

Precious Metals II: A Systemic Inequality

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Executive Summary

‘Re be re bolaya mabele!’ [We used to harvest a lot!] “Re be re eja! [we used to eat!]”

Twenty-two years after the election of the first democratic state and 13 years after a new mining regime was legislated in South Africa, the community of Mapela, on the outskirts of Mokopane in Limpopo, are still trapped in a system that has by most accounts, continued the legacy of apartheid and dispossession well after the promised liberation from an oppressive yolk.

In this report we argue that this reality is not an oversight or a merely the slow maturation of a long term liberation project, but rather a systemic crisis which permeates out from the very mechanisms and institutions introduced to overcome the inequality of the past.

This report seeks to answer the question of why those who used to harvest and eat, are today less secure and increasingly unable to claim and exercise their human rights.

This study was initiated by ActionAid South Africa (AASA) as a follow up to the study conducted in the villages of Mokopane in 2008. During that study AASA found a number of human rights violations against the people of Mapela/Langa villages, and who live in the shadows of the most profitable platinum mine in the world— Anglo American’s Mogalakena Platinum Mine.

As a response to our study, and following an investigation by the South African Human Rights Commission (SAHRC), Anglo Platinum accused AASA of producing the report from a “particular ideological standpoint”¹. Also in response to our report the SAHRC, in their report on the human rights situation facing the communities of Mapela/Langa, the incumbent chairperson of the SAHRC, Jody Kollapen, argued that the “impact of business cannot always be determined at one point in time like a snapshot, but is often more accurately reflected over a period of time.”

It was for this reason that AASA sought to engage a credible academic institution and researchers to provide a balanced and nuanced account of the impacts of Anglo’s operations on the communities of Mokopane. The findings by Dr. Sonwabile Manana and Dr Farai Mtero confirm our concerns that not only are the mining regime in South Africa grossly skewed against the interests of communities who host mining operations, but also confirms that over the intervening period, the conditions for the communities of Mapela/Langa have not improved. In most instances the conditions have deteriorated, while our constitutionally mandated institutions sit by and allow the continued violations of human rights.

The study by the Society Work and Development Institute (SWOP) of the University of Witwatersrand, which forms part of the Mining and Rural Transformation in Southern Africa (MARTISA) research project, was generously funded by the Ford Foundation through its Human Rights and Governance Programme with additional support from ActionAid South Africa and the Open Society Foundation (South Africa). The full study is not reproduced here², instead we have used key findings from the study to make a broader case about the

¹ Anglo Platinum, 2008. The Facts. <http://www.angloplatinum.co.za>. (accessed 09.04.2010.).

² The full SWOP report is available on request and will be placed online for further reference. Please check the AASA website. . It is worthwhile noting that the SWOP research report enunciates the integral ethnographic issues in much more detail than we replicate here and the report is worth a separate consideration.

systemic and institutional nature of the violations experienced by host communities generally, and the Mapela/Langa community in particular.

According to the SWOP, the report focussed on livelihoods, food security and environmental rights. They also investigated the efforts by local communities to defend and reclaim these rights in the face of mining expansion. SWOP connected these broader issues to specific sub-themes such as, customary rights and traditional authority; multiple and differentiated livelihoods; and post-resettlement experiences. The study took place between March and May 2015 in four villages near to the Mogalakwena Mine in the Mapela area. They used different research methods, including a small-scale survey, life histories, organisational and institutional interviews and focus group discussions to explore the highlighted themes.

Key Findings:

Evidence presented by the ethnographic material suggests that many people in the study villages have lost access to land as a result of mining, particularly ploughing fields and grazing land. Land dispossession also connects to loss of access to other natural resources, including wild fruits, trees, natural herbs and firewood.

- In the villages located close to the mine, there are strong complaints about the environmental impacts of the mine. Air pollution and damage to houses are among the main complaints.
- Intermittent water supply is a challenge in all four study villages. Many residents associate this challenge with the impact of the mine.
- Ethnographic material also revealed that families that were relocated by the mine in 2007 have been separated from the graves of their loved ones. The issue of grave relocations is prominent, particularly the complaint by residents that the relocated graves were reburied far away from the new village. Some residents also claim that the mine did not relocate all the graves. They argue that there are still graves of their loved ones in the area occupied by the Mogalakwena mine. As a result, many members of the families that were relocated feel displaced and culturally violated.
- Relocation has led to marginalisation of other social categories, particularly the youth and women. This results from the historical structure of customary land rights in Mapela and the way in which the mine interpreted these rights when distributing its relocation benefits. When distributing compensation to the relocated families, Anglo Platinum (Amplats) focused on, and mainly dealt with the heads of households. The historical structure of customary land rights seems to have favoured the elders – mainly male – household heads. As a result, adult household members that were not favoured by custom to hold land rights were marginalised and displaced when their families were relocated by the mine.
- Evidence on livelihood activities in the villages of Mapela, suggests that land-based livelihoods have historically played an important role in the livelihoods and sustenance of rural households in the area. In contemporary times, the central role of land-based livelihoods has been undercut by the mine-related land displacements.

- The adverse impact on agricultural activities in these villages is acutely prominent with respect to the cultivation of large ploughing fields which has virtually collapsed while cultivation of homestead gardens has invariably shrunk as suggested by the sharp decline in the range and diversity of crops grown on this type of land. This happens alongside the shortage of grazing land which has constrained livestock production in the area.
- The livelihood crisis experienced by rural households in the Mapela area, to a large extent, manifests itself in the inability of rural households to grow their own food which has resulted in widespread food insecurity. The attempts by rural households to contest for and reclaim their rights revolve around the centrality of land and agriculture in the local agrarian economy and how mining activities have undermined local food security.

The findings presented in this study connect to the grammar and agency of community resistance to the mine. Our findings suggest that resistance in the Mapela area takes different forms. These include individual residents' continued 'illegal' occupation and cultivation of the land inside Amplats' mineral rights area, and refusal to relocate by some families and even episodes of community protest action. The various forms of resistance signify the ways in which village residents in Mapela reclaim the rights they have lost due to mining expansion.

In strengthening our case for the Mokopane case study to be read as a systemic failure, we invited Dr. Sarah Malotane Henkeman, an independent conflict and social justice researcher and a Senior Staff Associate of the Centre of Criminology in the Faculty of Law, University of Cape Town (UCT)³, to test our assumptions in this regard. In her written response to our request, Dr. Henkeman states that “[a]fter studying the ActionAid document on Mokopane, I agree that there is a case to be made for a combination of symbolic violence, structural violence, and structural human rights violations; and how this combination of micro-macro factors play out in the everyday, lived experiences of people in Mokopane.”

AASA believes that the findings of this research, which indicates a livelihoods and food security crisis in a once self-sustaining community, seven years after our human rights institutions were called upon to intervene, reflects much deeper and systemic crises. We hope that through this report we garner the attention of the key stakeholders and the public regarding the systemic failures which led to this continuing calamity. We hope that the values of our Constitution and respect for human life and dignity will eventually trump the sole pursuit of profits.

³ See more at: <http://www.criminology.uct.ac.za/dr-sarah-henkeman#sthash.7uYpolnD.dpuf>. Sarah holds a B.Soc.Sci. (Hons) in Criminology from the University of Cape Town, an MA in International Conflict Analysis from the University of Kent, (UK) and a PhD in Conflict Resolution and Peace building from the University of KwaZulu Natal (SA). She also holds a BA in Psychology and a Higher Diploma in Education (Guidance and Counselling) from the University of Cape Town. These qualifications; her experience as a conflict resolution and peace building practitioner for over 20 years; and her lived experience under apartheid, inform her transdisciplinary approach to violence. - See more at: <http://www.criminology.uct.ac.za/dr-sarah-henkeman#sthash.7uYpolnD.dpuf>

Introduction

The community members who live in the shadows of the most profitable platinum mine in the world, find themselves at the centre of a systemic crisis that has denied them access to livelihoods, increased their food insecurity, limited their access to vital water and trampled on their heritage, all in the name of 'progress' and profit.

The Mapela/Langa communities have been engaged in a protracted battle of attrition with Anglo Platinum for over half a century. The first forced removals occurred in the late 1960s and by the time South Africa became a new democracy in the mid-1990s, Anglo was preparing to intensify its extraction of platinum from the area. By 2002 it had opened a second pit and by 2007 a third.

The aggressive expansion by Anglo, which saw about 1000 families - more than 7000 people, relocated between 2006 and 2015, happened alongside the introduction of a new mining regime initiated by a democratic government governed by some of the most progressive human rights standards in the world.

However, from its earliest conception as a White Paper, the new mining regime which was later to become the Mineral Petroleum Resources Development Act of 2002 (MPRDA), paid scant attention to those who bear the brunt of mining's negative impacts. The fight by mining affected communities and civil society to bring the rights of communities to the centre of mining legislation has been mostly marked by small gains and many reversals.

The current version of the MPRDA, which was approved by the National Assembly and rushed through the Council of Provinces with no consultations with communities, further seeks to limit the scope of community involvement and to render community voices in regulating mining impotent.

It was at the insistence and threat of a Constitutional challenge by the national network of mining affected communities – Mining Affected Communities United in Action (MACUA)⁴ – that the president of the country was compelled to send the Bill back to the National Assembly for broader community consultation. This Bill has still not been processed through the houses of Parliament, and the mining regime remains in limbo while communities, as shown in this report, face increasing food insecurity among a host of other human rights violations.

The issues which impact on the mining regime of the country are numerous. They are often interconnected and range from socio-economic to environmental, gender, cultural, symbolic and structural power relations. In line with AASA's mission of working together with people living in poverty to further human rights and defeat poverty for all, this report will seek to highlight the manner in which the organs of state have often worked, often inadvertently, against the interests of the most marginalised and vulnerable in our society.

The disproportionate impact that mining operations have had on women, youth and children should be of major concern to all who cherish the ideals of our Constitution, while the on-going and increasing anger of the youth should serve as warning to duty bearers both within

⁴ MACUA- Mining Affected Communities United in Action formed in 2012 and representing over 100 communities across the country.

the state, business and the constitutionally mandated human rights institutions, of the unsustainable nature of violations of mining affected communities' human rights.

In order to locate the centrality of systemic and structural failures, it would be important for us to first consider what these symbolic, systemic and structural elements entail. The following is taken from Dr Sarah Molatane Henkeman's³ response to AASA's request for comment on this report.

Rendering symbolic and structural violence visible: The case of Mokopane

By Dr. Sarah Malotane Henkeman

After studying the ActionAid document on Mokopane, I agree that there is a case to be made for a combination of symbolic violence, structural violence, and structural human rights violations, and how this plays out in the everyday, lived experiences of people in Mokopane. I draw on literature to first discuss the notions of symbolic and structural violence, and structural violations of human rights, where after, I link these to the examples cited in the report.

What is symbolic violence?

According to veteran peace researcher— Johan Galtung, symbolic violence is an aspect of cultural violence. Cultural violence legitimises or delegitimises and justifies structural and direct violence.⁵ Pierre Bourdieu focuses on the gender aspect of symbolic violence which, he argues, results in unequal power relations that are 'naturalised', meaning that the 'powerless' are not always aware that this need not be the 'order of things', but are 'trapped' in a one-way relationship that renders them as 'inferior' and therefore not worthy of being taken into account.

In the case of Mokopane, it can be argued that the international company's engagement with male heads of households introduces symbolic violence in which women and children's experiences are excluded, and their voices silenced with regard to amicable relocation arrangements and its aftermath. Here, the findings from the SWOP research report are relevant and confirm that "relocation has led to marginalisation of other social categories, particularly the youth and women. This results from the historical structure of customary land rights in Mapela and the way in which the mine interpreted these rights when distributing its relocation benefits. When distributing compensation to the relocated families, Amplats focused on, and mainly dealt with the heads of households. The historical structure of customary land rights seems to have favoured the elders – mainly male – household heads. As a result, adult household members that were not favoured by custom to hold land rights were marginalised and displaced when their families were relocated by the mine."

This engagement on the basis of the symbolic power of male heads of households, has arguably led to the legitimisation and justification of structural violence that now affects the entire community in general, and women and children in particular.

What is structural violence?

⁵ Galtung, J. (1996). Peace by peaceful means: peace and conflict, development and civilization. Oslo: International Peace Research Institute.

Based on his work in Haiti, Paul Farmer⁶ articulates the notion of structural violence best. This is helpful in trying to understand the case of the Mokopane community in both the national and global context. 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 Ho,⁷ 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.”

The SWOP report which unpacks the “complex picture” within the Mapela areas concludes that “land-based livelihoods have historically played an important role in the livelihoods and sustenance of rural households in the area. In contemporary times, the central role of land-based livelihoods has been undercut by the mine-related land displacements....and [t]he livelihood crisis experienced by rural households in the Mapela area, to a large extent, manifests itself in the inability of rural households to grow their own food which has resulted in widespread food insecurity.

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.”

Linking cultural and structural violence to human rights violations in Mokopane

To understand the experiences of individuals and families in the Mokopane area, it is important to make micro and macro linkages. This understanding of the link between cultural and structural violence, and structural violations of human rights is exemplified in the Mokopane case, as a shared social reality, in the following ways:

- Evidence presented by the ethnographic material suggests that many people in the study villages have lost access to land as a result of mining, particularly ploughing fields and grazing land.
- In the villages located close to the mine, there are strong complaints about the environmental impacts of the mine. Air pollution and damage to houses – mainly cracks – are among the main complaints.
- Intermittent water supply is a challenge in all four study villages. Many residents associate this challenge with the impact of the mine.

⁶ 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

⁷ Ho, K. (2007). Structural Violence as a Human Rights Violation. Essex Human Rights Review Vol. 4.2.

- Ethnographic material also revealed that families that were relocated by the mine in 2007 have been separated from the graves of their loved ones. As a result, many members of the families that were relocated feel displaced and culturally violated.

In Chapter 2- Anglo: Delivering Inequality, the AASA report traces what the company has in fact done, but how and why this falls short of human rights requirements, and it also points to indirect structural violence in general.

Peter Iadicola & Anton Shupe⁸ cast light on the protests that result from cultural and structural violence by locating violence in a macro or micro context. They argue that “if we focus only on the lowest levels [where protests and violence occur], we fail to understand and see how the violence that is committed at the highest levels by those with the greatest power manifest itself in the violence of those with the least power in the society and the world.” Placing their argument in global context, they suggest that:

“The impoverishment of nations and their people because of their structural position in the world economy and the enforcement of the maintenance of this position by imperialist relations between advanced industrialised societies and countries on the periphery is the beginning of this chain. The international structural violence of disease, famine, and lower life expectancies resulting from the impoverishment of people in Africa, South and Central America, and Asia begins the chain. This international structural violence may also manifest itself in the displacement of working-class populations”.

It can thus be argued that the protests in Mokopane can be placed in global, national and local context. These local protests play out in the following way:

“[R]esistance in the Mapela area take different forms. These include, individual residents’ continued ‘illegal’ occupation and cultivation of the land inside Amplats’ mineral rights area; refusal to relocate by some families; and even episodes of community protest action. The various forms of resistance signify the ways residents in Mapela attempt to reclaim the rights they lost due to mining expansion.”

In sum, literature on invisible or visible forms of violence support the argument that local protests sparked by lived conditions in Mokopeng at the micro level, are linked to broader global and national economic, political, and social factors at the macro level. The case has thus been made that the Mokopane community indeed experience cultural and structural violence which lead to structural violations of their human rights whether this was intended or not.

⁸ Iadicola, P., & Shupe, A. (2003). *Violence, inequality, and human freedom* (2nd ed.). Lanham: Rowman & Littlefield.

Chapter 1: Reclaiming their rights: The Mogalakwena Mine and Community Resistance in the Langa-Mapela/Langa Traditional Authority Area, Limpopo, South Africa.

Langa-Mapela people – formed by difference, shaped by dispossession

[Content extracted and edited from SWOP Report]

The Mapela area, north of Mokopane (former Potgietersrus) is inhabited by Africans of diverse, multi-ethnic origins. The most prevalent group, according to historical literature, is the Ndebele people. The earliest record of IsiNdebele-speaking people in the former Northern Transvaal dates to the mid-17th Century. According to Jackson (1981: 4), the Ndebele, also known as the 'Ndabele of Langa' first settled at a place called Thaba Tšhweu, south-east of the modern day city of Polokwane. After staying there for about four generations, the Langa, under Chief Seritarita (1775-1795)⁹, moved on. They drifted south-westwards, conquering and integrating smaller groups of Africans on their way (mainly Sotho people), before finally settling in Moumong-wa-Matswake near the Mogalakwena River, north of Mokopane. This is where Chief Seritarita died and was succeeded by his son, Mapela¹⁰ (1795-1825) (Jackson, 1981: 8). It was also at Moumong-wa-Matswake where the Langa, like the many other indigenous polities in South Africa encountered the vicissitudes of the 19th century – the Mfecane Wars and devastating encounters with white colonialists, which destabilised and dispossessed all Africans in the country.

In 1890 the Langa chiefdom broke into two independent chiefdoms (the Mapela and Bakenburg) under the Afrikaner colonial state. By this time, it was already multi-ethnic in composition. Various indigenous peoples, including Sotho, Pedi and Tsonga (also called 'Shangaan'), had already been assimilated into the Langa chiefdom through both coercive and voluntary means (Jackson 1981, Delius & Hay 2013). The two Langa branches also became two separate 'native locations' during the 1890s.

After the Afrikaner colonial invasion and conquest, large tracks of land formerly belonging to Africans in the northern Transvaal were surveyed into farms and generously parcelled to white private owners. By the 1890s, many Africans had become landless subjects of the white landlords. Most survived as labour tenants and their affiliation to local chiefdoms was, at times, loose.

In October 1972, the Mapela chiefdom fell under the administration of former Lebowa 'homeland' when the latter was established by the apartheid state and granted a fictitious independence. This undertaking shaped a new social order that not only redefined power structures but also the notion of 'the tribe.'

