cycle although the R35 million budget for the current SLP commitments was stated in most IRs as reassurance of financial means to complete the projects. This is also true for all the projects approved by the DMRE, yet the only projects that seem to have been attempted were not at all completed. The street rehabilitation project was further delayed and pushed to the next proposed SLP³⁹.

These failures were attributed to ‘the unfortunate landscape that Foskor finds itself⁴⁰.’ However, the social audit found that part of the reason why Foskor failed the Ba-Phalaborwa community was due to a lack of structured, comprehensive, and frequent consultation with the community as the Regulations⁴¹ require, as well as the fact that the SLPs are vague and lack clear budgets and timelines which are not open to community scrutiny.

³⁸ Ibid, at 90.

³⁹ Ibid, at 90.

⁴⁰ Ibid.

⁴¹ Op cit. note 6.

CONCLUSION

Findings from the social audit conducted in the Ba-Phalaborwa community by the MACUA and WAMUA Social Audit Team indicate general non-compliance by Foskor regarding SLP commitments in the years under review.

Despite the increase in revenue for the mine over the 5 year period, and “pledges” of R35 million each year, Foskor did not implement a majority of the projects they were due to implement during the 2013-2018 period. The only project that Foskor reported completing was the refurbishment and upgrading of the electricity network, which undoubtedly benefits them more than mining affected communities. Data collected further indicates a lack of consultation with mining-affected communities surveyed and the projects under review were either not complete or entirely neglected by the mine.

The impact of non-compliance on communities includes general discontent and a strained relationship between the mine and the community. Other stakeholders such as traditional leaders, the local municipality and established community formations who play the role of fostering and maintaining a sustainable relationship between the mine and the community also stand as complacent collaborators as far as they failed to ensure that Foskor accounts for its failures.

The DMRE and the Ba-Phalaborwa Local Municipality also failed the Ba-Phalaborwa community in failing to require that all projects from the previous SLP cycle be completed before approving a new SLP cycle and the R35 million budget commitment⁴² was underspent as a result. Foskor capitalised on the DMRE’s complacency and lack of oversight. It does not appear that Regulation 4⁴³ was complied with, nor has the DMRE upheld its duty to enforce its own policies and related legislation.

Due to Foskor and the DMRE making it cumbersome to access annual compliance reports for the surveyed years, this report reflects findings based on documents that were accessible at the time of its compilation. Mere budgets and integrated reports do not provide sufficient information for communities to be able to monitor compliance, access the true progress of the development and to seek legal recourse where non-compliance is evident.

⁴² Foskor Pty (Ltd). *Foskor Social and Labour Plan 5-year Plan*: Midrand: Foskor Pty (Ltd). 2013, at 54.

⁴³ Op cit. note 6. Section 4.

APPENDICES

Appendix A: Observations and Results

The answers to the survey questions are provided below. The answers to open-ended questions were grouped into themes. For open-ended questions, some people provided more than one response and for that reason, the total will not reflect the number of people surveyed.

ITEM	QUESTION	ANSWER	COMMENT
DEMOGRAPHICS	Gender	F = 80 M = 75	
	Age	< 20 = 2 20 – 29 = 45 30 – 39 = 44 40 – 49 = 22 50 – 59 = 24 60 – 69 = 10 70 – 79 = 7 80 – 89 = 1	
	No. of people in household	1 = 5 2 = 8 3 = 23 4 = 35 5 = 28 6 = 23 7 = 11 8 = 7 9 = 11 10 = 4	The households we visited were large, and together are made up of 780 people. On average there are 5 people per household.

	No. of people finished matric in household	0 = 41 1 = 51 2 = 34 3 = 18 4 = 10 5 = 1	A total of 144 people in the households we visited had a matric. That represents only 18.5% of all the people in the households visited, although some may still be in school.
	Is anyone in your household working?	Y = 71 N = 84	45.8% of the respondents living in the Ba-Phalaborwa area had one person living in their household that was employed, whereas 54.2% had no one in their household that was working.
	Is anyone in your household working at Foskor?	Y = 4 N = 151	When asked how many of them were employed at Foskor Mine, only 4 people (2.6%) asserted that they had someone living in their household that worked at the mine, while 151 (97.4) of those that were surveyed noted that no one in their household was working at Foskor mine.
CONSULTATION	If there is a project happening in the community, how do you find out?	No information given / we just see things happening = 88 Word of mouth / the community = 32	While this was an open-ended question, not one responded said that they were consulted by a mine before a project started, even though mines are legally obligated to do so.

