



Sekhukhune Social and Labour Plan Compliance Audit – Summary

by the Sekhukhune Combined Mining-Affected Communities
in partnership with the Centre for Applied Legal Studies

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1. Executive summary

This document summarises the findings of an audit conducted by the Sekhukhune Combined Mining-Affected Communities (SCMAC) on the compliance of three mines impacting on their members with obligations in their social and labour plans (SLPs) which are binding under the Mineral and Petroleum Resources Development Act (MPRDA). The findings reveal that directly impacted communities are not experiencing the benefits of SLPs and there are, for two of the three operations analysed, a number of projects that raise serious questions around compliance. This report also contains recommendations around making social and labour plans and related compliance reports accessible, ensuring community engagement forums are inclusive, developing accelerated time frames for outstanding commitments and ensuring enforcement by the Department of Mineral Resources (DMR).



Conditions in the areas around the mines of Marula, Sefateng and Twickenham

2. Introduction

About the project participants

About SCMAC

Sekhukhune Combined Mining-Affected Communities (SCMAC) is a registered non-profit community-based organisation based in Moroke, Limpopo. SCMAC's membership is made up of communities and individuals from various parts of the district, whose environmental and human rights are affected directly and indirectly by mining and related activities in the region. SCMAC is also a member of the national network of mining-affected communities, the Mining and Environmental Justice Community Network of South Africa (MEJCON-SA).

One of the activities SCMAC undertakes in order to advance the rights and interests of its members is engaging in research and audits of the compliance of mining companies with their environmental and social obligations under the National Environmental Management Act, the National Water Act, and the Mineral and Petroleum Resources Development Act (MPRDA) and other legislation. A particular focus of this work has been the compliance of mining companies with their social and economic obligations under their social and labour plans, which are comprised of binding commitments in terms of the MPRDA, regulations and guidelines.

SCMAC is the organisation that has taken the decision to conduct the compliance audit on the SLPs of the Marula, Sefateng and Twickenham Mines that are the subject of this report. Its members have conducted interviews with 120 community members in different households impacted by the three mines. The findings of this research are contained in this report.

About CALS

The Centre for Applied Legal Studies (CALS) is a civil society organisation based at the School of Law at the University of the Witwatersrand, Johannesburg. CALS is also a law clinic, registered with the Legal Practice Council. As such, CALS connects the worlds of both academia and social justice. CALS' vision is a socially, economically and politically just society where repositories of power, including the state and the private sector, uphold human rights. CALS practises human rights law with a specific focus on five intersecting programme areas, namely: Basic Services, Business and Human Rights, Environmental Justice, Gender, and the Rule of Law.

The SLP Project is located in CALS' Environmental Justice Programme, which works towards making the environmental right contained in Section 24 of the Constitution a tangible reality for all who live in South Africa. The Programme adopts as the basic premise of its work that a healthy environment is critical for the development of all people, marginalised communities who have limited options in choosing the environment in which they live. A central

focus of the Programme's work has been on the social and labour plan system which has the stated intention of ensuring communities derive developmental benefits from the mining activities that impact them. Due to CALS' experience on this issue, SCMAC approached CALS to play a supportive role, especially with regard to training on SLPs and conducting social audits. CALS provided capacitation workshops and resources and accompanied the SCMAC team on the social audit. CALS did not, however, conduct the audit which was led by SCMAC. This is in line with CALS' mission of supporting the agency of marginalised actors to hold powerful entities accountable for human rights commitments.

Background of the case study area: Conditions in the Tubatse Local Municipality, Sekhukhune

The South African mining industry was both a beneficiary and a driver of colonialism and apartheid in their economic, social and legal manifestations. The mining sector perpetuated and strengthened the apartheid state through the ill treatment and economic exploitation of workers from the Southern Africa sub-region.¹ These inequalities were engineered through means which include land dispossession to make way for the mining operations, forced relocation from ancestral lands, and the birth of homelands that became the catalyst of today's rural-urban migration.² An underlying driver of these injustices was an economic model built on profits derived from cheap black, and often migrant, labour.³

A growing body of research, including a report by the South African Human Rights Commission (SAHRC), shows that despite legislation with the stated purpose of transforming the sector, mining continues to be a colonial imposition for the majority of affected communities with the harms exceeding the benefits.⁴ In fact many of the areas in which mining has been expanding during the democratic era fall within the former homelands and communities of the Fetakgomo Tubatse Municipality are another example.

The mines that SCMAC elected to audit – Marula Mine owned by Impala Platinum Holdings Limited (Implats), Twickenham Mine owned by Anglo American Platinum (Anglo Platinum) and Sefateng Chrome Mine – are all located in the Fetakgomo Tubatse Local Municipality, Sekhukhune, Limpopo. The area is part of the Northern limb of the Bushveld Complex.⁵ This is an area rich in Platinum and other Platinum Group Metals (which include ruthenium, rhodium, palladium, osmium and iridium).