The colonial and apartheid conception that every African was a member of a tribe and that custodianship of African land solely rested on the authority of local chiefs, was deeply flawed. Pre-colonial chiefs did not have control over the property rights of their subjects. Delius (2008: 215) explains:

⁹ Son and successor of Chief Masebe II.

¹⁰ Chief Mapela was later succeeded by his son Chief Mankopane (1835-1877).

“The availability of land made it relatively easy for groups to move between chiefdoms. The evidence suggests that there was considerable movement between chiefdoms in 18th and 19th century South Africa, and that this process placed important checks on chiefly abuse of power. This mobility also contributed to cultural heterogeneity, which undermines the depiction of these communities as tribes ... In fact, the populations of much chiefdom were diverse and their boundaries were porous.”

The residents of Mapela community, like many African groups, have experienced the draconian apartheid policies that caused massive forced relocations of African people from their land to the least productive areas (designated for ‘Blacks’) in the former homelands. These impoverished people continue to live their lives without dignity. They have never enjoyed the proper legal protection over any piece of land they owned or occupied.

The post-apartheid legislation¹¹, that redefines former homeland areas as ‘traditional communities’ under chiefs, continues to reproduce the apartheid-style interpretation of communal property rights. Chiefs in these areas are empowered as legitimate custodians of communal land and other natural resources. Not only does this go against many rural peoples’ understanding of the authority of chiefs, it can also violate the local meanings attached to and connections with the land.

A consequence of the post-apartheid state’s assumption that chiefs are the sole custodians of communal property has been the emergence of a role for traditional authorities in mediating mine-community relationships in Mapela. Customary land rights render rural residents in Mapela vulnerable to dispossession when mining capital expands on communal land.

There have been many instances on the platinum belt where this has factored in local political conflict, with the legitimacy of the chiefly power contested.

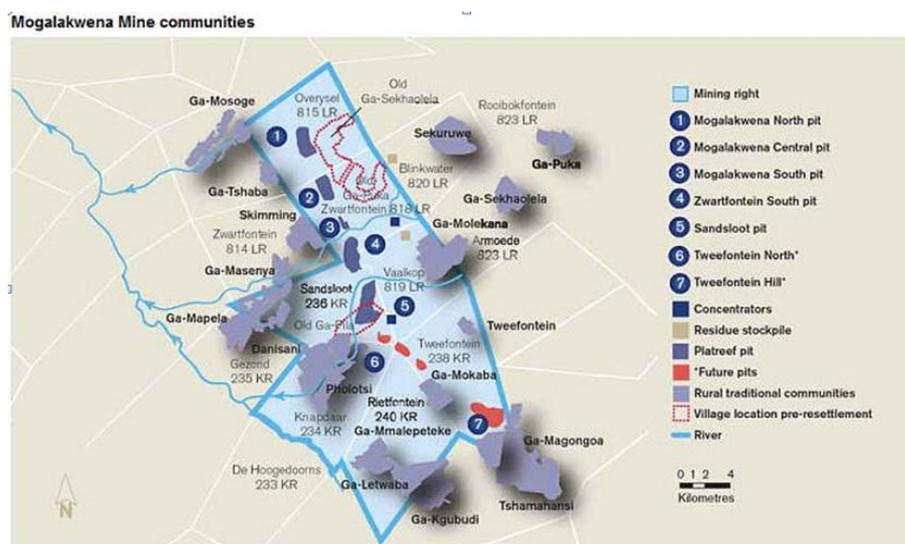
¹¹ These include the Traditional Leadership and Governance Framework Act of 2003 (Act 41 of 2003, or the TLGFA), the Communal Land Rights Act of 2004 (Act 11 of 2004) and the Traditional Courts Bill (B15—2008).

Introduction

The state's interpretation of cultural institutions and structures within Mapela, have lent to a particular redefining of power within the region. The chief wields all authority over land and resources while rural residents are expected to be obliging subjects. This re-configuration largely serves to the benefit of the state and big companies like Amplats, who are able to circumvent communities and negotiate dubious deals with local chiefs. The repercussions of which are often borne by rural communities who are left further marginalised.

The 2008 *Precious Metal Report*, which investigated the impacts of platinum mining on vulnerable communities, plainly illustrates this. The study examined four villages in the broader Mokopane area, namely; Ga-Pila, Ga-Puka, Ga- Molekane and Ga-Chaba. It found that mining triggered off a series of social, economic, political and cultural impacts that, it could be argued, has changed the very fabric of this rural community. Community members complained bitterly about the loss of agricultural land; lack of access to clean drinking water; inequitable relocations; damage to property; security and legal intimidation by the mine; and further displacements of communities. It has been seven years since the publication of the *Precious Metal Report* and ActionAid South Africa (AASA) thought it was important to measure the many claims contained in Anglo's 2014 Sustainability Report to ensure that Anglo does in fact 'walk its talk.'

In this follow-up report four villages in Limpopo were again examined, two of which, namely Ga- Molekane and Ga-Chaba, formed part of the original study, while Sekeming and Ga-Sekhaolelo/Armoede were additions. This allowed AASA to get a broader sense of mining, its impacts on local communities and the ability to identify key shifts in the Mapela area. The case studies and key findings of each village, which were extracted and edited from the SWOP report, are summed up below.



Source: Wickimapia: <http://wikimapia.org/13554463/Mogalakwena-Platinum-Mine>

Ga-Chaba - “Re be re eja! [We used to eat!]”

Context

Ga-Chaba is one of the oldest villages in the Mapela area. According to the village *ntona* (headman) the village is mainly constituted by the descendants of a group of Pedi migrants who fled during the late 18th century wars to the land north of Mokopane. They assumed a new name of Chaba (or Tshaba meaning ‘to flee’) because they were running away from their enemies. According to the elders, residents historically occupied a much larger land area, with homesteads sparsely scattered and ample land for grazing livestock and cultivation. In the late 1970s, at the height of apartheid, residents were forced into small residential plots and separated from their ploughing fields.

Ga-Chaba is situated on the north western border of the Mogalakwena Mine pit, on the Moordkopje farm. The homesteads are located close to Mogalakwena’s northern open pit, while huge mine dumps border the village on the eastern side. The unemployment and poverty levels are high. About 59% of the male population and 75% of women were unemployed at the time of the 2011 census (Stats SA 2011). Many residents continue to feel that the arrival of the mine has led to the deterioration of their living conditions.

The expansion of the mine into the area from the early 2000s has been negotiated by the traditional authority, but has nonetheless triggered resistance from residents. At the root of this opposition, lies loss of land.

Villagers in Ga-Chaba detailed their dissatisfaction with the Mogalakwena arguing that the mine had violated their rights to land access. Villagers raised concerns about loss of ploughing fields, loss of access to natural resources and the mine’s unfulfilled promises. These are not new findings. The 2008 AASA *Precious Metals Report* and subsequent studies (South African Human Rights Commission/SAHRC, 2008; Farrell, Hamann & Mackres, 2012) also cover these issues.

Case Studies

Residents of Ga-Chaba have historically lived through farming, raising crops and rearing animals to survive. The expansion of Mogalakwena had significantly disrupted this lifestyle. The land on the north-eastern side of the village has been almost completely fenced off by the mine. The mine began fencing off villagers’ ploughing land in 2006. Villagers stressed the importance of this land as a source of food (crops), for grazing of livestock, and for extracting firewood and other natural resources.

A 68 year-old man, a village farmer, explained how his ploughing field which was about fifteen hectares was reduced to only three hectares. According to him and other respondents the mine’s consultation with villagers was poor and promises made were never fulfilled:

“It was in February 2002 that the people from the mine and the chief called a meeting of the local residents. The people from the mine told us that we would no longer be allowed to cultivate our fields anymore because mining was going to take place on that land. We asked them about the effects of losing those ploughing fields, pasture lands, trees for firewood medicinal roots and herbs. They told us that for everything that we feared to lose the mine would compensate us. To this day we have received nothing from the mine!”

Lack of food is constantly cited as one of the direct consequences of loss of land.

An elderly woman commented:

“Re be re eja! [We used to eat!] We depended on farming for survival and we were not struggling. We used to eat mabele [sorghum], maize and beans and we were not suffering at all. Now we are no longer farming because they (the mine) took away our ploughing fields.”

Residents narrated how they used to harvest several bags of crops, including sorghum, maize and beans.

A woman in her early 60s summarised this:

“My parents made a living out of the land. They cultivated land for crops. They were able to harvest sorghum, maize, beans and many other things which we lived on. We would produce between 10 to 12 bags, depending on the rains. Some would have a harvest of 15 bags. It varied amongst the farmers. After harvest time, we took sorghum and maize for grinding to the milling depot to make sorghum and maize meal. We exchanged grain into ground meal. When that batch ran out we would fetch another sack from storage and consume it and so forth. That was our way of life.”

Often men in Ga-Chaba left for work in the cities while women would remain to tend to the children and family fields. The remittance income received from the men would usually be used to build houses, pay for children’s education, purchase clothing and other household needs. It was unusual for villagers to use the money to buy food. The land provided food. This structure reduced the dependency on a single source of income.

The arrival and expansion of mine operations in Mapela herald in a change to this way of life. Ploughing fields are fast becoming private property owned by mining houses and this has seriously compromised the livelihood of rural communities. Many people in Ga-Chaba have not given up on ploughing. In almost every homestead people have planted some crops and vegetables in their residential plots. Some of those who were fortunate enough to have parts of their ploughing fields spared by the mine are still cultivating it. However, according to villagers the harvest has depleted significantly compared to the years before the mine took this land.

A village farmer explained:

“The size of land I used to have has been extremely reduced by the mine. As a result, I only cultivate three out of the fifteen hectares that I originally had. I pay the owner of the tractor people R600 to cultivate the three hectares at R200 per hectare. Last year I harvested only three small bags of sorghum. As we speak, there is none left in the storage. It has all been finished.”

Others have borrowed ploughing fields from friends and relatives in other villages that are not close the mine. People are actively making efforts to use any opportunity to attain

alternative ploughing land that they can find. Some residents continue to plough on patches of their old ploughing fields, even if it is fenced off by the mine. This should be seen as an important form of resistance against the mine.

A resident, who has been farming on the land for years, narrated how he had been harassed by the mine employees while working on his ploughing fields:

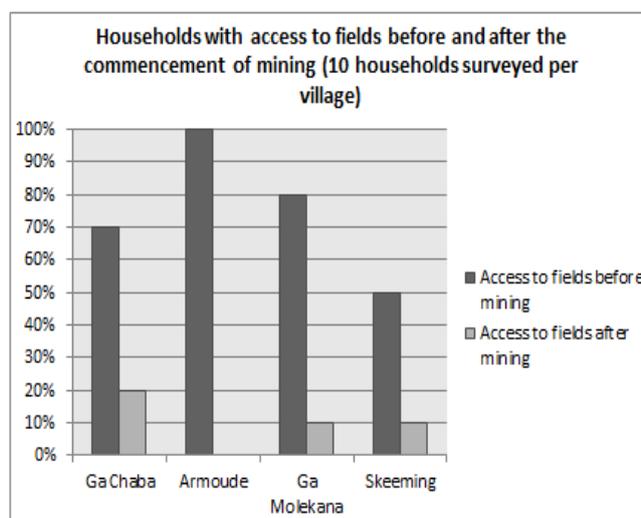
“One day I was working on what was remaining of my field. There where the mine is. Five big vans from the mine came towards me. It was the white people from the mine and the police. I was afraid. They asked me what I was doing. I said I was working on my field. By that time the mabele and beans were this high [showing with his hand - up to the height of his knee]. They told me to leave immediately because the land where my field was belonged to the mine. It had been bought from the chief. I left. That was the last time I saw my ploughing field. I, together with other villagers started ploughing on the small piece of land next to the mine dump. One day as I was working there two white men from the mine came to me. They told me to leave. I told them, ‘you are not going to chase me away again! You rather arrest me. You took my ploughing field and now you want to take even this small field. How am I going to survive with my family?’ They decided to leave me alone. That is why, even today, I am still ploughing on the small piece of land next to the mine dump.”

Other respondents narrated a similar story, stating that there was no negotiation with the farmers. The mine, they said, simply entered the land and began its operations while the farmers had crops on their ploughing fields.

One elderly female farmer recalled:

“I had two big ploughing fields. People from the mine started drilling next to my fields. My crops were almost ripe at that time. Those people just drove their tractors on over my crops. I then decided to stop ploughing my fields because the mine destroyed all my crops.”

The data from the household survey conducted by SWOP also suggests that access to ploughing fields had been reduced in all the study villages. In Ga-Chaba, for instance, 70% of the selected households had access to ploughing fields before mining began. Since mining began, that percentage had dropped to 20% (see Figure 1.1). It was found that even this 20% was mainly made up of people who had either borrowed ploughing land far away from the village or those who had continued ploughing on the small patches of land next to the mine dump despite intimidation by the mine representatives.



Dust, dirty water and damaged houses

Being the village closest to the northern pit of Mogakwena Mine, it is unsurprising that the people of Ga-Chaba expressed major concerns about the environmental impact of the mine. These impacts included noise during rock blasting procedures, water contamination and damage (cracks) to houses. Air pollution in the form of windblown dust from the mine dumps and fumes released after blasting were also serious concerns. When residents complained about these issues with mine officials, responses were always inadequate.

Although there are a few boreholes and communal taps in Ga-Chaba, water supply is intermittent. People store water in huge containers because taps often run dry.

Village elders explained that natural springs, where residents would draw water from, began to dry up:

“There was a spring called Madingwaneng where we got our water. We used to clean the spring as a community and then wait for water to seep through from the ground and collect. But it has run dry. I don’t know. It just dried up when mining operations started. We now rely on a borehole installed down the village, near the royal house. Lately we have community taps. But the supply is only restricted to certain times of the day. Let’s say the water is running during the day and is switched off at 4pm. You would then need someone to draw and store that water if you have work engagements at that time. Ever since the mining began, natural springs have disappeared and we are reliant on piped water.”

Compounding the challenge of unreliable water supply is the issue of water contamination.

Villagers complained that dust from the mine is contaminating their water, even when it is stored in containers:

“We are forced to store water in tanks because of the inconsistency of water supply. The blasting in the mine however releases large amounts of dust which contaminates the water. At close inspection, you will notice that the state of health of the people of Ga-Chaba is questionable. It is a result of the dynamite blasting from the mine.”

The mine promised to plant 7200 trees to mitigate dust pollution, but this project never materialised.

Officials at Mogalakwena Municipality also confirmed that access to drinking water is a challenge in the Mapela area.

When discussing the issue of public services, one of the municipal officials explained:

“We are proud to say that all the villages are electrified except the new village extensions. Unfortunately I can’t say the same for water availability in all the villages. In winter it gets worse because we rely on underground water. We don’t have a reliable water source like a big river.”

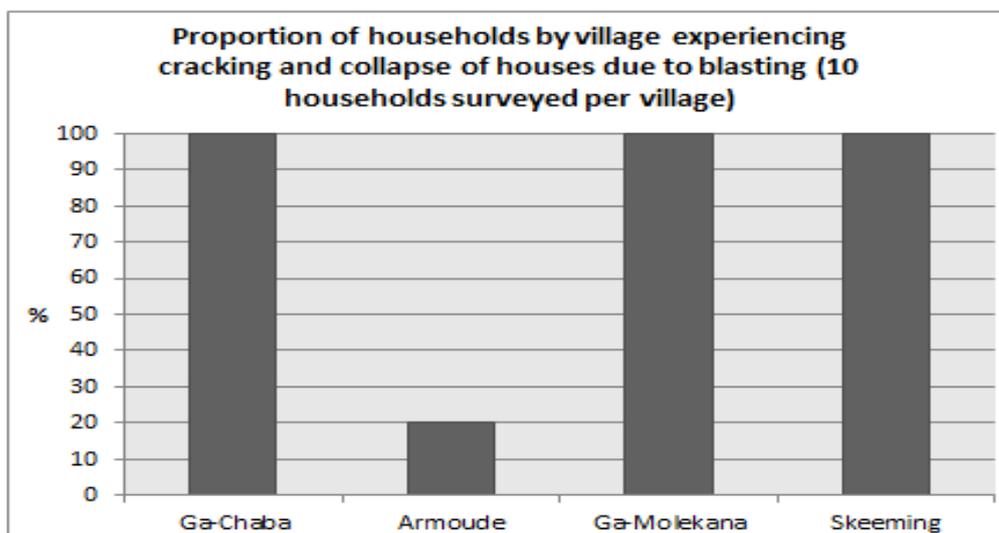
Mines in Mapela make use of ground water for some its operations. Local residents are concerned that the mine is polluting the water table and that the water they drink from the borehole could be contaminated.

A young male resident who also works for the Mogalakwena mine explained:

“The machinery that they use down there in the mine is leaky and it contaminates ground water. Right inside the pit there are machines that never leave the pit except when there is blasting. Those machines have oil leaks which are responsible for polluting the underground water. We always face challenges when we mine regarding driving through underground water for example and because the mine is open cast and very deep, you can even see some water oozing from the side walls (we call them high walls) and trickling down to bottom surface. The pollution of the water is inevitable under these conditions. The ordinary villager is generally apathetic about their health. Even if someone gets ill from that contaminated water, they would probably say that the disease would pass. So far, no causal link between exposure to contaminated water and the ailment would ever be established.”

The mining company uses explosives to blast ore out of the ground after which the material is crushed and milled. This process causes ground tremors and noise pollution. Villagers complain that vibrations during blasting are the main cause of cracks on their houses.

According to SWOP’s household survey, 100% of participants in Ga-Chaba claimed their houses had been damaged by the mine’s blasting (See Figure 1.2). At one stage, the mine hired someone to fix the cracks for some residents but the cracks keep surfacing due to continuous blasting at the mine site.



Ga-Sekhaolelo/Armoede – Dreaming of home

Context

Between 2006 and 2015 Amplats (Mogalakwena Mine) relocated about 1000 families, amounting to more than 7000 people, from the villages of Ga-Sekhaolelo and Ga-Puka. These villages are in Mhlotlo, respectively situated on the farms of Overysel 815LR and Zwartfontein 818 LR. Villagers were relocated to Armoede 823LR and Rooibokfontein 823LR farms (Amplats 2014, 10). This massive relocation project was to enable Amplats to excavate its northern open pit, which it is now expanding.