		<p>Traditional Leaders = 13</p> <p>Unemployment Forum = 6</p> <p>Municipality / Councilor = 6</p> <p>Unspecified meeting = 6</p> <p>School = 1</p> <p>Not sure = 3</p>	<p>88 (56.8%) told us that they just see things happening, 32 people (20.6%) noted that they find out by word of mouth from people in their community, 13, only 13 people (8.4%) said that they find out from their traditional leaders, 6 people (3.9%) said they find out from their local Unemployment Forum, only 6 people (3.9%) were told by their Municipality of Ward Councillor, another 6 people (3.9%) noted that they are told in community meetings and one person (0.6%) had found out from the school.</p>
	Have you ever had a community meeting with Foskop?	Y = 1 N = 154	Only 1 respondent had ever had a meeting with Foskop, and that was in 2017.
	If yes, when?	2017	
	If yes, where?	Moshate = 1	
	What was discussed?	Jobs and services = 1	
	Do you know what an SLP is?	Y = 2 N = 152 N/A = 1	Only 2 respondents (1.3%) claimed to know what an SLP is,

	If yes, what?	Lawyer of company = 1 N/A = 1	but they were not able to provide an answer as to what it is.
	If yes, how did you learn?	Phalaborwa Foundation = 1 Community members = 1	
	Now that you know what an SLP is, are you interested in seeing SLP of Foskor?	Y = 144 N=11	Once respondents were made aware of what an SLP is, 144 of them (91.9%) stated that they would be interested to see an SLP and the information that it has in it.
	Do you know you have a right to ask for SLP?	Y=25 N/A=1 N=129	16.1% of people were aware that it is their right to ask for a copy of an SLP, however none of them had ever asked for a copy of one nor had they ever seen one, but for one person. This speaks to the lack of community participation when it comes to issues that affects their everyday living and development.
	If yes, have you ever asked?	Y=0 N=25	
	If yes, have you ever seen?	Y=1 N=24	
BOLLANOTO TOURISM CENTRE	Do you know the road leading from Spar to Kruger	Y = 130 N= 25	83.9% of the respondents knew the road on which Bollanoto Tourism Centre was situated and

	Gate? (Hendrick van Eck Avenue)		80% of them did not know of a tree park in the area between Spar and Kruger Gate as there was supposed to be in accordance with the description in the SLP. 84.6% of people had never used the park. 88.5% of the people asked had never seen benches along the stretch of road adjacent to the Bollanoto Tourism Centre. 97.7% of people had never seen and water fountains along the road adjacent to the Bollanoto Tourism Centre. 87.7% people noted that there was no safe pathway to cross the road between Spar and Bollanoto Tourism Centre.
	If yes, have you seen a tree park between Spar and Kruger Gate?	Y = 26 N = 104	
	If yes, have you ever used the park?	Y = 20 N=110	
	If yes, have you seen benches along Hendrick van Eck Avenue?	Y = 15 N = 115	
	If yes, have you seen water fountains along Hendrick van Eck Avenue?	Y = 3 N = 127	
	If yes, is there a safe pathway for people to walk along Hendrick van Eck Avenue?	Y = 16 N= 114	
	Do you know the Bollanoto Tourism Centre?	Y = 72 N = 83	46.5% knew of the Bollanoto Tourism Centre because the projects selected by Foskor were in town, whereas the communities were far from those
	If yes, have you visited the centre?	Y = 16 N = 56	