Sekhukhune is a predominantly Sepedi speaking area. The inhabitants have a proud history resisting settler colonialism. A central driver of the aggressive colonialism from the late 18th century was to profit from Africa's rich mineral resources.

Perhaps the most acute struggle described by the community currently regards water – quality, infrastructure and access. The official statistics for 2016 indicate that only 3.8% of households in the local municipality have piped water inside their dwellings. Most of the community members interviewed in this audit do not have taps with potable water in their homes and buy water (or fetch water from streams). Community members report

getting ill from drinking the water which they link to the discharge of water by mining companies.

Another impact of mining felt keenly is from blasting activity which community members report is causing damage to their homes. The state of the roads in the area severely impairs the mobility of the community. The situation is particularly dire when the rains come, with roads turning into mud. Community members have even reported public transport not travelling to their villages at times because of the state of the roads.

Access to government services, including healthcare is also a struggle for community members with many having to walk for a long period or pay for transport to receive the assistance they require. People living in the area report that the recent (2016) merger of the Greater Tubatse and Fetakgomo Local Municipalities into the Fetakgomo / Greater Tubatse Local Municipality has further exacerbated the situation.

Unemployment is a severe challenge in the area with the most recent data from Stats SA (prior to the merger of the municipalities) being mentioned by community members in the audit interview sheets even without prompting from specific questions. Community members have reported the impact of large mines in the area being in care and maintenance on the local economy including on small community owned businesses, such as shops. While the SLP projects analysed were not focused on job creation, many interviewees mentioned unemployment as one of the most severe problems they were facing as a community.

Aims of the SLP compliance audit and this report

SCMAC exists in order to advance the struggles of its communities against environmental and social injustices and to ensure mining companies comply with their environmental and social obligations under the law. They employ a number of tools to do so, including mobilisation, engagement, research and litigation. Their research activities are focused on uncovering evidence regarding companies' compliance with their legal obligations. Social and labour plans are of interest to SCMAC since SLPs are meant to ensure real benefit for the communities impacted by mining and address issues of access to services that are a daily struggle for the communities they represent.

The value of social audits are that they empower communities to generate their own knowledge, can be a tool for holding government and mining companies accountable and can also be used as a tool for further mobilising and organising. For this reason SCMAC embarked on a compliance audit centring around the SLPs of three mining companies whose operations have a particularly severe impact on its members namely Marula Platinum Mine (parent company Impala Platinum Holdings Ltd), Twickenham Mine (parent company Anglo American Platinum Ltd) and Sefateng Chrome Mine.

This report contains a write up of the findings of SCMAC's compliance audit conducted with the assistance of CALS.

About social audits

Social audits should be viewed as part of the growing pressure for public participation, especially by poor, working class and oppressed groups in decisions pertaining to development. In the mining sector, this has found expression in the Peoples' Mining Charter, based on the principle of 'nothing about us without us'; the formation of national networks including MEJCON-SA, Mining-Affected Communities United in Action (MACUA), and Women Affected by Mining United in Action (WAMUA); as well as local networks like SCMAC.

This pressure has provided impetus for emerging principles of international and regional human rights law. For example, Article 38 of the UN Guiding Principles on Poverty and Human Rights was adopted by the Human Rights Council at its 21st session in 2012. Article 38 reads as follows: 'States must ensure the active, free, informed and meaningful participation of persons living in poverty at all stages of the design, implementation, monitoring and evaluation of decisions and policies affecting them.' Similarly, in the *Endorois* case, the African Commission on Human and Peoples' Rights interpreted the right to development in the African Charter on Human and Peoples' Rights. They held that the right to development has a procedural as well as a substantive component and that it includes freedom of choice (of those affected by development).⁸

The definition of social audits provided by the Social Audits Network in its pocket book is as follows:

*'A social audit is a community-led process that facilitates public participation in the monitoring of government service delivery and expenditure. During the social audit process, communities study government documents and compare them to their experiences as recipients of a public service. Evidence and experiences are collected, presented, and then discussed with government officials.'*⁹

Given that the private sector has significant impacts on human rights, including environmental and socio-economic rights, and are subject to binding licence conditions, this definition can and should be extended to monitoring companies' compliance with obligations with a direct bearing on the rights of communities.

Social audits are a critical tool communities that can be used to claim a greater involvement in development projects that are meant for their benefit. This is the reason that SCMAC has adopted social audits as a key tactic in advancing the rights of its members.

3. Methodology

Basis for selection of participants

As a community-based organisation, SCMAC is primarily concerned with combating environmental harms caused by mining and for mineral wealth to be translated into meaningful local economic development. In choosing which mining operations' SLPs to audit, SCMAC's primary consideration was which mines were having the most significant impact on its members. The SCMAC audit team consisted of its steering committee (overseeing the process) and three teams each focusing on one mine's SLP and comprising of 6 community members particularly impacted by the mining operation (often living in close proximity to the mine).