A significant portion of Mhlotlo has been fenced for Amplats' open pit. According to the locals, this land was agriculturally productive with plenty of underground water before the mine arrived.

Relocation

Previous studies, including the ActionAid South Africa (AASA) 2008 *Precious Mineral Report*; the follow-up study by the South African Human Rights Commission (SAHRC 2008); and Farrell, Hamann and Mackres (2012) have detailed the issues surrounding community relocations in the Mapela. In 2014, Amplats reported it had spent almost R800 million in relocating more than 7000 Mapela residents. According to the mine, this process was due to be finalised by 2015. However, at the time this study was conducted there were still about eleven families who had resisted relocation and were occupying their homes in Mhlotlo amid the mine dumps. Conditions for these families are difficult, with no ploughing fields, water sources, schools, or animals. It was also found that some of the relocated people of Ga-Sekhaolelo in Armoede wanted to return to Mhlotlo.

The reasons for this relate to the findings of the previous AASA study regarding the relocation process. Reasons included a flawed strategy of community engagement, representation and consultation; loss of agricultural land; unfulfilled promises of employment for local youth; and controversies around the relocation of graves amounting to violation of cultural rights.

It was found that in the years following the 2008 study, the former residents of Ga-Sekhaolelo have been unsatisfied with their new settlement. In addition, the manner in which the mine handled the relocation has created a growing sense of discontentment and displacement.

Discontent

There is a significant degree of discontent with the mine's relocation procedure amongst residents in Armoede. The mine vehemently refuted the finding cited in the 2008 *Precious Metals Report* which stressed that the compensation being afforded to relocating communities was grossly inadequate. According to Amplats:

“The ActionAid report is written from a particular ideological standpoint which advocates providing communities and, seemingly, individual households, with the ability to block the development of natural resources belonging to the State and which generate significant economic benefits for the nation as well as new economic and social opportunities for local people...Anglo Platinum ... seeks to negotiate with communities to obtain their agreement on fair collective and individual compensation. The relocations conducted around the

PPRust mine are delivering significantly improved housing, education and health facilities which is why the great majority of people have voluntarily chosen to relocate. (Amplats 2008:4)”

This view from the mine that its relocations are improving people’s lives, which “is why the great majority of people have voluntarily chosen to relocate”, is contradicted by SWOP’s findings. Discontent is rooted in unfulfilled promises by the mine; loss of ploughing fields; marginalisation of social groups; and lack of services.

Problematic engagement and representation

At the inception phase of the relocation, the mine consulted the Mapela chief, which at the time was Kgoshigadi Atalia Thabantsi Langa. The chief instructed the *mantona* (headmen) of the affected villages to oversee the formation of village relocation committees – the Relocation Steering Committees (RSCs). The RSC for Ga-Sekhaolelo consisted of ten members (Farrell, Hamann and Mackres 2012:198). This committee reached an agreement with Amplats about relocation in October 2002.

In 2003, the RSCs were reconstructed as non-profit organisations (the Section 21 companies¹²) “in order to be able to enter into legal contracts with Anglo Platinum as representative structures for the respective villages” (ibid). According to community members, Amplats conveniently facilitated the reconstitution of RSCs into Section 21 companies. Amplats, they firstly claimed, was paying a lawyer who negotiated on behalf of the relocating communities, and advised the communities to reconstitute RSCs into Section 21s. It is unsurprising that some of the Ga-Sekhaolelo community members had objections concerning the appointment of the lawyer and his impartiality.

Secondly, and more importantly, it was claimed that the lawyer and the members of the Section 21s tended to exclude the community from key decisions about the relocation process. Furthermore, the traditional authority also had challenges in working together with the Section 21s on matters relating to relocation. According to Kgoshi Langa, the current chief of Mapela, his mother Kgoshigadi A. *Langa* was initially involved in the Section 21s but later withdrew due to lack of transparency within these structures.

Kgoshi also found it problematic that the lawyer representing the community was paid by the mine:

“The Section 21s first invited my mother (Kgoshigadi Langa) to take part as an ex officio member in their structures. But her role was limited, she ended up resigning because there were certain things the Section 21 members were not transparent about. Again, there was a conflict of interest in a sense that Anglo (Amplats) was paying the lawyer directly. He was not paid by the Section 21s” (Interview, Kgoshi K. D. Langa.10.06.2015).

¹² Section 21 companies are non-profit entities formed in terms of South Africa’s Companies Act No 61 of 1973 (“the Companies Act”). Such companies or associations are incorporated in terms of Section 21 of the said act ‘not for gain’.

In 2005, Amplats signed the final relocation agreements with the Section 21s and the lawyers. According to Amplats:

“During 13 October 2002 and July 2005, the various agreements ...were negotiated through consultations at more than 400 community meetings were held [sic], and the final agreements were then ratified and adopted by both the Ga-Puka and Ga-Sekhaolelo in 2005. (Amplats 2008:17)

Nonetheless, many members of the community felt excluded and were dissatisfied with the process. It was at that point that the Motlhotlo Development Committee (MDC) was formed to oppose the Section 21s and to voice community concerns about dissatisfaction with the relocation process and other issues, including compensation and alternative land for ploughing. This had minimal impact, however, and Amplats still did not engage directly with the community. Instead meetings about the relocation between the mine and community representatives continued to be held in distant venues which were largely inaccessible to the majority of community members.

One of the former members of the MDC explained:

“In most cases the meetings that were arranged by the mine took place at the hotels in Sandton Johannesburg, sometimes Protea Hotel or the Range in Polokwane. It cost a lot of money for transport to go and attend meetings at the hotels to meet with the mine and legal representatives. But the mine paid all the costs. Attending meetings at the hotels was a problem because we would often end up agreeing to things that the community could have disagreed to.”

It is difficult to avoid the conclusion that Amplats' commitment to “negotiate with communities to obtain their agreement on fair collective and individual compensation” is simply trite rhetoric and token actions. SWOP's findings further suggest that Amplats may have taken little consideration of the social dynamics around notions of the household, property rights and the cultural and spiritual meanings attached to the land and the graves. The upshot of which has been the surfacing of cleavages on the level of the household as well as the community, where some now boast meagre privileges and others are side-lined.

Marginalisation

When consulting with families, Amplats primarily dealt with the head of a household, who are usually elders and men. In their 2008 report, Amplats state that:

“The head of each household signed an agreement in which the terms of his/her relocation were agreed together with the size and location of the house to which he/she and the family living in the present house would be relocated. Minutes of the meetings proving consultations are available (Amplats 2008:17).”

Having carried out these consultations, Amplats relocated 459 Ga-Sekhaolelo families from Mohlotlo to Armoede between 2007 and 2014 (Amplats 2014). The Section 21s liaised directly with the community through regular village meetings at the *kgoro*. Through this model, only one person in each family took decisions and signed agreements about compensation, house size and other critical issues on behalf of the rest of the family. It is to

this person that the mine paid once-off compensation for loss of ploughing fields (R1000-R5000), the R1500 for each relocated grave and the R20 000 to cover relocation expenses.

The mine's primary focus on the home owners alone, when distributing relocation seems to have negatively affected the youth. Young people in Ga-Sekhaolelo expressed their dissatisfaction with this model of engagement and felt excluded. There is also mounting anger among the youth towards the mine due to high levels of unemployment.

A young resident in Ga-Sekhaolelo explains:

"When the mine first came and presented their relocation vision and promises to us, I was genuinely impressed. They were hitting all the right notes, especially with their understanding of our socio-economic issues. They talked about how they would take the youth away from the streets through educational opportunities. Those who could not be absorbed into mainstream education would be offered vocational skills training. Senior citizens who did not yet qualify to receive pension grants would be partnered with the disabled to start cooperative projects and young people would find employment in the mine and our parents would not need to depend on farming to feed their families. The mine is yet to fulfil any of those promises."

According to officials at Mogalakwena Local Municipality (MLM), Amplats' recruitment strategy does not enhance employment opportunities for local youth at Mogalakwena mine:

"If you are mining in Mapela the first priority in recruitment should be people living there. Anglo American claims that there are no local qualified people while they advertise in national papers which don't have a reach into village communities, and not the local newspapers."

The chief of Mapela, Kgoshi Langa also concurred:

"To a large extent the problem with this mine [Mogalakwena] is that it is mechanised. It is not labour intensive. People get employed on contracts but permanent jobs are few. For the mine to employ them [local people] they must have maths and science. So those who don't have maths and science feel that they are being marginalised."
(Interview, Kgoshi K. D. Langa. 10.06.2015)

As a response to their marginalisation by the mine, some of the young people in Ga-Sekhaolelo have started returning to Mochlotlo to build small dwellings on the land that remains in-between the mine dumps. There have also been several protests against the mine and the tribal authority since relocation took place. The latest of these occurred in September 2015.

At the household level, women tend to be vulnerable to marginalisation during relocation. Customarily, married women had access land rights through their husbands.

Amplats channelled relocation compensation and other benefits to male household heads since men are the main holders of land rights. In cases where the husbands had passed away, their widows became recipients. However, when both parents had passed away the surviving female children would not be eligible to receive direct compensation or have the new house registered under their names unless there was no male sibling.

In cases where two or more male siblings continued to live in their parent's homestead in Mochlotlo after they passed on, the relocation process displaced the siblings who, according to custom, are not entitled to inherit their parents homestead. For instance, before relocation, Mr Hlongo,¹³ a man in his late 60s, had stayed in his late parent's homestead with his family sharing with his younger brother and his family. During relocation, the mine gave the new home in Armoede to his younger brother since, according to local custom, the youngest male inherits the land and homestead of the late parents. Mr Hlongo and his family could not stay with his brother in the new home for two main reasons. First, unlike the old homestead, the new house did not belong to his late parents – it was his younger's property. Second, unlike the old homestead which was traditionally built with separate small structures, the new house in Armoede is a modern structure. It has rooms inside – not separate small structures. As such, it is not suitable to permanently accommodate more than one family.

Mr Hlongo and his family had to leave Mochlotlo in 2007 without any compensation and went around the villages looking for a place to stay. They obtained a residential plot of land in Ga-Chaba through a local headman. His wife's family (Living in Ga-Chaba) helped them to build a shack on the new residential plot where they now live. They survive on a government old age grant and they also plant maize and some vegetables in their homestead garden.

At village level some residents faced challenges trying to secure residential plots. In March 2001, while relocation negotiations were still in progress, it was decided that headmen should stop issuing new residential stands prior to relocation. New stands were to be issued at Armoede after relocation and Amplats management promised to build toilets, provide water taps and erect fencing (Minutes: *Ntona Sekhaolelo* 17.03. 2001). The headmen provided Amplats with a list of names and the number of stand-holders in the villages. Community members who were due for allocations but who were hindered from this in Mochlotlo, because of the relocation, could not be included on the list. It was only those who were named in the database that were afforded any compensation. Villagers further claimed that after relocation to Armoede, Amplats did not fulfil its promise of providing fenced plots with toilets, taps and electricity connections for community members who were due for allocation of new residential plots in Mochlotlo.

The model adopted by Amplats of only focussing on the headman's list of household heads (which are mainly men), as well as its reading of customary land rights, has led to marginalisation of other social categories both at village and family levels. It can be argued that this ultimately breeds discontent and corrodes social fabric of the community.

Inadequate compensation and the water challenge

The relocated residents of Ga-Sekhaolelo are deeply dissatisfied with the compensation they received from the mine for loss of their ploughing fields, grazing land, trees and other natural resources. Compensation for loss of ploughing fields differed significantly from household to

¹³ A pseudonym

household. Most residents did not know the exact details of the method used to calculate the compensation sums. They claimed that the Section 21s and mine management decided the figures using their discretion and estimations based on the size of the ploughing fields lost and the number of trees in the homestead. For the ploughing field, some families received R1000 while others received up to R5000.

Residents also complained that the land Amplats allocated for ploughing after the relocation, was neither suitable for ploughing nor sufficient in size for everyone. One resident explained:

“Before we were here [in Armoede] we had ploughing fields. They compensated us in the form of money, but the mine’s compensation was not even enough. For instance, my family had 20 hectares, but we were given only R4500.00 when we relocated to this area in 2007. In 2008 they began to distribute the land that you see as you enter Armoede for the people to plough. The land that I am talking about is where you see the old farm building. But that land was not enough for the entire community ploughing land. When they were building the main road they removed the top soil and left the rocks underneath. People could not plough the land because the top soil was removed. Until today, we were never provided with enough land to plough.”

Data from the household survey conducted by SWOP confirms this finding. As shown in figure 2.1 below, Ga-Sekhaolelo is the only one among the selected study villages that has lost all access to ploughing fields after the commencement of mining.

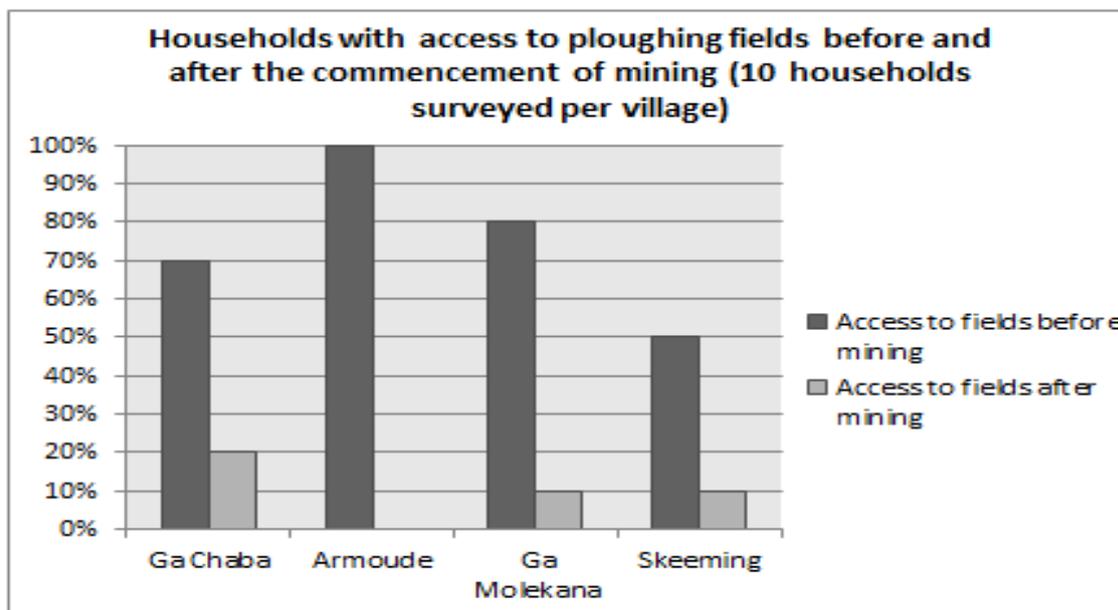


Figure 2. 1: Households with access to ploughing fields before and after the commencement of mining

The lack of fertility and suitability of the mine's alternative ploughing land has very negatively affected the agrarian lifestyle of the people of Ga-Sekhaolelo. For most villagers, the relocation to Armoede has significantly affected food production and exacerbated poverty.

Many people want to return to Mohlotlo:

“That place [Mohlotlo] was rich in farming. Re be re bolaya mabele! [We used to harvest a lot!]. Even when it was not raining much, we could still harvest about thirty bags of maize on our ploughing fields. We were using donkeys and cattle to plough, but we still harvested a lot. We also had a grazing land. We were not complaining at all when we were still staying there.”

While there is significant dissatisfaction about the compensation offered by the mine in all the villages studied, Armoede displays the highest level of discontent as seen in figure 2.2 below:

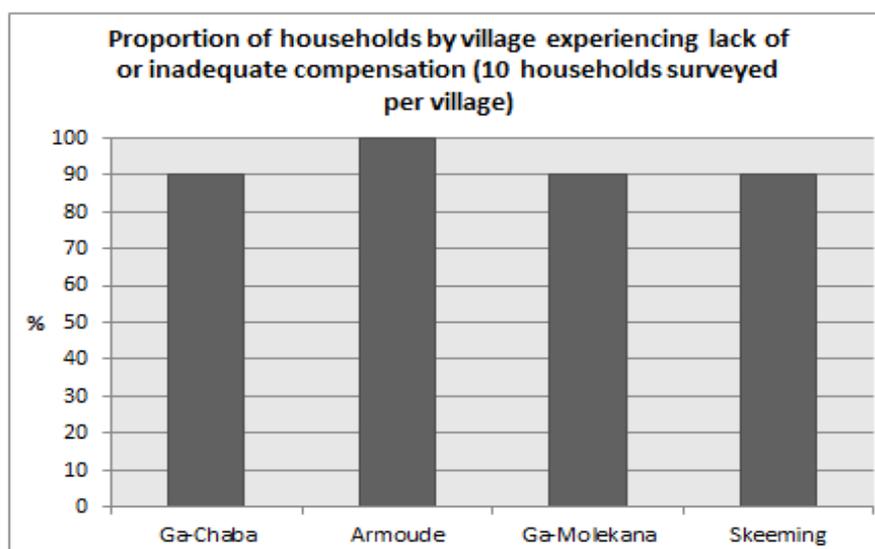


Figure 2. 2: Proportion of households experiencing lack or inadequate compensation.

Although there are houses, a new church, schools and tarred road entering the village, according to residents, there is a serious crisis of intermittent water supply. The mine provided communal taps and drilled about eight boreholes for this village, but due to the high unemployment rate and poverty, some of the youth vandalised the water infrastructure, stole the water pipes and sold them to residents of other villages. As a result, many families don't have access to water. When the municipality brings water trucks, it only supplies the owners of the new stands.

The mine has not taken steps towards replacing the stolen water pipes in Armoede, but provides some services, including fresh water to the families who resisted relocation and

remained in Mochlotlo. Some villagers decided to put money together to buy and install new water pipes, but the youth continue to steal and vandalise this infrastructure.