	If yes, do you feel safe walking around the centre?	Y = 8 N = 62 N/A=2	locations. Of those that knew the centre, only 16 (10.3%) had visited the centre and half of that (5.2%) felt safe walking around the centre.
BOELANG MAKATIKELE ANDRIES MALATJI SCHOOL	Do you know Boelang area?	Y=135 N=20	87.1% of the respondents knew the area of Boelang and out of that 26 people (19.3%) knew of the school called Makatikele Andries Malatji, whereas 109 people (80.7%) did not. None of the people that knew of the school were aware of the budget set aside to build the school and 23 people (79.3%) did not know when they started building the school, while the majority of those who knew had conflicting dates regarding when they started building the school. 2 people asserted that the school was unfinished, while others thought the school had been finished in 2017 or 2018. Nevertheless 100% of the respondents who knew about the school stated that
	If yes, do you know of a school that was supposed to be built in Boelang called Makatikele Andries Malatji?	Y = 26 N = 109 N/A = 1	
	If yes, do you know how much the schools was supposed to cost?	Y=0 N=27	
	When did they start building the school?	Don't know = 23 2015 = 1 2016 = 1 2017= 1 2018 = 1	

	When did they finish building the school?	Don't know = 23 Unfinished = 2 2017 = 1 2018 = 1	they did not know any children that went to the school.
	Do you know any children that go to that school?	Y=0 N=27	
STREETS	How is the quality of the streets in the CBD?	Good = 30 Okay = 36 Bad = 88 N/A = 1	<p>When asked about the quality of the streets in the CBD 30 people (19.4%) responded 'good', 36 people (23.2%) responded 'okay', and 88 people (56.8%) responded 'bad'. In relation to who uses the streets, the majority of people asserted that it was the residents of the CBD (78 people), while 45 people asserted that it's everybody that uses the roads, and 18 people asserted that it was people who worked in the CBD.</p> <p>When asked about the streets in their communities, 0 people responded 'good', 2 people (1.3%) responded 'okay' and 152 people (98.1%) responded 'bad'. 79 people asserted that the roads are used by the community and</p>
	Who uses those streets?	Residents of CBD = 78 Everybody/community = 45 People who work in CBD = 18 Taxis & busses = 12 Mining trucks = 2 Students = 2 N/A = 9 Municipality = 1	
	How is the quality of streets in your community?	Good = 0 Okay = 2 Bad = 152 N/A = 1	
	Who uses those streets?	Us/communities = 79	

		<p>Taxis and busses = 14</p> <p>School children = 3</p> <p>Mining people = 2</p> <p>People who go to town = 1</p> <p>N/A= 10</p>	<p>14 people asserted that they are used by taxis and busses.</p> <p>87.1% noted that there was a difference between the roads in the CBD and the roads in their community.</p>
	<p>Is there are difference in the quality of streets?</p>	<p>Y=135</p> <p>N=16</p> <p>N/A=4</p>	
	<p>If yes, what is the difference?</p>	<p>Community doesn't have tar road = 80</p> <p>Community streets aren't maintained = 18</p> <p>Community streets are worse = 17</p> <p>CBD has potholes = 13</p> <p>Community has no street lights = 9</p> <p>Community streets have no pavement = 6</p> <p>Community streets have potholes = 5</p> <p>Community streets aren't clean/safe = 4</p>	

		Community has no street lights / signs = 2 Community has no bridges = 2 N/A = 12	
GENERAL	Do you know that communities affected by mining must benefit from the mines around them?	Y=47 N=106 N/A=2	106 people (68.4%) did not know that communities that are host to mining companies must benefit from the mines around them, whereas only 47 people (30.3%) knew of this obligation on mining companies.
	If yes, how did you learn this?	Observations/ figured it out = 14 Unemployment Forum = 9 Word of mouth / community = 15 N/A= 5 Municipality = 1 Inspections = 1 ANC meeting= 1 Phalaborwa Foundation = 1	
	In your own view, what does the community need?	Water = 47 Tar road = 30 Jobs = 13 School = 12	

		Clinic = 11 Library = 9 Street lights = 8 Electricity = 7 Hall = 4 Shopping complex = 3 Park = 2 Paving = 2 Bridge = 2 Houses = 1 After care = 1 Training center = 1 University = 1 WiFi = 1	
	Between 2013 and 2018, did you community benefit from Foskor?	Y=0 N = 154 N/A = 1	99.4% of people asked asserted that their community had never benefited from Foskor Mine between the SLP years audited.