This is one reason why some people feel it would be better to return to Mochlotlo:

“In Mochlotlo we had access to tap water. When we had no water, a truck full of water from the mine would come and supply us with fresh drinking water. We would take out drums and fill them with water for our households. Here we don’t have access to the same service. It can take us three to five months without water. There is no one helping us. The people living in the new stands get water supply from the municipality whilst we don’t. For us to be able to drink water, wash the laundry and bath we have to purchase water for R30 a full drum which is too expensive. The day we wash the laundry we buy five drums of water. That is R150 and in no time there is no water again. So you will still have to purchase water for the next coming months. During the past December we had no water and life was tough.”

Our graves should be close to us!

Between 2000 and 2012 Amplats relocated more than 2200 graves (Amplats 2014) from within its mine lease area to different grave sites in Mapela. These graves belong to families in different villages, including Ga-Sekhaolelo. The issue of grave relocations and the controversies around it were detailed in the 2008 ActionAid South Africa report and in other subsequent studies.

In Ga-Sekhaolelo, although there is discontent about the money residents received from Amplats as compensation for grave relocations (R1500 per grave), there are two main issues that make some residents feel violated by the mine. First, not all the graves were successfully relocated. Many complained that the graves of their relatives are still at Mochlotlo and that some have been lost under the mine dumps due to failings by the company hired to manage the exhumations.

The issue that continues to haunt some residents, concerns the graves of children who were either stillborn or died as young babies. Culturally, such bodies are usually buried behind the house. If at some stage the house is extended, the grave will end up inside the house.

The graves were relocated before the people of Ga-Sekhaolelo moved to Armoede, and those who had graves of their children behind or inside their houses were told to relocate their families to their new homes first, before their children’s graves were exhumed. After relocation, some were told the graves were missing while other families said the mine and the contractor simply did not go back to exhume the bodies of their children after relocation.

In tears, this elderly woman explains:

“I lost one important thing when we left Mochlotlo – my child’s grave! My child passed away when she was eleven months old. We buried her behind the house. When we extended the house we extended over the grave. When we were relocating the mine promised that they will exhume my child’s body when they demolish the house after we have left Mochlotlo. But this was not done. I left my child’s remains behind and no one is saying anything about helping me get the body exhumed. Since 2008, I have been pleading with the mine and the people from Section 21. In 2013, when mine representatives came to our kgoro I asked them to buy a coffin because I wanted to go and dig the up the grave myself. They never responded to my request.”

She also believes that the un-relocated grave is making her other children sick, poor and unemployed. According to her, the child's remains that are still in Mochlotlo "are crying" saying, "These people [the family] don't want me anymore."

Another woman whose child's grave was not relocated also concurred:

"One day the baby will give problems to one of our family members in their dreams and say that we have forgotten about him as his body is left behind. So how will we resolve this?"

The second challenge concerning the graves that the people of Ga-Sekhaolelo complained about was how relocated graves of their relatives were buried far away from their new homes in Armoede. Amplats provided no gravesite close to the village. Therefore people are unable to perform rituals as often as they would like due to the long distance they have to travel. Furthermore, it is unsafe for people to go there alone or in small groups. Residents maintain that Amplats never consulted with them first before reaching the decision about the alternative burial site.

It is against this backdrop of the issues that many residents of Ga-Sekhaolelo expressed a desire to return to Mochlotlo. They do not regard Armoede as home. Mochlotlo is still their home.

A woman, while pointing to the rubble remnants of her former home in Mochlotlo, explained:

"I dream of this place every night. This is my home."

The concerns arising from the grave relocations, loss of ploughing fields and water scarcity have lent to feelings of alienation and dislocation harboured by residents of Ga-Sekhaolelo after the relocation.

This feeling of dispossession is clearly articulated here:

"Life at Mochlotlo was very good. It was better than the life we are living right now. Even when we dream at night, our dreams don't appear in this place, but at Mochlotlo. This means that our thoughts are still back there."

Ga-Molekana – "This is all the land we have!"

Context

The village of Ga-Molekana is located on the Vaalkop 819LR farm east of Mogalakwena Mine's Sandloot pit. A significant portion of the village is located within the mine's mineral lease area. As such, it is very close to the mine's operations, including a huge tailings dump directly opposite the village on the north-western side. The village has about 5000 residents (Stats SA 2011) of which most (about 70%) are below the age of 35. Ga-Molekana faces high levels of youth unemployment and poverty.

This village has a much longer history of mining than the other three study villages. Village elders detailed their experiences of how the Mogalakwena mine (formerly owned by JCI Mining) in the late 1960s forcibly removed people from various parts of the Vaalkop farm for its drilling operations. Over the years, the consequences of Amplats' expansion on Vaalkop include loss of ploughing, grazing and residential land and exposure to dust, noise and other forms of environmental pollution. Local youth claim that the mine continues to side-line them, particularly around issues of employment.

Land loss

This remark captures a common feeling among the people in Ga-Molekana about how mining has affected their lives:

“A lot has changed. We thought that the mine would bring forth developments when it arrived here at the kingdom of Mapela. We have no grazing land today because of the mine. They also took our ploughing land. Unlike today, we did not go far in order to collect firewood either. The water they use throughout their processes is drained from our groundwater reserves.”

Residents in this village detailed how they used to grow crops and animals grazed on the land where the mine now operates. Like in other Mapela villages, agriculture historically sustained the lives of the people of Ga-Molekana. Alongside this, residents claimed the size of new residential plots have become smaller since land is becoming more scarce.

An elderly man commented:

“We used to have plenty of land. In times like these however, we are forced into accepting the small residential stands without any ploughing fields because those [ploughing fields] were taken away from us already by the mine. There is no more land that is conducive for farming purposes. There is no other alternative. This is all the land that we have!”

Loss of land is also connected to loss of other natural resources, especially firewood and marula trees, which have special ethno-ecological significance.

One resident explained:

“We preferred marula trees on our ploughing fields so that we could hide from the scorching sun and rest when we were ploughing. We also made marula beer which people sold to make an income. There are a few trees left now since the mine occupied the land.”

Although most households have an electricity connection in Mapela, many families still rely on firewood for fuel. This is linked to affordability, because many people cannot afford to use electricity for cooking, hence firewood is an important resource for domestic fuel.

Water shortages, dust and cracks

Ga-Molekana is one of the villages where there are widespread complaints about the adverse impacts of Mogalakwena Mine on the environment. This is not surprising considering how close the village is to the mine operations and the long history of mine activity in the area. Local residents complained about the impact of dust from the mine during blasting. People also complained about the damage caused by earth vibrations during blasting on their houses.

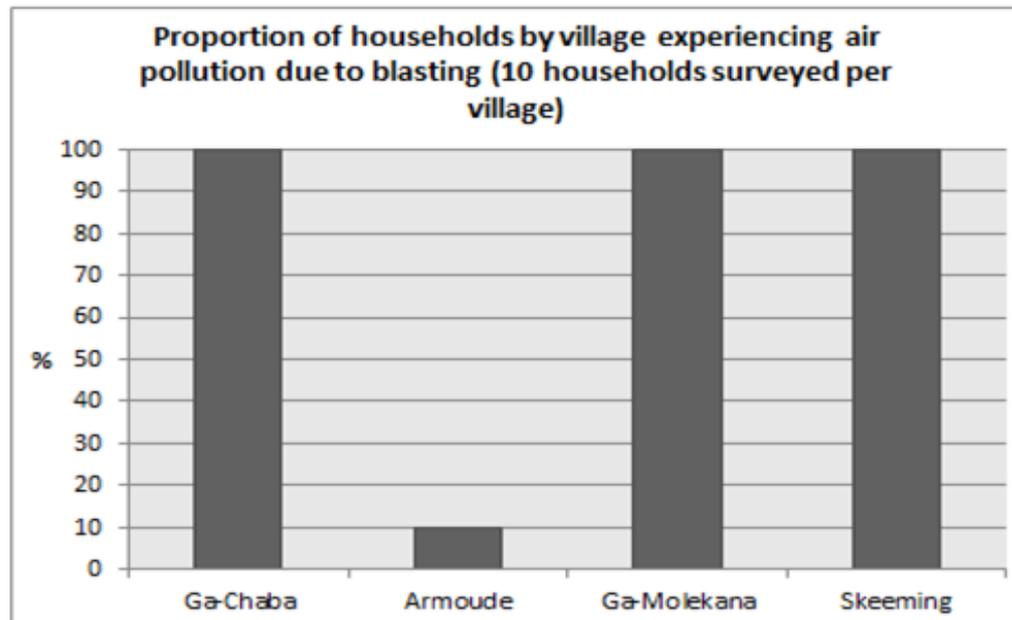


Figure 3.1: Proportion of households experiencing air pollution due to blasting

Intermittent water supply is also a challenge in Ga-Molekana. Although there are boreholes and piped water infrastructure (communal taps, provided by the municipality) water supply is nonetheless sporadic. Residents in Ga-Molekana blamed this on the mine operations. They claimed that the mine had affected the water table, making communal taps run dry in most sections of the village.

The headwoman explained:

“Ever since the start of mining activity, we don’t have access to water like we used to. We last had water on the first of last month. It was only recently on Saturday, the second of this month, that I came back from church to find the taps running. I keep record of these events so I can inform the government authorities when they come to inspect. We buy water from a truck in Ga-Matšhikiri [another village] for R30 for per drum.”

Another respondent stated that:

“Our conventional equipment that we use to draw underground water does not even reach the water table anymore because the mine is drawing huge amounts of ground water. The water table used to be closer to the surface but now it is very deep and only the mine has the financial muscle to get equipment that can reach such depths.”

Sekeming – formed by farming, shaped by resistance

Context

Sekeming is located on the Zwartfontein 814LR farm, west of Mogalakwena's central pit. It is a relatively small village, which was started by small groups of African families who moved there to farm in the 1960s. Since Zwartfontein is 'tribal' land, they had to get permission to from the Mapela chief to occupy the land. As time went on many more individuals and families moved in, drawn by the availability of agricultural land. While the village is outside the mineral rights area, it is not far from the mine's operations, though still considerably further than Ga-Chaba and Ga-Molekana.

Most people in Sekeming are still farming homestead gardens, but most of the ploughing land is now part of the mine's lease area. On a few occasions, the Mapela traditional authority has tried to appoint a *ntona* or headman for Sekeming, but none ruled for a long period. This is partly a result of the unique history of the village. Currently leaders of the village are called 'chairmen' (being to date only male) and are appointed by residents. They perform headman duties like allocation of residential plots and liaising with the Mapela Traditional Authority on behalf of the residents of Sekeming.

Forced removals and intimidation

At Sekeming, resistance to mine expansion is rooted in competition for land. As the mine expanded its operations in the early 2000s it made agreements with the Mapela Traditional Authority. Villagers were told that the land had been leased to the mine and so they could not use it.

A local resident explains:

"There was no fence there, where the mine is. That area was used as grazing land for our cattle and a place to collect firewood. We used firewood as an alternative source of energy because electricity is not reliable and it is expensive. The mine took that land. It was apparently sold [leased] to them by mošate [traditional authority]."

The conflict between the mine and the residents intensified in the late 2000s. As more people required residential plots, Sekeming expanded eastwards towards the mine. In 2012, the mine called in police and armed guards to remove residents off the new plots by force. Shacks were demolished and some residents were arrested.

One of the residents narrated:

"Our chairperson gave us the residential plots close to the mine. We built our homes there with no problem at all. I lived in my residential plot from the year 2006 and in the year 2012 people from the mine came and said they bought the land on which we had built our homes. They then fenced the area with heaps of soil but our homes were left on the outskirts of the soil dump. When you open the door you would see the giant heap of soil in front of you. We continued to live there. Then we heard that the mine was going to construct a road there that would lead to the Mapela Traditional Authority. We asked a lot of questions about this then they told us that they are upgrading the area. We then said to them if you're upgrading the area we request that you show us the documents and the entire village community at the kgoro and they agreed to do that. Before we could reach an agreement with them we heard that they had already started working. We then went to stop them and we were arrested, left without food and no one to look after our children. By the time we were released from jail the tar road was already being constructed, very close to my house."

The heightened conflict between the mine and village has led to increased harassment of the villagers by police and mine authorities. The data from SWOP's survey study showed that 100% of the selected households in Sekeming experienced some form of harassment by police and/or mine authorities.

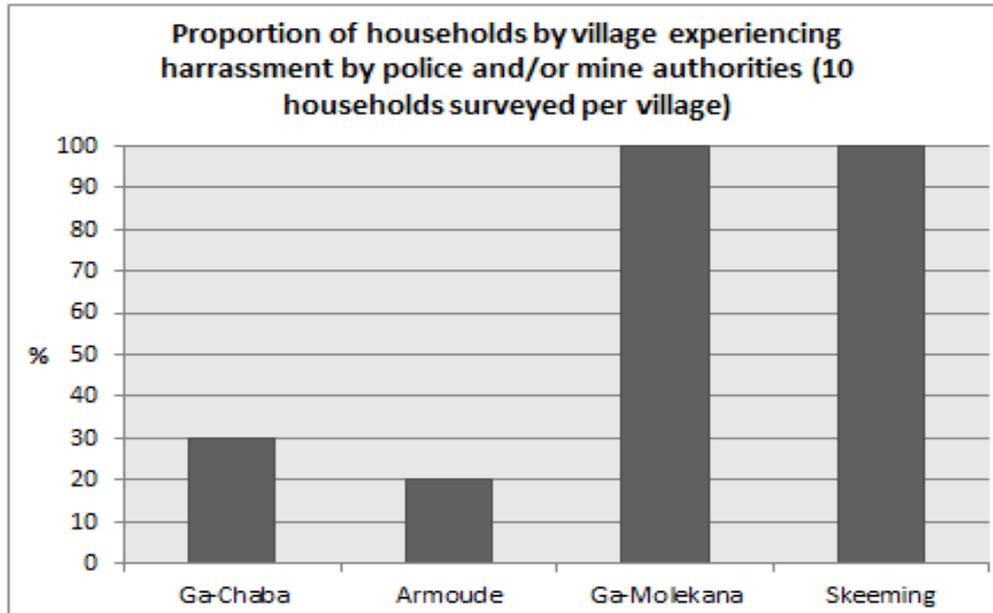


Figure 4. 1: Proportion of households by village experiencing harassment

Conclusion

The key findings and case studies highlighted in SWOP's study suggests that the expansion of Mogalakwena Mine and its consequent community relocation process in Mapela, has led to significant loss of productive agricultural land and access to natural resources. This loss of land has in part affected food security and rural livelihoods. Case studies show that historically, the people of Mapela cultivated various crops and livestock to survive. The loss of fertile ploughing fields, grazing land and access to natural resources (i.e. firewood, wild fruit, trees and natural herbs) has grossly threatened this nature of subsistence. Ultimately, land loss has triggered feelings of insecurity, discontent and dispossession amongst communities in Mapela.

Moreover, the limited resources that communities do possess are often at risk because of mine operations. Residents claim that during blasting, earth vibrations and dust particles released cause damage to property and crops; air pollution; and water contamination.

The process by which meagre compensations and relocations were rendered by the mine, offered no solace to residents. Instead, it has led to the marginalisation of some social categories particularly the youth, women and male siblings who were living in their parent's home before relocation and are not, according to custom, entitled to inherit the homestead. The mine's flawed process of distributing relocation benefits is underpinned by the manner in which customary land rights are structured and how the mine chose to interpret these rights. There is also scant regard for people's cultural and ancestral connection with their land and

homes, and how relocation not only displaces them, but displaces their loved ones who have died.

The displacement of rural households from their customary land is predicated on the supposed economic benefits these investments would yield in these communities, especially employment generation. Yet the impact of mining on the welfare of surrounding rural localities in terms of job creation has been minimal. Rural households are dispossessed of their land, left with no alternatives since mining does not assuage the problem of bleak employment prospects outside of agriculture. The anger and discontent amongst rural households in mining localities emanates from the fact that agrarian livelihoods are diminished mainly through land dispossessions, while no tangible alternatives are offered to improve their level of livelihood. Mining is widely seen as having minimal impact in terms of uplifting and maximizing the welfare of affected localities.

It is little wonder why the people of Mapela have offered strong opposition to the mine. Resistance has taken different forms and includes continued 'illegal' occupation and cultivation of land by individuals within Amplats' mineral rights area; refusal to relocate; and community protest action. These forms of resistance can reasonably be seen as ways by which the village residents in Mapela attempt to reclaim the rights they've lost as a result of mining expansion.

Chapter 2: Anglo: Delivering Inequality

2.1 Introduction

Anglo American reports in its Anglo American Platinum Limited Sustainable Development Report of 2014 that “*Amplats makes a real difference to the people whose lives we touch. We mine a mineral that makes aspects of modern life possible, in a safe, smart and responsible way*”.

This claim is increasingly open to questioning given the recent findings of the SWOP research report commissioned by ActionAid South Africa. The report’s findings and the claims made by Anglo seem to diverge in many critical areas.

In this report we look at the claims made by Anglo in its 2014 report and also contrast these against the findings of the SWOP 2015 report and the recommendations made to Anglo Plat by the South African Human Rights Commission in 2008/2009.

We find that the not only has Anglo failed to implement the recommendations of the SAHRC, but that it fails to meet the basic goals of the South African legislation that governs its operations and that the claims it makes in its report to Stakeholders and investors are nothing more than words on a glossy paper that hides the on-going violations of human rights of the community of Mapela/Langa.

2.2 SAHRC Recommendations and Anglo’s Failures

In its 2008/2009 investigations and report, sparked by the AASA report entitled Precious Metals, the SAHRC made a number of specific recommendations to Amplats. These include the following:

1. **Water:** “PPL (Anglo) and the Mogalakwena Municipality to ensure the continued access to water for all communities both those that have relocated and those who are resisting relocation”.

The 2015 SWOP report indicates that access to water remains a major human rights violation within the Mapela/Langa communities. The SWOP report provides a picture of a community who historically had ample access to water and who now face limited access and regular shortages of water. By Anglo’s own admission in its 2010 Social Labour Plans, Anglo acknowledges that the provision of water to Mapela is problematic and undertakes to “identify areas with a dire need for water provision”¹⁴. However in Anglo uses a figure of 7000 residents without providing its source, while SWOP identifies 65 000 residents based on StatsSA 2011 Census as the basis for its claim¹⁵. Furthermore Anglo only identifies a limited amount of interventions and allocates only 7.4% of its total SLP budget over 5 years to providing sanitation and water provision at 3 clinics, 4 ECD centres per annum and 4 schools per annum. The SWOP report indicates that this limited intervention has little or no impact on the rights of the community to water: One elder respondent reported to SWOP: “*There was a spring called Madingwaneng where we got our water. We used to clean the spring as a community and then wait for water to seep through from the ground and collect. But it has run dry. I don’t know. It just dried up when mining operations started. We now rely on a borehole installed down the village, near the royal house. Lately we have community taps. But the*

¹⁴ Anglo Platinum Mogalakwena Social and Labour Plan July 2010. Page 49

¹⁵ SWOP report page 20

supply is only restricted to certain times of the day. Let's say the water is running during the day and is switched off at 4pm. You would then need someone to draw and store that water if you have work engagements at that time. Ever since the mining began, natural springs have disappeared and we are reliant on piped water. (Interview.Ga-Chaba.30.03.2015)”

2. **Sanitation (this was not specifically addressed in the 2015 report but the issue of water and sanitation are inextricably linked)**
3. **Environment (Including mine blasting):** PPL (Anglo) should constantly monitor the impacts of mining activities on surrounding communities and illustrate how this monitoring is used in conjunction with the grievance redress mechanism to ensure that any potential negative impacts of the mine ...are addressed promptly.

The 2015 report finds that *blasting and environmental impacts continue unabated and represents a continued violation of the human rights. Compounding the challenge of unreliable water supply is the issue of water contamination. Villagers complained that dust from the mine is contaminating their water, even when it is stored in containers: We are forced to store water in tanks because of the inconsistency of water supply. The blasting in the mine however releases large amounts of dust which contaminates the water. At close inspection, you will notice that the state of health of the people of Ga-Chaba is questionable. It is a result of the dynamite blasting from the mine. (Interview: Ga-Chaba.30.03.2015) The SWOP Report further states that “The issue of cracked houses is another cause for concern in Ga-Chaba. Villagers complain that vibrations during blasting are the major cause of cracks on their houses. Our observations also confirmed this. Almost every household we sampled had cracks on their houses. According to our survey, 100% of our participants in Ga-Chaba had houses that they claimed had been damaged by the mine (See Figure 2.2). According to respondents in Ga-Chaba, at some stage the mine hired someone to fix the cracks for some residents. But cracks keep surfacing due to continuous blasting at the mine site.*

4. **Electricity (This was not addressed in the 2015 report)**
5. **Grave Removals:** The SAHRC report made a range of recommendations in this regard. The 2015 report finds that the issue of grave relocations remains a sticking point and a violation of the communities cultural and heritage rights. The Swop report states that “Our findings also suggest that, Amplats may have taken little consideration of the social dynamics around notions of the household, property rights and the cultural and spiritual meanings attached to the land and the graves. In Ga-Sekhaolelo we found that although there is discontent about the money residents received from Amplats as compensation for grave relocations (R1500 per grave), there are two main issues that make some of our respondents feel violated by the mine. First, not all the graves were successfully relocated. Many respondents complained that graves of their relatives are still at Mohlotlo, and that some have been lost under the mine dumps due to failings by the company hired to manage the exhumations. The second challenge about the graves that the people of Ga-Sekhaolelo complained about was how relocated graves of their relatives were buried far away from their new homes (Armoede). Amplats provided no gravesite close to the village. Therefore people are unable to perform rituals as often as they would like due to the long distance they have to travel. It is also said that the new burial site is far away from the villages. Therefore it is unsafe for people to go there

alone or in small groups. They maintain that Amplats never consulted them first before reaching the decision about the alternative burial site. In our survey Armoede shows significant experience of loss of access to graves.”

- 6. Agricultural land and food security:** The SAHRC report calls for the “provision of compensation and the determination of the impact on food security of the affected communities given the traditional and partial reliance on subsistence farming and limited access to commercial food sources”.

The 2015 report finds that subsistence farming was more than a partial source of food security and that up to 70% of households have lost access to agricultural and grazing land and has resulted in reduced food security across the affected communities. Swop states that “evidence presented by the ethnographic material suggests that people in Mapela have lost access to land and other natural resources as a result of the expansion of the mine. Loss of land seems to affect food security, because most of our respondents have lost ploughing fields and grazing land. Historically, people raised various crops and animals to survive. Life history interviews suggest that even when people had been involved in wage labour, they mainly used their income to cover other household expenses. Most of their food came from the land. Land dispossession also connects to loss of access to other natural resources like wild fruits, trees, natural herbs and firewood. In the research area, mining has accelerated and intensified the livelihood or reproduction challenges confronting rural households by obliterating the land-based livelihood component of local households’ survival strategies. These adverse impacts are particularly acute on the local food economy since a critical resource, ploughing fields, is no longer available to most households. The impacts of mining in the local villages has largely undercut the ability of rural households to shift resources and efforts from the previously predominant agricultural activity, in this case, cropping in large ploughing fields to the cultivation of household plots. Cropping especially in the large ploughing fields has played a critical role in maintaining the food security of the local rural households. Mining related land dispossessions have undermined the food security of households in these localities. Villagers repeatedly argued that they relied on their land to produce food that would sustain them from month to month throughout the year. Consequently, the once-off cash payments from the mine were not commensurate to the benefits previously derived from owning and utilizing their arable land. The rallying cry amongst the villagers has overwhelmingly been about Kgwedi ka Kagwedi. Kgwedi kaqwedi meaning that reproduction and consumption needs are requirements they deal with on a daily if not monthly basis. Since produce obtained from ploughing fields, for instance, constituted a huge component of household reproduction and consumption requirements, a once off payment in the form of compensation for loss of land is seen as highly inadequate and unjust.

- 7. Compensation:** The SAHRC report recommends that PPL (Anglo) “further engage with affected communities to clarify and outline the non-financial benefits of relocation” and refers further to the recommendations in recommendation 6 above.

To the best of our knowledge this has not taken place. See comments above with regards to the one off compensation against the loss of food security and the need for regular on-going compensation.

- 8. Transportation of children to school(This was not addressed in the 2015 report)**

9. Concrete batch plant(This was not addressed in the 2015 report)

In Section B. The sources: institutional processes the SAHRC report recommends the following:

1. **Process Documentation (Including reporting):** *“communities should ultimately be empowered to actively participate in processes that affect them, have certainty as to possible outcomes, processes and grievance mechanisms”.*

The 2015 report indicates that communities have not participated actively and that processes and mechanisms to affect this have not been institutionalised. The SWOP report contradicts any claims to community participation and its report states; “Among the key findings, this study presents the prolonged resistance against the Mogalakwena mine. Resistance to the mine’s expansion and even its existence takes various forms in Mapela. We found that, the various ways through which Mapela residents resist the mine also signify people’s efforts to reclaim their rights. On Monday 31 August 2015, hundreds of people from Mapela villages took to the streets and began what was to become a two weeks long protest march against Mogalakwena mine. In villages close to the mine residents demanded that Amplats must act swiftly in dealing with dust pollution and damages caused by mine blasting to their houses. People of Ga-Chaba and Sekeming villages demanded the reopening of the old Seritarita Secondary School (in Sekeming). They were against Amplats’ relocation of the school to Sandsloot village which is several kilometres from away from Sekeming. The school is located close to the mine and had been closed due to blasting at the mine site. The community demanded their old school be reopened because they could not afford to pay for their children’s transport to and from the new school that the mine has built and Amplats had made no provision for transportation.

For two weeks residents blockaded the roads connecting to the mine, thus, prohibiting any entry to the mine. As a result, many workers at the Mogalakwena mine could not report for work. Protesters burnt down and vandalised a part of the Mapela traditional authority offices, the chiefs’ house and the community development infrastructure provided by the mine, including the sports stadium and the agricultural project at Ga-Chaba. They also torched a truck passing by carrying potatoes and it was left badly vandalised. This process has led to disappointment because years have gone by without any response from the mine. Another common demand among the protesting villages was compensation for the loss of ploughing fields and grazing land for animals. Protesters also complained that Amplats and Chief Langa did not consult properly with the community about mine-driven development projects in Mapela.”

2. **Monitoring:** *“PPL (Anglo) link monitoring and grievance mechanisms to ...allow PPL (Anglo) to make timely interventions to address issues emerging throughout the relocation process”.*

The 2015 report found evidence of monitoring by Anglo but no evidence of a redress mechanism thus accounting for Anglo’s apparent surprise at the latest protests within the community.

3. **Grievance redress:** The SAHRC report found that *“(a) grievance redress process is a fundamental vehicle for individual community members to voice concerns”...and*

that “grievance mechanisms are meaningfully employed to ensure PPL (Anglo) is aware of developing issues”. It further recommends that PPL (Anglo) “recognise its unique position in the web of relationships between stakeholders to address specific concerns”.

The 2015 report found no evidence of such a grievance mechanism or of any recognition by Anglo of its “unique position in the web of relationships between stakeholders” which the SAHRC attributes to Anglo in its 2008 report. Anglo does report in its 2014 Sustainability report that “In 2014, 42 community complaints were submitted through formal procedures at our various operations. All were assessed and 36 of them were resolved. The six unresolved incidents relate to Mogalakwena resettlement issues that are on-going and opportunities of employment for youth groups. The majority of community grievances were related to employment, procurement opportunities and environmental impacts.” This however does not indicate that the grievance mechanism was fair and the description of the grievances lodged with Anglo indicates a lack of appreciation of the holistic resolutions required to a complex problem of dispossession, and violation of human rights.

4. **Consultation:** The SAHRC report recommended that “all stakeholders engage in developing a new relocation committee”.

This committee did not function for reasons we outline in the in the section dealing with the State and the commitments made by the SAHRC to ensure that consultation processes are prioritised on Page51

5. **Achievement of consent (beyond a fixed point):** The SAHRC report recommended “PPL (Anglo) acknowledges the flaws identified in the achievement of consent processes and engages with all stakeholders including resistant community members in working through stalemates and that Anglo Platinum move beyond a compliance based approach in undertaking community consultation and achieving community consent.”

The 2015 report found no evidence that this was the case. The recent 10 day long protest action in September 2015 by the community, and the findings throughout the SWOP report, indicates that rather than consent for providing Anglo with a social licence to operate, various forms of resistance to Anglo`s operations remain the main form of consent within the community.

Following the release of the report and consultations with the key stakeholders, the SAHRC released a further report in 2009 in which it “reiterated” the main findings as follows:

- “There was a breakdown in relationships between stakeholders and there was need to rebuild trust before moving forward; there is no evidence that this indeed took place.
- Effective communication was lacking from all sides and regular and more effective communication was required from the mine and the SAPS; The on-going protests and distrust between the Anglo and the community indicates that no meaningful communication has been fostered
- Education and training would greatly assist most stakeholders in understanding all associated issues from a human rights perspective and would generate awareness within communities on what services were available to them from the mine and the

SAPS and how to go about accessing these services; No discernible efforts to engage community members or leaders on these matters could be accounted for.

- *The lack of service delivery in communities was cause for concern. All communities complained of poor water quality or a lack of access to water and, electricity; this violation of the communities Human Rights remains a sticking point.*
- *Grave-removals were also an issue raised consistently by communities. Anglo Platinum had embarked on an independent study on the grave relocations and had subsequently employed a credible grave relocation company to remedy the problem. It is hoped that a solution to this problem will be reached shortly. This remains a critical area of contention and is a vital source of grievance that remains unresolved 7 years later.*

2. 3 Anglo`s 2014 Sustainability Report:

In this section we critically consider Anglo`s claim against the lived reality and ethnographic findings of the SWOP report.

Claim 1: Society ultimately gives the Company its licence to operate.

The community of Mapela/Langa has been in a 3 decades long struggle with Anglo Platinum and has engaged in consistent and various efforts of resistance to the mines continued and unrelenting encroachment on the livelihoods, traditions customs and human rights. By Anglo`s own admission; *“During 2014 incidents of community discontent included demonstrations at the Rustenburg, Modikwa, Mogalakwena, Bokoni and Twickenham mines. All protests were undertaken without acts of violence or damage other than two protests at Mogalakwena Mine on 13 May 2014, during which Motlhotlo village members blocked haul roads to the mine and started to damage equipment and disrupt production processes. Mine security was compelled to fire rubber and pepper balls to disperse the protesting group. In the second incident, protesters retaliated by throwing stones. Six people incurred minor injuries, and a number of arrests were made by the South African Police Service (SAPS) for acts of public violence, trespassing and malicious damage to property”.*

We elaborate elsewhere on the protests which shut down Mogalakwena Mine for ten days during September 2015.

These protests enjoy large scale and broad public support within the community and are indicative of a community that has not granted Anglo a social licence to operate. Anglo`s failures to improve the impasse with the community since the 2008/2009 interventions by AASA and the SAHRC, despite specific recommendations, points to a Mining Corporation that is not concerned with its social licence to operate and only dispenses platitudes to appease public sentiment.

Claim 2: We walk the talk – our actions are consistent with our words

This report, informed by SWOP`s 2015 research and the failure by Anglo to rigorously implement the specific recommendations made to it, and to decisively deal with the violations brought to its attention more than 7 years ago, suggest that Anglo`s claim cannot be supported by the facts.

Claim 3: Our Material Priority is to Meeting our obligation to comply with legislation, regulation, voluntary codes and social compacts.

This report decisively belies the claims that Anglo complies with voluntary codes and social compacts. Further on we show how these voluntary codes are ignored in the pursuit of profit.

Claim 4: Social and environmental excellence. Preventing harm to employees, community and environment; making a positive contribution during operation; and leaving a positive legacy after closure.

The 2008 AASA report and the 2015 report commissioned by AASA shows that the longitudinal surveys of the Mapela/Langa community all point to an increasing toxic and harmful environment for the community of Mapela/Langa with on-going and increasingly negative legacies that are continually being created and impacting on the community and particularly the marginalised sections of the community which includes women, youth and pensioners.

Claim 5: Our Mogalakwena Mine is setting a leading example in building resilient communities.

This report which finds that Anglo has impacted negatively on the host communities around Mogalakwena and the on-going popular community protests makes it difficult for us to take the claims made by Chris Griffiths, Anglo's Chief Executive Officer, seriously. Instead we are compelled to ask why there remains such a huge disparity between the communities lived experiences and the claims made by distant CEO's.

Claim 6: Inclusive stakeholder engagement underpins our approach to ensuring that we are respectful of human rights, and responsive to stakeholder aspirations and concerns in the communities in which we operate. We are building durable relationships with these communities and delivering developmental benefits and opportunities aimed at increasing their capacity now and in the future.

The longitudinal survey of Anglo's relationship with the community of Mapela/Langa has not shown that there has been any significant inclusion of the community as a stakeholder. Furthermore the study indicates rather than respect for human rights, Anglo's engagement with the community have impacted on the right of the community to access water, livelihoods and dignity, all of which are guaranteed under the constitution. The relationship with the community leaders are non-existent and strained at best, indicating that over the long term Anglo has neglected this aspect and has left the community with an acute awareness of the long term negative impacts of the mine, the decreasing capacity of the community to sustain themselves and an increasing misery with rising unemployment, lack of housing, lack of infrastructure, loss of cultural heritage and loss of livelihoods.

Claim 7: In South Africa, every mining operation has a Social and Labour Plan that is developed through a consultative process with local municipalities and through regular interaction with host communities.

The community of Mapela/Langa have until the recent uprisings in September 2015 not been privy to the Social Labour Plan Developed by Anglo and their claim that it was developed in consultation with the host community is not corroborated by the research and other

interventions to obtain copies of the Plan. The SWOP researchers were reluctantly provided with a copy, and then only after numerous requests and with an embargo placed on it for public distribution. This does not tally with the claims made by Anglo. In November of 2015, the members of the Mapela Task Team¹⁶ received an outdated 2010 SLP which made no reference to how the SLP was developed without community participation and whether the objectives and projects identified in the SLP were achieved or not. The SLP expires in 2015 and is for all intents and purposes a historical document and bears no relevance to resolving existing and future problems. In Chapter 3 we deal with SLP`s in more detail and show that SLP`s as utilised by Anglo and other mining companies, lack community consultation and does not prioritise issues identified by the community themselves. Often the projects are imposed on the community, as is the case with the plans for Seritarita Secondary School (in Sekeming) which Anglo was forced to abandon after the protests in September.

The Social and Labour Plan (SLP) system, together with Broad-Based Black Economic Empowerment (BBBEE) schemes under the Mining Charter, is the main mechanism by means of which the mines are to channel the proceeds of mining into benefits and transformation for the community.

Amplats identifies a number of projects for the Mapela community without indicating what processes of consultation took place and the lack of evidence that the projects have impacted positively on the community of Mapela is evident from the SWOP research.

These projects, whose success or failures we cannot comment on as Amplats has refused to share their outcomes with us¹⁷, are invariably large scale products, removed from the community in terms of accountability and impact and the SWOP report did not find any significant evidence that the projects have improved the lives or transformed the community. Instead the report finds that the loss of food security and loss of access to water are the defining characteristics and demands of the community. These are not addressed in the SLP other than at a macro level and its impacts are unclear.

It is also indicative of Anglo`s engagement with the community that the new 5 year SLP which is due to come into operation as of 2016, has not been consulted with the community, further indicating that Amplats either undermines the legitimate right of the community to decide on its development priorities or its disdain for the importance and significance of the SLP`s as a vehicle for transformation. Either way the claims made by Anglo in this regard are not supported by the evidence in Mapela.

Claim 8: All our operations have functioning community engagement forums that meet at least quarterly. We continually monitor the quality of our engagement and the structures and communication channels in place, especially at community level, to ensure that these are effective.

Anglo`s claim has not been confirmed by the ethnographic study conducted by SWOP and if an engagement forum does exist, it has no public legitimacy within the Mapela/Langa

¹⁶ The Task team was set up by the SAHRC in response to the 10 day protest in September 2015. IN Chapter 3 we deal with this Task Team in more detail.

¹⁷ Upon requesting the assessment of the 2010 SLP`s Anglo advised us that they would first need to discuss it with the Provincial Government.

community, is not widely known and has not included the community in any of the discussions it has had with Anglo. Anglo's further claim that they continually monitor the quality of their engagement at community level is at odds with the on-going and consistent protests and community blockades and with the findings of the research. This claim is also undermined by the recent (September 2015) establishment of a Mapela Task Team which includes community representatives and Anglo to negotiate community demands¹⁸.

Claim 9: Sharing the benefits of mining. Mining is a key driver of economic growth and can play a significant role in socio-economic development. Our licence to operate depends on our ability to ensure that our stakeholders participate in the economic benefits generated during the time of our operations, and that our activities leave our host governments and communities with a firm foundation for a sustainable future.

The longitudinal survey of Anglo's impact on the community of Mapela/Langa shows the opposite to the claims made by Anglo in this regard. Instead the research found that as a whole the community has lost access to livelihoods, water and cultural heritage. The research shows a deepening of poverty and a disintegration of the cultural bonds that have bound the community over the last century. Anglo's claims are thus not relevant to the community of Mapela/Langa.

Claim 10: Our standards, which align with Anglo American's, require that all resettlement exercises must meet or exceed the requirements set out in the International Finance Corporate (IFC) Performance Standard 5 on Land Acquisition and Involuntary Resettlement, and must lead to a demonstrable improvement in the livelihoods of resettled people.

The longitudinal survey of Anglo's impact on the communities of Mapela/Langa clearly shows that any claims to a "*demonstrable improvement in the livelihoods*" of the community is not borne out by the findings of at least two surveys over a 7 year period. Furthermore clear evidence has emerged of a decline in the wellness of the community relating specifically to loss of livelihoods, access to water and loss of cultural heritage.

2. 4 Conclusion

The far reaching claims, made by Anglo, and which have been highlighted above, paint a picture of a corporate entity that is either wholly out of touch with the true impacts of its operations or is in denial about its impacts on host communities. From its vantage of privilege and preferential treatment from the local laws, from the local, provincial and national duty bearers and from Human Rights institutions which consistently seeks to accommodate their violations rather than end them, Anglo displays all the attributes of an abusive partner who uses their financial and legal muscle to keep the community of Mapela/Langa subjected to harsh human rights abuses.

Anglo's behaviour in the Mapela/Langa community clearly runs contrary to the values of our constitution and even with the relatively supportive legislative framework in place, Anglo continues to negate the very purpose of the legislation which is to:

1. To promote employment and advance the social and economic welfare of all South Africa;

¹⁸ The creation of this Task Team is still a matter of dispute between the HRC and the Mapela executive

2. Develop the resources in a way that promotes justifiable social and economic development (in the context of Section 24 of the Constitution); and
3. Ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.

Chapter 3: The South African State: Upholding Inequality

3.1 Introduction

Adopted in 1996, after a tumultuous struggle against the oppressive and exploitative systems of Colonialism and Apartheid, the South African Constitution, presented a new template on which the development of a fundamentally more equal society could be built.

Flowing from the constitution, the state is constituted on an important democratic principle called the separation of powers. That means that the power of the state is divided between three different but interdependent components or arms, namely the executive (Cabinet), the legislature (Parliament) and the judiciary (Courts of law)¹⁹. A very significant feature of our Constitution is that it sets up several independent bodies to support and safeguard our democracy. Informally these bodies are often referred to as the “Chapter 9 Institutions”, because the most important of these are provided for in Chapter 9 of the Constitution. These include the Human Rights Commission which has been intimately involved in the dispute between the community of Mapela/Langa and Anglo Platinum.

Section 1 of the Constitution states that the Republic of South Africa is one, sovereign, democratic state founded on the values of inter alia human dignity, the achievement of equality and the advancement of human rights and freedoms and these are enshrined in the Bill of Rights. The rights in the Bill of Rights form the cornerstone of our democracy and an obligation is placed on the state to respect, protect, promote and fulfil these rights²⁰.

In this section we will consider, in light of the SWOP research report, the manner in which the state, particularly, the legislature, the executive, the DMR specifically, and the Chapter 9 institutions, specifically the HRC, have impacted on or failed to uphold their obligations to respect, protect and fulfil these rights for the community of Mapela/Langa and how through the individual failures of these institutions to uphold their constitutional obligations, a systemic abuse of the human rights is made possible. No specific focus is devoted to the Judiciary in this section but frequent reference is made to Constitutional Court rulings with regards to its interpretations of the Constitution as the highest court in the country when it comes to the interpretation, protection and enforcement of the Constitution.²¹

3.2 The Legislature

In this section we focus specifically on the National Assembly, which is responsible for passing laws and ensuring that the members of the executive perform their work properly among other duties.²²

The State, in accordance with its obligations undertook to reform the mining landscape and through what was described by the authors of the White Paper, A Minerals and Mining Policy for South Africa in October 1998²³, as “*the most comprehensive consultative process yet conducted for a review of a minerals and mining policy in South Africa*”, the Department of

¹⁹ http://www.parliament.gov.za/live/content.php?Category_ID=11

²⁰ http://www.parliament.gov.za/live/content.php?Category_ID=11

²¹ <http://www.constitutionalcourt.org.za/site/thecourt/role.htm>

²² http://www.parliament.gov.za/live/content.php?Category_ID=11

²³ <http://www.dmr.gov.za/publications/summary/125-white-papers/335-white-paper-minerals-and-mining-policy-for-sa-1998.html>

Minerals and Energy set out the new imperatives for a mining dispensation in democratic South Africa, underpinned by the values and imperatives of the Constitution.

Yet it was striking to note that the 1998 White Paper, a 93 page document, only dealt with the question of community once and its sum total of awareness and focus on the impacts that mining has on communities is recorded as:

“6.3.3.2 Other views

- i. A forum should be established where the views of communities affected by mining could be heard.”***

In the final version of the Act that was eventually adopted in 2002 and which came into effect in 2004, the Legislators acknowledges the constitutional imperative imposed on it and the MPRDA accordingly explicitly commits itself to take positive measures to affect transformation. But the law remained unclear and ambiguous with regards to the protection and empowerment of host communities.

The transformation measures outlined in the MPRDA are two-pronged in that it seeks to transform the ownership of the industry and it seeks to ensure the positive impact of the industry on socio-economic advancement. The Objects of Act which seek to achieve the constitutional imperatives of addressing past inequalities are set out as to-

- (c) Promote equitable access to the nation's mineral and petroleum resources to all the people of South Africa;
- (d) substantially and meaningfully expand opportunities for historically disadvantaged persons, including women and (communities)²⁴, 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;
- (e) Promote economic growth and mineral and petroleum resources development in the Republic, (particularly development of downstream industries through provision of feedstock, and development of mining and petroleum inputs industries)²⁵;
- (f) Promote employment and advance the social and economic welfare of all South Africans;
- (h) give effect to section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development; and
- (i) Ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.

While limited in scope, the objectives of the Act are noble and in line with the Constitution. The true test is however to what extent the objectives of the act are able to transform the South African society and particularly the lives of rural communities impacted by mining.

²⁴ Communities were added later in Act 49 of 2008 with effect from 7 June 2013, through pressure from communities and civil society.

²⁵ This was added in Act 49 of 2008 with effect from 7 June 2013.

Former Chief Justice Langa identified substantive equality as a key indicator of success in measuring transformation. Substantive equality he defines in turn with reference to *“a social and economic revolution in which all enjoy equal access to the resources and amenities of life, and are able to develop to their full human potential. This goal requires the dismantling of systemic inequalities, the eradication of poverty and disadvantage (economic equality) and the affirmation of diverse human identities and capabilities (social equality)”*²⁶

So the key question we must direct at the state, regarding its intentions and its achievement must relate to the extent that the state, through the efforts of its institutions, namely the National Assembly, tasked with developing laws in pursuance of the goals of the constitution and exercising oversight over the executive, and the executive, namely the Minister responsible for the Department of Mineral Resources, in implementing the law and regulating the industry, has substantively transformed society and the extent to which it has been able to reverse or end the systemic inequalities of the industry.

Before we consider the outcomes of the state’s interventions over the last 22 years of democracy and specifically the period identified in this research, we must consider the legislators approach to legislating the industry.

3.3 Legislating Inequality

As mentioned above, the 1998 White Paper had hardly considered a role for communities in the overall development of legislation and in the ability and duty of the industry to overcome the substantive inequalities of the past. The MPRDA of 2002 failed to deal not only with the community as a stakeholder that has a direct interest in the manner in which mining happens, its effects on the health, livelihoods and heritage but also failed to adequately consider how the industry has historically contributed to the dispossession of black people in South Africa and how in turn it is required to provide redress for centuries of dispossession while contributing to the substantial transformation of the most marginalised rural communities.

The Legal Resources Centre, in its submission to the Portfolio Committee on Minerals stated that *“Inequity in the mining industry has its roots in the dispossession of the African population of their land. The first form of redress in relation to this legacy of inequity undertaken by the democratic government was to divorce mining rights from surface land occupation and ownership rights. While the placement of the country’s mineral wealth in the hands of the State enables the nation to benefit from future extractions, it does not compensate for past injustice and plunder.”*²⁷

The main thrust of the LRC’s submission to the PC was that *“The MPRDA discriminates against those African communities which either have a right to land ownership in terms of the restitution law, or a right to ownership in terms of the tenure security which is guaranteed by the South African constitution. It is only because these are African communities whose members organised themselves under local and customary law, that they are not today the owners of the land; if they had been recognised as owners of their communal land, they would have had unused old order rights in terms of the MPRDA... and the exclusive right to*

²⁶ MEC for Education: KwaZulu-Natal & Others v Pillay Case CCT 51/06 [2007] ZACC 21 (Pillay).

²⁷ DRAFT MINERALS AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL 2012 by The Legal Resources Centre On behalf of Mr Mmuthi Pilane of Mothlabe Village and others 7 February 2013.

apply for new order right. However, because their rights are not recognised at law, they could not have applied for those rights - unlike (white) landowners who had that right."

In 2013, ActionAid also presented to the PC and shared with them some of the findings of the precious Metals Report. These included:

- Villagers have been removed from their homes in relocation agreements signed with associations that the company claims represent the community, but which had actually been established by the company itself.
- Many communities are subject to constant and intrusive mining activity, especially blasting, which is damaging their homes and environment.
- Community protests to improve services offered to villagers or to challenge Anglo Platinum over land take-overs have often been met with brutality by the police and legal action by the company.
- Anglo Platinum continues to expand its mining operations in densely populated rural areas, which will result in further imminent displacements.

We urged the PC to consider the following:

- The Act does not specifically require the permission of the community. The DMR and the minister have no obligation to consult with the community affected and usually do not do so; they depend on the report given to them by the mining company, which the community has no right to see.
- The Act does not align with recent jurisprudence and with the Constitution of South Africa.
It places an unfair burden on communities, whose only remedy is to seek legal relief, which is expensive and often beyond their means.
- Once a mining right is awarded to a company, the Act does not require it to obtain permission from the occupiers or the owners of the land. Rather, the Act expressly authorises the company to commence laying infrastructure and undertake mining on the land.
- The DMR does not require written lease agreements to be concluded between the mine and the community; the negotiation and conclusion of a lease agreement is standard practice in relation to privately owned land (land generally owned by white people) but is the exception in relation to communal land (land generally used by black people).
- We note that a failure to consult with the correct parties in the course of a mining or prospecting application, or before activities commence, has always potentially resulted in the prospecting and/or mining right being successfully challenged either on appeal or in judicial review proceedings in the High Court.
- The *Bengwenyama* decision of the Constitutional Court (*Bengwenyama Minerals (Pty) Ltd and others v Genorah Resources (Pty) Ltd and other* 2011 (3) BCLR 229 (CC)) (J.Froneman, 2010) refers.
- The Courts have shown themselves to be very **concerned about the effects of mining on land owners, occupiers and neighbouring communities**. The Court in *Bengwenyama* emphasised this and it lead to a very onerous approach to

consultation with the Courts stating that agreement with the community was to be pursued.

- “The MPRDA and its regulations do not have detailed requirements for conducting a consultation process, as opposed to Environmental Impact Assessment Regulations published in terms of the National Environmental Management Act 107 of 1998 (“NEMA”). The NEMA Regulations provide, inter alia, comments on all written submissions to the decision making authority. In the mining context the requirement is that an applicant must “consult” with the landowner and the extent of this process has been developed only in case law and guidelines.”
- “As the prospecting of mining rights may amount to serious interference with a property right it is imperative that there is a balance between the statutory right, on the one hand, and the right to property and environmental protection, on the other. In the *Bengwenyama and Sechaba v Kotza* rulings it is said that this is achieved through an effective consultation process.
- while S23 (2A) gives the Minister power to impose conditions to promote the rights and interests of communities in the event of an application (Granting and Duration of Mining Right) that affects their land, the deletion of “**including conditions requiring the participation of the community**” from the existing clause in the Amendment, is likely to **further limit the rights of communities to be consulted**.
- The exclusion of communities and social partners from the Regional Mining Development and Environmental Committee in S56A. This **exacerbates the legislative exclusion of communities** and will only serve to further alienate communities from the process of transformation which the Act aims to foster.
- Amendments should be included to ensure:
 - Communities have greater rights to be fully consulted and give Free Prior and Informed Consent before mining concessions are granted
 - The consultation process is supervised by the State or an independent, non-interested party delegated by the State and strictly governed by regulations.
 - Environmental assessments and safeguards are retained and strengthened and remain under the control of the Department of Environmental and Water Affairs.
 - Mining companies’ Black Economic Empowerment obligations include equity participation and/or community royalties for historically disadvantaged communities in mining areas.

3.4 The Executive: Regulating for Inequality

The Department of Mineral resources, under the political mandate of the Minister of Mineral Resources, are the technical hub of legislation and regulation in South Africa’s mining regime. It is the DMR which proposes and acts on legislation.

In its 2008 report, the SAHRC made the following specific recommendations with regards to legislation:

- *The recommendations made by the SAHRC in this report concerning the obtaining of free prior informed consent of affected communities apply equally to State undertakings. This recommendation remains despite the legislative standard being one of “consultation” by the mining company, and is again an attempt to move*

beyond compliance. The standard of consultation has been further diluted in subsequent attempts to amend the legislation

- *The Department of Minerals and Energy (“DME”) should clearly state what its criteria are for meeting the required standard of “consultation” by the applicant mining company with the affected community. This will further empower the affected community to assert their rights during the process as opposed to objecting to a process after the fact. The murky regulations around consultation have been addressed above, suffice to say that this recommendation was ignored.*
- *The Department of Land affairs (“DLA”) should engage affected communities on the nature of land rights at the outset of any resettlement negotiation process so as to avoid confusion and uncertainties. This lands rights clarification will provide certainty for communities concerning their informal rights to land. Land remains a central component of the dispossession of rural communities and legislation in either the MPRDA or other land specific legislation has not provided a solution to the land rights of communal communities.*

While there are numerous areas where the DMR could be taken to task for failing to regulate the industry, this report will focus only on its legislated and constitutional task of delivering substantial equality while respecting, protecting, promoting and fulfilling this right.

Social Labour Plans

The Social and Labour Plan (SLP) system, together with Broad-Based Black Economic Empowerment (BBBEE) schemes under the Mining Charter, is the main mechanism by means of which the mines are to channel the proceeds of mining into benefits for the community and transformation of society generally. The failure of BBBEE to transform mining ownership patterns is currently the bone of contention between the Minister of Minerals, the Chamber of Mines and various other parties before the Gauteng High Court. The question before the court revolves around the “once empowered always empowered” claims made by the mining houses and which is contested by the DMR and the Minister as well as by a host of civil society formations. The legal definition of “once empowered always empowered” aside, the question remains to what extent has BBBEE served to bring about “substantial equality”. The research currently under consideration suggests that this remains an elusive reality for mining affected communities.

In this sub section, we wish instead to consider the SLP’s and its failure to contribute to the grand objectives of the MPRDA and the constitution.

The MPRDA explicitly commits itself to take positive measures to affect transformation. What is more, the Constitutional Court found, in *Agri SA case*, that the MPRDA represents “legislative measures [...] taken to facilitate equitable access to opportunities in the mining industry”, because black South Africans “were unable to benefit directly from the exploitation of our mineral resources by reason of their landlessness, exclusion and poverty”.

The purpose of the SLP model is to make it a statutory licensing requirement for mining companies to develop a range of human resources development and local economic development programmes. These programmes, which are contained in the SLP document, become binding on the company on the granting of a mining right by the Department of

Mineral Resources (DMR). The system therefore uses the licensing process to compel mining companies to provide benefits for workers and communities.²⁸

One of the most striking features of the regulatory framework is that the primary legislative source of the SLP system, the Mineral and Petroleum Resources Development Act (MPRDA), says very little about the definition, objectives and content of SLPs. The requirement to consult is vague and non-existent except for one injunction in the DMR's guideline to "consult with communities".

In a recent study by the Centre for Applied Legal Studies, the authors of the report even go so far as to say that there are more barriers to community participation than there are avenues to access information.

The CALS report questions whether it is appropriate for the legislator to leave even the broad content of one of the most important planks of reformist legislation to determination by the executive. This lack of specificity unfortunately sets the tone for the entire system. The result is that, in practice, SLPs seem to belong more to mining companies than to the intended beneficiaries of the system.²⁹

A regulatory system that provides and aims to satisfy the duty bearer more than it does the rights holder, besides from not being a pragmatic way to bring about transformation, is also fundamentally set up against the constitution which, as confirmed in the *Bengwenyama case*³⁰, requires robust and thorough consultation processes to meet the criteria of substantial equality.

The CALS research³¹, with a Study sample of 50 SLP's and over 4500 data points, found among a broad range of findings that:

- Community participation in developing SLP's are lacking.
- SLP's generally do not incorporate long term planning or sustainability into its plans.
- Less than 10% of SLP's are clear on how the SLP's are communicated to stakeholders.
- The exclusivity and privacy of labour plans are a first step in wrong direction. This includes practical difficulties of obtaining the report and printing etc.
- SLP's never talk about the history, of what happened before the start of the SLP, so efforts to drive transformation starts from scratch without consideration of past injustices.
- There are no contextual or ethnographic details to the SLP and therefore it is unlikely that the SLP will be able to address the core transformational issues.
- SLP's do not have baselines from which they operate and targets are changed regularly thus not being able to track their effectiveness.
- They do not devote equal attention to negative and positive social impacts in that exclusion of negative impacts reduce the SLP to a sales pitch.

²⁸ DO SOCIAL AND LABOUR PLANS BELONG TO COMMUNITIES? By Louis Snyman and Robert Krause as printed in the OSF document entitled Mining in Good Company.

²⁹ IBID

³⁰ <http://www.saflii.org/za/cases/ZACC/2010/26.html>

³¹ Insert link to research

- The correlation between impact of mining and benefits of the SLP are not always clear.
- SLP`s do not cater for population influx and recognition that the community fundamentally changes with the introduction of mining operations.
- SLP`s do not have baselines from which they operate and targets are changed regularly thus not being able to track their effectiveness.
- Amendments to the SLP are not required by law beyond the approval of the minister and no reasoning is provided for why targets or projects are changed.
- The language of the SLP is always in English and never translated to local languages thus excluding a significant portion of the community.
- 25% of SLP`s link the performance of commodity prices to their ability to deliver on the commitments in the SLP.

By the Legislators own admission when faced with evidence presented before the committee that SLP mitigation measures have not worked, with the failures of Lonmin in Marikana serving as a case in point, the committee said in its report of the hearings of 5 June 2013:

“When we conduct oversights, we come back depressed. Because before you enter into a mine, you walk through a sea of poverty. ... In our own experience these Social and Labour Plans are indeed not implemented...Mining communities lament that here, within our area we extract the wealth of the country but there is no drop that comes back to us as the mining community.”³²

The legislation and regulation of SLP`s thus provides a perfect circular outcome that facilitates and countenances a system that fails to deliver on its constitutional mandate. The law was proposed by the DMR, as specifically vague and virtually unenforceable, adopted and passed into law by the legislature, knowing full well that its outcomes, being vague and ambiguous cannot be guaranteed, thus limiting the oversight it could enforce on the DMR and leaving the constitutional imperative of transformation in terms of substantial equality as a non-starter. A perfect systemic failure which allows the DMR, the Legislator and the Corporate to all be able to show compliance while actually not delivering anything substantial. The Mapela case study, with its longitudinal approach is well placed to capture this failure as it shows that over the long term, no substantial transformation has taken place, indeed the life circumstances of the community of Mapela has regressed.

SLP`s and its failures are thus a good case study of a systemic inequality, that is allowed to exist, unchecked, unregulated and endorsed by legislation.

3.5 THE SAHRC: Facilitating Inequality

In the SAHRC`s 2008 Report, then Chairperson of the SAHRC, Jody Kollapen points out that “ *a number of issues raised by the affected communities, or observed by the SAHRC during this investigation are symptomatic of systemic inequalities in addition to possible institutional problems in the relocation processes undertaken.*” He however cautions that the “*impact of business can therefore not always be determined at one point in time like a snapshot, but is often more accurately reflected over a period of time.*”³³

³² As reported in LRC letter to PC dated 4 November 2013

³³ Mining-related observations and recommendations: Anglo Platinum, affected communities and other stakeholders, in and around the PPL Mine, Limpopo; SAHRC 2008

We believe that with the baseline of the first 2008 report and the findings of the second 2015 report, we are now able to draw a much clearer panorama of the “*systemic inequalities*” that continue to plaque the community of Mapela/Langa/Langa and the complicity or otherwise of the role players and stakeholders in Mapela/Langa/Langa.

The report thus brings into sharp focus the efficacy of the strategies of all stakeholders, including the SAHRC`s 2008 recommendations and commitments, and by implication the current strategy of the SAHRC in 2015.

We outline our concerns in the section entitled A Longitudinal View, which lists the recommendations of the SAHRC Report contrasted against the findings of the SWOP 2015 report which indicates a prima facie failure to bring about an improvement in the human rights condition of the Mapela/Langa community.

3.6 Re-Affirming Inequality

This then brings us to our concerns on the current engagement by the SAHRC following the protests over 10 days in September which effectively shut down Mogalakwena Mine.

Our concerns relate to the following key areas:

- 1. The continuation of a strategy that has not worked in past.**
- 2. The denial of community agency.**
- 3. Mistrust between community groups and the SAHRC.**
- 4. Perceptions of collusion between Anglo and the SAHRC.**

During meetings with the Mapela/Langa executive committee the committee raised concerns and insights and allegations which have significant bearing on the current processes.

The Mapela/Langa executive claim, that they are a representative community forum established in May 2015 by 32 communities from the greater Mapela/Langa area, to address various community grievances. They further claim that they were the leaders of the protest movement which resulted in the intervention of the SAHRC and that following the SAHRC`s intervention that they were side-lined as community representatives in favour of the establishment of the “Task Team” at the insistence of the SAHRC. The committee further makes the following claims about the current process:

- That they have no faith in the SAHRC to resolve their longstanding dispute with Anglo as they have previously intervened in 2008/2009 and again in 2012 where promises were made but no resolution was found.
- That the SAHRC Limpopo manager refused to allow the community to include legal representatives or advisors thus condemning them to bystanders of their own processes.
- That, as with previous “Task Teams”, this Task team were offered stipends and possible roles and positions in a new R5million Anglo project under Project Alchemy

and that this serves to alienate the Task Team from the community rendering the Task team moot and compromised.

- It was for this reason that the Mapela/Langa executive committee refused to participate in the Task team with the bulk of their leadership outside of the Task team Process.
- That a “leadership training” workshop, organised by the SAHRC in Tzaneen during this past week, and funded by Anglo, did not have any leadership component training but was instead used to influence the Task Team, as Anglo, The Department of Mineral Resources, the Mayor, Mapela/Langa Tribal Authority and CoGTA addressed the Task Team members making various (disputed) claims about the community and their rights.
- The Mapela/Langa Executive further claim that the intention of the Task Team was never to engage in Leadership training but to negotiate around community demands and that this in itself is a violation of their trust.
- The committee further suggests that the initial agreement to form the Task Team has been violated and that the SAHRC has failed to agree on the Terms of Reference of the negotiations between Anglo and the community as was set out in the initial agreement. The Terms of Reference was specifically identified as the first task of the new Task Team. To date the Terms of Reference have not been finalised.
- The Mapela/Langa Executive furthermore strongly pointed out that the initial agreement was entered into with Anglo to suspend protests and not to end them and vowed to take up protests again.
- The Mapela/Langa executive also bemoaned the fact that no priority was given to the fact that the initial protests were peaceful until police started shooting at residents and that protestors who were arrested and still face charges (96 in total) must be part of the Terms of Reference.

The view from the Mapela/Langa Executive and the findings of the 2015 report contrasted against the SAHRC 2008/9 reports thus inform our concerns regarding the current SAHRC strategy. These are:

1. **The continuation of a strategy that has not worked in the past.** Based on the comparisons we have drawn between the 2008/2009 SAHRC recommendations and reports and the findings of the SWOP 2015 report, we believe that the role of the SAHRC as mediator in this process has not only produced very little by way of improving the human rights conditions of the Mapela/Langa community but also compromises the integrity and standing of the SAHRC as a Chapter 9 institution tasked with the protection and promotion of human rights.
2. **The denial of community agency.** The concerns expressed by the Mapela/Langa Executive suggests that the SAHRC was instrumental in denying the community agency after they had organised themselves into a representative forum, despite the historical and lingering divisions within the community, by insisting on the formation of a new Task Team. This is especially significant given that the SAHRC should be

aware, based on its report in 2009 in which it specifically raised the issue of “**factionalism and distrust**” and noted that these stemmed from “**the fact that ...representatives were being paid a stipend for their services, which led other community leaders feeling marginalised.**” During the Meeting with Anglo it was specifically recorded that “**(t)here was therefore a need to get the right representatives from communities and NGO`s on the committee...and time for a new body...that will not be paid stipends**”. It is certainly curious that a new task team, who will receive stipends, is the first thing suggested by the SAHRC Limpopo Manager.

3. **Mistrust between community groups and the SAHRC.** The manner in which the SAHRC Limpopo manager is perceived to be both a referee and a player, by promoting his preference for who should serve on the Task Team, promising the Task Team members that he is negotiating stipends on their behalf, and offering roles in multi million rand projects, while ignoring the central issues of the protesting community members and acting as facilitator, is both unhealthy for any conciliation process but also fails to build confidence and trust within the broader community about the possibility of resolving the long standing demands of the community. The community leadership have indicated to us their willingness to resume protests should the SAHRC process continue unhindered. It is our view that in this instance, the integrity and the standing of the SAHRC is in serious jeopardy
4. **Perceptions of collusion between Anglo and the SAHRC.** The perceptions of an apparent cosy relationship between the SAHRC and Anglo, the failure of the SAHRC`s 2008 investigation and 2012 intervention, to yield any tangible changes in the lives of a vulnerable community and the railroading of a continuation of a failed process all serve to bolster a growing perception among, certainly the leadership of Mapela/Langa, that the SAHRC has no intention of resolving their demands or in protecting their human rights.

We have raised our concerns with the SAHRC but have to date not received any response to our concerns.

3.7 A Longitudinal View³⁴

SAHRC General Recommendations:

1. **Assist communities in understanding their rights and how to access them.** The SAHRC report recommends that such “*programmes should be developed in conjunction with the SAHRC and that the programme should be revisited and revised annually*”.

We are not aware of processes or “education programmes” that has emerged from this recommendation both in Mapela and in South Africa.

2. **Assist companies in moving beyond compliance based approach to resettlement.** The SAHRC report recommends that “*a general human rights audit*”

³⁴ Please see Chapter 2 Dealing with Anglo for more details on the failure to realise the SAHRC recommendations

becomes a recommended standard practise for all extractives industry and other companies undertaking resettlement of affected communities”.

We are not aware that this recommendation has been followed up or prioritised in any way either in Mapela or in South Africa.

- 3. Assist companies in understanding the human rights implications of their behaviour and operation within their sphere of impact.** The SAHRC report recommends that *“Anglo Platinum should be able to use human rights rhetoric and additional contextual analysis to better understand how social impact issues can evolve into potential human rights violations. That as standard practise a general forum be established of which all mining companies in the relevant area, whether operating under mining right or prospecting be members. That PPL(Anglo) make efforts to engage in broader multi stakeholder engagement, particularly with civil society which they misguidedly place themselves in opposition to, to manage their potential human rights impacts”.*

To the best of our knowledge this has not happened.

SAHRC Specific Recommendations

- 10. Water:** “PPL (Anglo) and the Mogalakwena Municipality to ensure the continued access to water for all communities both those that have relocated and those who are resisting relocation”.

The 2015 SWOP report indicates that access to water remains a major human rights violation within the Mapela communities.

- 11. Sanitation (this was not addressed in the 2015 report)**

- 12. Environment (Including mine blasting):** PPL (Anglo) should constantly monitor the impacts of mining activities on surrounding communities and illustrate how this monitoring is used in conjunction with the grievance redress mechanism to ensure that any potential negative impacts of the mine ...are addressed promptly.

The 2015 report finds that blasting and environmental impacts continue unabated and represents a continued violation of the human rights.

- 13. Electricity (This was not addressed in the 2015 report)**

- 14. Grave Removals:** The SAHRC report made a range of recommendations in this regard. The 2015 report finds that the issue of grave relocations remains a sticking point and a violation of the communities cultural and heritage rights.

- 15. Agricultural land and food security:** The SAHRC report calls for the *“provision of compensation and the determination of the impact on food security of the affected communities given the traditional and partial reliance on subsistence farming and limited access to commercial food sources”.*

The 2015 report finds that subsistence farming was more than a partial source of food security and that up to 70% of households have lost access to agricultural and grazing land and has resulted in reduced food security across the affected communities.

- 16. Compensation:** The SAHRC report recommends that PPL (Anglo) “*further engage with affected communities to clarify and outline the non-financial benefits of relocation*” and refers further to the recommendations in recommendation 6 above.

To the best of our knowledge this has not taken place.

- 17. Transportation of children to school(This was not addressed in the 2015 report)**

- 18. Concrete batch plant(This was not addressed in the 2015 report)**

Medium to long term issues:

As a preamble to this section the SAHRC report finds that

- Recommendations made in the report concerning free prior and informed consent apply equally to the state.
- The Department of Minerals and Energy(now the DMR), *should clearly state what its criteria are for meeting the required standard of “consultation” by the applicant mining company with the affected community*”.

This has not been met and subsequent legislation has further diluted the standard of consultation.

- *“The Department of Land Affairs should engage affected communities on the nature of the land rights at the outset of any resettlement negotiation process”.*

To the best of our knowledge this has not transpired and the onus of the Department of Land Affairs or its successor the Department of Rural Development and Land Reform has been further reduced through subsequent legislation.

In Section B. The sources: institutional processes the SAHRC report recommends the following:

- 6. Process Documentation (Including reporting):** *“communities should ultimately be empowered to actively participate in processes that affect them, have certainty as to possible outcomes, processes and grievance mechanisms”.*

The 2015 report indicates that communities have not participated actively and that processes and mechanisms to affect this have not been institutionalised.

- 7. Monitoring:** *“PPL (Anglo) link monitoring and grievance mechanisms to ...allow PPL (Anglo) to make timely interventions to address issues emerging throughout the relocation process”.*

The 2015 report found evidence of monitoring by Anglo but no evidence of a redress mechanism thus accounting for Anglo’s apparent surprise at the latest protests within the community.

- 8. Grievance redress:** The SAHRC report found that *“(a) grievance redress process is a fundamental vehicle for individual community members to voice concerns”...and*

that “grievance mechanisms are meaningfully employed to ensure PPL (Anglo) is aware of developing issues”. It further recommends that PPL (Anglo) “recognise its unique position in the web of relationships between stakeholders to address specific concerns”.

The 2015 report found no evidence of such a grievance mechanism or of any recognition by Anglo of its “unique position in the web of relationships between stakeholders”.

9. **Consultation:** The SAHRC report recommended that “all stakeholders engage in developing a new relocation committee”.

This committee did not function for reasons we outline in the section dealing with the SAHRC.

10. **Achievement of consent (beyond a fixed point):** The SAHRC report recommended “PPL (Anglo) acknowledges the flaws identified in the achievement of consent processes and engages with all stakeholders including resistant community members in working through stalemates and that Anglo Platinum move beyond a compliance based approach in undertaking community consultation and achieving community consent.”

The 2015 report found no evidence that this was the case.

Following the release of the report and consultations with the key stakeholders, the SAHRC released a further report in 2009 in which it “reiterated” the main findings as follows:

- “There was a breakdown in relationships between stakeholders and there was need to rebuild trust before moving forward;
- Effective communication was lacking from all sides and regular and more effective communication was required from the mine and the SAPS;
- Education and training would greatly assist most stakeholders in understanding all associated issues from a human rights perspective and would generate awareness within communities on what services were available to them from the mine and the SAPS and how to go about accessing these services;
- The lack of service delivery in communities was cause for concern. All communities complained of poor water quality or a lack of access to water and, electricity;
- Grave-removals were also an issue raised consistently by communities. Anglo Platinum had embarked on an independent study on the grave relocations and had subsequently employed a credible grave relocation company to remedy the problem. It is hoped that a solution to this problem will be reached shortly.

Overall, the Commission will continue to monitor the situation in Limpopo and assist in opening the lines of communication between all stakeholders so that these stakeholders can better understand the issues that are inhibiting progress in the area and can eventually progress on tasks that they are responsible for such as service delivery.”

The 2009 report suggests that the “*systemic inequalities*” and human rights violations experienced by the communities of Mapela could be overcome by better communication and the SAHRC then expressly commits to “*monitor the situation in Limpopo and assist in opening the lines of communication between all stakeholders*”.

While the SAHRC 2008 and 2009 reports omits to a great extent the key questions of livelihoods and access to land The 2015 report by SWOP, nonetheless finds that the current conditions within Mapela is a continuation and extension of the concerns raised by communities and the AASA Precious Metals Report in 2008.

3.8 Conclusions

The South African Constitution and the Bill of Rights in particular, are the cornerstones and the foundation on which the people of South Africa have committed to build their new country. The state, through popular support, has been entrusted with the task of bringing the values of the constitution to bear on the livelihoods and lived realities of millions who have experienced one of the greatest “crimes against humanity”. There are few who harbour any illusions that 350 years of colonial disposition and Apartheid crimes would be able to be reversed in the relatively short time of 22 years. To expect such miracles would be outside of the ambit of any critical reflection.

Yet, our critical reflection on the correlation between our ideals and our reality deserves serious and sober consideration. What our reflections suggest, is that the state, through its various institutions, namely the Legislator, the Executive and its Chapter 9 institution the SAHRC, have in the haze of an incredibly difficult task of redressing the wrongs of the past and in setting our country on the path to a more substantially equal society, have failed to see the systemic continuity of past, current and proposed policies, laws and actions.

We hope that in seeking to bring these into focus, we will have contributed to the necessary and urgent realignment of our mining regime.

Chapter 4: Final Conclusions and Recommendations

The achievement of equality is, in South Africa, “a constitutional imperative of the first order”. The Constitution commands us to strive for an equal society in entrenching it as both a founding value and a right which is informed directly by the unjust history of Colonialism and Apartheid.

In the words of former Justice Langa; “*In this fundamental way, our Constitution differs from other constitutions which assume that all are equal and in so doing simply entrench existing inequalities. Our Constitution recognises that decades of systematic racial discrimination entrenched by the apartheid legal order cannot be eliminated without positive action being taken to achieve that result. We are required to do more than that. The effects of discrimination may continue indefinitely unless there is a commitment to end it.*”

This report has shown that through a combination of well-intentioned but ultimately fruitless endeavours, the South African state has failed in its constitutional obligations to arrest the discrimination of the past and has instead perpetuated a systemic and fundamentally unjust mining regime which impinges on the human rights of the most marginalised and historically most discriminated against rural communities affected by mining.

It is our belief that merely continuing along this path without a fundamental rebalancing in favour of human rights, the South African state is inadvertently sowing the seeds of discontent and resistance.

The case study of the Mapela community has shown that despite overwhelming odds against their claim to human rights and a just dispensation, the community continues to resist and disrupt the “normal” functioning of their dis-possession and impoverishment. The growing organisational ability of mining affected communities to collectively claim their rights as is evidenced in the growth and popularity of MACUA, and the increasing rate of protest and disruption at mines across the country, attests to the emergence of a new struggle for justice that finds its conception in the unjustness of the system.

We hope that this report will result in a much wider open and democratic debate, which must include affected communities, the DMR, the Legislators and business as well as the relevant constitutionally mandated Human Rights Institutions.

SWOP`s Conclusions

The following are the conclusions from the SWOP report:

This study investigated the impact of Amplats’ Mogalakwena mines on four villages in the Mapela area. We focussed with on livelihoods, food security and the environmental rights. We also investigated how residents defend these rights. We connected these broader issues to specific subthemes such as: customary rights and traditional authority, multiple and differentiated livelihoods and post-resettlement experiences.

The findings of this study suggest a significant loss of agricultural land and access to natural resources due to the expansion of the Mogalakwena mine and its community relocation processes. This has triggered feelings of discontentment, displacement and dispossession in the Mapela villages. Our findings also suggest loss of rural livelihoods and new forms of

marginalisation within the selected households in the study area. In this chapter we summarise these findings and draw some conclusions.

4.1 Reclaiming their rights

Among the key findings, this study presents the prolonged resistance against the Mogalakwena mine. Resistance to the mine's expansion takes various forms in Mapela. The various ways through which Mapela residents resist the mine also signify people's efforts to reclaim their rights.

Evidence presented by the ethnographic material suggests that people in Mapela have lost access to land and other natural resources as a result of the expansion of the mine. Loss of land seems to affect food security, because most of our respondents have lost ploughing fields and grazing land. Historically, people raised various crops and animals to survive. Life history interviews suggest that even when people had been involved in wage labour, they mainly used their income to cover other household expenses. Most of their food came from the land. Land dispossession also connects to loss of access to other natural resources like wild fruits, trees, natural herbs and firewood. In Ga-Sekhaolelo - the relocated village – land dispossession is expressed in terms of loss of fertile land. Our respondents in this village complained that the alternative land granted by the mine after relocation is not suitable for grazing. As we shall see later in this chapter, evident statistical survey supports this finding. The findings on post-relocation experiences in Ga-Sekhaolelo also suggest discontent among residents about the compensation provided by the mine for the loss of land and other resources.

In villages close to the mine, namely Ga-Chaba, Ga-Molekana and Sekeming, there are strong complaints about the environmental impacts of the mine. Air pollution and damage to houses – cracks – are among the key complaints. Residents claim that earth vibrations and dust particles released by the mine during blasting are responsible for the cracks on housing and air pollution. Some residents suspect that the mine is responsible for contaminating the water table. In Ga-Sekhaolelo, – the village that the mine relocated from Mholotlo – complaints about environmental issues are not significant. However, we observed that intermitted water supply is a challenge in all four study villages. The ethnographic material presented in this chapter also suggests a strong feeling of displacement due the separation of the relocated families with the graves of their loved ones. The issue of grave relocations seems prominent, particularly the complaint by residents that, the relocated graves were reburied far away from the new village in Armoede. The claim by residents that some of the graves were never exhumed is also at the root of the experience of displacement in Ga-Sekhaolelo. People in Ga-Sekhaolelo are experiencing displacement not only because they lost the graves of their relatives, but also due to the loss of ploughing fields. This is one of the main issues which lead to rejection of Armoede as 'home'. Hence they constantly dream of Mholotlo and some of them – the youth in particular – have returned to build small structures in Mholotlo, as a form of resistance against the mine.

Our findings also suggest that relocation has led to marginalisation of some social categories as a result of the manner in which customary land rights are structured and how the mine interpreted these rights when distributing its relocation benefits. When distributing compensation to the relocated families the mine focused on household heads. The historical structure of customary land rights seems to have favoured the elders (mainly male)

household heads. Interview evidence suggests that social categories that were not favoured by custom to hold land rights were marginalised during and after relocation. These categories include the youth, unmarried women and male siblings who were living in their parent's home before relocation and are not, according to custom entitled to inherit the homestead. In some cases we found that, the modern houses built by the mine are not suitable for the traditional big family lifestyles that some relocated families lived in Mochlotlo. For instance, adult male siblings could live with their wives and children at the homestead left for them by their late parents. This big family structure is possible because traditional African homesteads usually have a number of separate building structures (albeit small sometimes) to accommodate many people. The mine built one house for every family with rooms inside - according to the number of separate structures that each family had before relocation. These modern structures made it difficult more than one family to share the new homesteads after relocation. As a result some families were displaced.

The findings presented in this study connect to the grammar and agency of resistance to the mine. Our findings suggest that resistance in the study villages take different forms. These include, continued 'illegal' occupation and cultivation of land by individuals within Amplats' mineral rights area, refusal to relocate and even episodes of community protest action. Various forms of resistance seem to represent ways by which the village residents in Mapela attempt to reclaim the rights they lost as a result of mining expansion.

In the section below we expand on these findings mainly drawing on evidence presented by the statistical survey method.

4.2 Mining, Livelihoods Crisis, Impoverishment and hunger

The prolonged resistance to the presence of the mine on the part of the rural households around Mokgalakwena mine must be seen in the context of the livelihoods crisis that mining activities in the area induce. In the research area, mining has accelerated and intensified the livelihood or reproduction challenges confronting rural households by obliterating the land-based livelihood component of local households' survival strategies. These adverse impacts are particularly acute on the local food economy since a critical resource, ploughing fields, is no longer available to most households. In times of crisis, rural households often diversify their survival strategies and this diversification happens both within and outside of agriculture. Livelihood diversification does not only proceed on the basis of rural households combining farm and non-farm income sources. In other contexts it has been widely noted that rural households also tend to shift resources from the precarious and risky agricultural activities and focus on other less risky activities within agriculture. In the case of the study villages, diversification or adaptation of livelihoods within agriculture has not been effective. The impacts of mining in the local villages has largely undercut the ability of rural households to shift resources and efforts from the previously predominant agricultural activity, in this case, cropping in large ploughing fields to the cultivation of household plots.

Cropping especially in the large ploughing fields has played a critical role in maintaining the food security of the local rural households. Mining related land dispossessions have undermined the food security of households in these localities. In instances where compensation has been paid to the dispossessed households, this has often been a once-off meagre payment and barely enough to make up for the loss of livelihoods experienced by the households. In their own words, villagers repeatedly argued that they relied on their land

to produce food that would sustain them from month to month throughout the year. Consequently, the once-off cash payments from the mine were not commensurate to the benefits previously derived from owning and utilizing their arable land. The rallying cry amongst the villagers has overwhelmingly been about *Kgwedi ka Kagwedi*. *Kgwedi kagwedi* meaning that reproduction and consumption needs are requirements they deal with on a daily if not monthly basis. Since produce obtained from ploughing fields, for instance, constituted a huge component of household reproduction and consumption requirements, a once off payment in the form of compensation for loss of land is seen as highly inadequate and unjust. The excerpt below is illustrative:

Because they have taken our ploughing fields each and every household should benefit, every month end there should be some income that we get to purchase food. They are able to benefit hourly from the land they took from us which is unfair because there is no other mine that does not produce as much as they do. "Interview, Ga-Sekhaolelo (Armoede) 31/03/2015.

Attempts to diversify livelihood activities within agriculture especially the intensification of cropping in household plots after the displacement of rural households from their large ploughing fields have been undermined by a number of factors. For those households which have been displaced from their erstwhile arable lands newly occupied land or alternative land provided by the mine has been largely infertile and unsuitable for cropping activities. The decrease in the diversity of crops in household plots may be attributed to the poor quality of soils in the alternative land. Most villagers noted that there was stunted growth of crops in their new residential plots. In the case of Armoede, the research shows that the alternative land where the villagers were settled after relocation is largely unsuitable for agriculture. The poor quality of soils inhibits the productive use household plots especially when there is no clarity in terms of tenure issues on the land set aside for ploughing fields.

The mine-induced water crisis has also had an adverse impact on the productive use of what is left of agricultural land. Rain-fed agriculture has predominated in the area. However, households have also mobilised resources to invest in boreholes to draw on ground water. Ground water has played a very significant role in the livelihoods of these households especially considering that running tap water is not readily available or its supply has been largely intermittent. Borehole water is not only utilised for domestic purposes but to supplement rain-fed agriculture in the household plots. Mining activity in the area has resulted in a drastic decrease in ground water levels with the result that ground water supplies from boreholes do not last long. Ground water, just like running water from the taps, has become a scarce resource in the area that cannot be utilised for supplementing rain fed agriculture. In the village of Ga-Chaba, households previously had access to water from Madingwaneng stream which flows by the village. However, the mine fenced off the upper reaches of the stream including a spring where the community used to fetch drinking water. Besides, fencing off this water body, the mine also blocked the stream so that water no longer flows to the lower reaches of the stream where Ga-Chaba is located. Interviews with villagers also reveal that the water in this stream also assumes a different colour and looks contaminated by mine effluent. The fencing off and blocking of the Madingwaneng stream has exacerbated and intensified the water crisis in Ga-Chaba village. This has also had an impact on cropping in homestead gardens especially for households within a stone's throw away from the stream who could previously draw water from this stream to irrigate their small plots.

In other parts of the country, livestock production has proven to be a resilient activity which tends to endure adverse socio-economic impacts better than cropping for instance. Yet in the research area, livestock production, especially cattle rearing, suffered a much earlier decline, as a consequence of historical dispossessions linked to the repressive agricultural development policies of stock culling directed at the black small-scale farmers. In present times, the enclosure of vast tracts of land that could be utilised for grazing further acts as a constraint to the flourishing of livestock production in these villages. The acute shortage of grazing land in these localities has also affected what could be characterised as remnants of livestock production activities in the area. While cattle production came under duress at a much earlier period, households still kept goats, sheep and donkeys for instance. The small livestock, goats and sheep, are less vulnerable than cattle to lack of adequate forage relative to cattle while donkeys are largely hardy and drought resistant. However, the annexation of grazing land, in recent times, for mining purposes has further deprived the villages of much needed grazing land. This has had an adverse impact on the livestock production activities including the remnants of livestock production (e.g. goats, sheep and donkeys) in the villages in question.

The lack of room for manoeuvre within agriculture for rural households in these localities in a context characterised by dearth of opportunities outside of agriculture defines the 'crisis of livelihoods' in this area. It also underlies and drives continued discontent and conflict between the mine and the affected households. Land based livelihoods have played a critical role in the livelihoods of rural households in both historical and contemporary times. Wage income, has always been combined with farm income for survival and accumulation activities amongst rural households. When the broader economic environment and new (mining) investments do not yield job opportunities for rural households yet dislodge them from their land-based livelihood activities through land-dispossessions and or relocation to poor and infertile arable lands this produces and intensifies a crisis of livelihoods. Rural households in this instance are left with fewer options both within agriculture and outside of agriculture. While mining has destructive impacts on agrarian livelihoods in these localities, it barely offers alternative livelihood strategies or an escape route for the rural households it dispossesses. Dispossessing rural households of their land has in this context had a debilitating impact on the local food economy. Without alternatives for local households within agriculture and beyond the only outcome is prolonged resistance and conflict.

*Agrarian livelihoods are often mistakenly seen as disappearing as industrialization and urbanization proceed. However, in recent times, it has become increasingly apparent that both farm and non-farm incomes remain critical for the survival of rural households. Land-based livelihoods have a symbiotic relationship with non-farm income or wage income. It is therefore imprudent to discount the continued relevance of agrarian livelihoods especially considering that processes of industrialization have barely generated enough employment opportunities to absorb labour. **The discourse around the introduction of mining activities in rural localities often portrays mining capital as progressive and an avenue for absorbing labour in the surrounding localities. However, also implicit in these narratives is the tendency to see agrarian livelihoods as an activity of a bygone era whose remnants will soon give way to the large scale capital investments associated with industrialization. The reality on the ground is that rural households draw on both agrarian and non-agrarian livelihoods for their sustenance.** Discounting the significance of agrarian livelihoods simultaneously forms the basis of land*

dispossessions and results in poor and inadequate compensation for the disposed rural households. While mining capital is progressive it is equally dispossessive especially with respect to the marginal rural households who have, in both historical and contemporary times, combined agrarian livelihoods and other sources of income for survival. Instead of maximizing the welfare of rural households, mining capital disrupts the livelihood making system by obliterating its agrarian component driving rural households into hunger and desperation. This accelerates and intensifies a crisis of reproduction which feeds into the resistance and conflict that has come to characterize relations between mining companies and rural households in the countryside.

Recommendations

Recommendations to the South African Government:

- Take immediate action to ensure that all villages in the Bushveld complex have access to adequate supplies of clean drinking water.
- Institute an investigation into Anglo Platinum's liability for the costs involved in remedying water access to the community of Mapela.
- To ensure that community access to agricultural and grazing land are prioritized and that monthly compensation for loss of agricultural and grazing land is afforded to the community urgently.
- Instruct the Department of Minerals and Energy to investigate allegations in this report and reappraise Anglo Platinum's operations in the Bushveld complex. This should include an evaluation of the company's compliance with the environmental and social requirements of the Mineral and Petroleum Resources Development Act and the environmental management plan submitted under this Act.
- Ensure that the SLP presented by Anglo is submitted to the community for approval and consultation.
- To ensure that the popular leaders of the community are engaged in meaningful dialogue to find sustainable solutions to the half century of discrimination.

Recommendations to the Legislator:

The following recommendations were derived through a democratic process initiated by the Civil Society Coalition on the MPRDA and included 15 civil society organisations³⁵ and over 100 affected communities represented through MACUA and Mejcon.

We recommend that the Legislators urgently revise the Mineral and Petroleum Resources Development Amendment Bill to ensure:

- Community Voice in Decision Making through negotiation based on right of consent to determine what activities occur on one's land.

³⁵ The organisations include: Mining Affected Communities United in Action (MACUA), Women Affected by Mining United in Action (WAMUA), Mining and Environmental Justice Community Network (MEJCON-SA), Vaal Environmental Justice Alliance (VEJA), ActionAid South Africa (AASA), Benchmarks Foundation (BMF), GroundWorks, NUMSA, Oxfam, Federation for a Sustainable Environment (FSE) Southern African Catholic Bishops Conference, Justice and Peace Commission, United Front, Right 2 Know, Amnesty International, International Alliance on Natural Resources in Africa (IANRA), Legal Advisors: Legal Resources Centre (LRC), Lawyers for Human Rights (LHR), Centre For Applied Legal Studies (CALS), Centre for Environmental Rights (CER),

- Democratic Community representation and customary decision making processes that are community based and not based on undemocratic traditional Authority.
- 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.
- 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.
- 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.
- Rehabilitation standards should ensure that the land is no worse than when mining started.
- Restitution and Reparations should correct historical wrongs and should include environmental, social, cultural and heritage rights including spiritual connections to land, people and nature.
- 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.

Recommendations to the South African Human Rights Commission:

- Conduct an investigation into the alleged violations of economic, social and cultural rights highlighted in this report - in particular the rights to food and water, the right to a healthy environment and the violation of the communities' cultural rights.
 - Recuse itself as the facilitator of negotiation processes.
 - To assist in the appointment of an independent arbiter.
 - To assist with the formulation of Terms of Reference for negotiation between Anglo and the community based on the human rights violations identified in the 2008 reports and the 2015 report.
 - To immediately dismantle the system of Task Teams and to place the agency with the community informed by their own organic leadership processes.
 - To institute an immediate investigation into the failures of Anglo and other stakeholders to live up to their human rights obligations as set out in the constitution and as per the recommendations of the SAHRC 2008 report.
 - To include in its report firm recommendations on compensation and findings of culpability if it is found that non-payment of compensation has impacted on the food security of individuals, families and communities.
 - To include in its report the increasing deviation of legislation away from human rights standards identified in the 2008 report but also in terms of other instruments such as the African Mining Vision.
 - To include in its report an investigation into the R3.5 billion Project Alchemy, in terms of, what it is, who runs it, who benefits from it, who participates in it and why this "award winning" project has not resulted in any benefits for the Mapela community.

Recommendations to Anglo Platinum:

Anglo Platinum should immediately:

- Comprehensively review and reform its consultation and negotiation processes to ensure all members of local communities are fairly represented and that organic community leaders are respected and engaged as legitimate partners.
- Seize creating divisions within the community through offering preferential deals to Tribal authorities without the democratic consent of the community.
- Introduce monthly reparations to fully compensate for direct and indirect losses, immediate and long term impacts; and afford equity stakes in all of its mining operations to the historically disadvantaged communities surrounding the mines.
- Make its environmental management and social and labour plans publicly available and subject its community development projects to community approval and independent audits.
- Introduce dispute reporting mechanism managed by an independent ombudsman.
- Encourage local authorities and police to respect and uphold the civil and political rights of villagers and openly condemn and reject any actions that contravene their rights.
- Ensure human rights standards are respected throughout its operations.

Recommendations to Anglo American:

As the majority owner of Anglo Platinum, the board of Anglo American should:

- Take steps to ensure that Anglo Platinum complies with the measures recommended above.
- Review governance structures and internal policies and procedures to ensure its group businesses, such as Anglo Platinum, respect human rights.

Recommendations to the UK Government:

- Review and improve mechanisms for holding parent companies accountable for human rights violations by their subsidiaries and group businesses overseas, including through the provision of better access to justice for affected persons in UK courts.