In relation to the members of the community who were interviewed, the selection criteria were proximity, first, to the mining operation and, second, (where applicable) to the villages, farms and schools the SLP identified as beneficiaries.

The social audit process

The social audit process commenced as a resolution by SCMAC and a proposal sent to CALS to collaborate on an audit of the SLP compliance of mines in the Fetakgomo Tubatse Local Municipality. A meeting was held between SCMAC and CALS to plot the way forward, informed by SCMAC's needs and the established social audit process. SCMAC elected to conduct the compliance audit on Marula, Twickenham and Sefateng mines. The next step was the constitution of the SCMAC core groups of six directly affected community members for each mine. The SCMAC structure of the core groups overseen by the steering committee of SCMAC assisted by CALS was established. At the same time, CALS assisted SCMAC in obtaining the relevant SLPs and annual compliance reports from the Department of Mineral Resources (DMR) and the mining companies. SCMAC also sent letters to the mining companies and government, notifying them of the audit project and inviting them to participate.

The next stage consisted of capacitation sessions in which CALS lent its legal expertise. The training included understanding SLPs and their legally binding nature, the content to expect in SLPs, a breakdown and discussion of the commitments in each SLP, and an explanation of the social audit process. The culmination of the training was the selection by the core groups of projects to monitor (three per SLP) based upon the most pressing issues in the community. This is necessary for SLP social audits as they consist of many and sometimes complex commitments that consume significant time and resources to thoroughly audit.

At the last capacitation workshop the core groups identified questions to put into the questionnaires that the core groups would ask community interviewees and that were aimed at establishing what commitments had

been met with actual work on the ground. Some of the questions also related to how much community participation and transparency the mines had undertaken in SLP process. In the end, the questionnaires for each mine were divided into questions relating to:

- the particulars of the interviewee (mostly in order to capture the villages interviewees were staying in to understand proximity and also show that these were the stated beneficiaries in the SLPs);
- questions relating to the overarching experience of community members with the SLP (including knowledge of SLPs generally, whether meaningful engagement had taken place, whether community members had access to the SLPs, and whether there was an overall experience of tangible improvement); and
- questions pertaining specifically to each selected project in the SLP with the aim of gathering information regarding the state of compliance and implementation of key commitments in the SLP.

An example questionnaire for Sefateng can be found in the Annexure at the end of this report.

The next stage was the audit week itself during which the SCMAC social audit team conducted interviews with members of the community selected as being most likely to provide evidence. At the end of the group all participants gathered and spoke of their experiences and the main patterns they saw during the audit week. Questionnaires had been prepared and interview requests had been sent to the mines and municipal officials. The mines did not respond and the municipal officials did not provide answers to the SCMAC team that met with them.

Writing up the research

The social audit process entailed around 115 interviews. The process of writing up the audit findings began with the capturing of the answers from each completed questionnaire into a table format. Many of the questions had yes or no options and even those that did not could be fairly easily coded based on patterns of responses (for example, the various manners in which community members accessed water such as buying water, fetching water from the river or from household taps).

Once the capturing was completed the next step was to count up and assign percentages of the different responses. The next step was to identify pervasive themes emerging from the interviews. This was a qualitative analysis of the observations, opinions, experiences of the community interviewees that spoke not only to issues of compliance but also overall impacts and the manner in which companies related to the community and implemented the SLP. Some of these observations were not a direct response to the questions but invaluable at understanding the conditions and social dynamics within communities and between the community and the mine. This phase (the write up of the audit findings) will be followed by meetings with mining companies, local government and the DMR as will be discussed later in the report under the heading 'going forward.'

Limitations of the research

The first, unavoidable, limitation is that not every potential beneficiary of each SLP project could be interviewed. This would have required time and resources not available to the team. Instead, since the SLP projects often did refer to specific villages, farms and schools, interviews took place in the identified areas. There were also instances (for example, in relation to roads and school infrastructure projects) where, in addition to the responses of interviewees, progress or lack thereof could be easily observed. The audit team was also from the communities directly impacted by the mining operations and, therefore, were knowledgeable about the area. Unfortunately, during the time of the social audits, conflicts had arisen in some of the areas identified in SLP projects. This means that these areas had to be avoided due to considerations of the safety of the interviewers.

Another limitation is that, in spite of attempts to secure interviews with the three mining companies and the Local Municipality (which included letters of invitation to participate in the interviews as well as letters of invitation to collaborate months prior to any interviews taking place), these attempts were not successful.

While the audit process followed cannot make authoritative findings of non-compliance, based on the above-mentioned methodology of selecting the interviewees as well as the observations of the team, the process has succeeded in uncovering several instances (outlined below) of possible or even likely non-compliance with SLP commitments. Community members are entitled to answers from the mines responsible in relation to these projects. It is unfortunate that the mines did not avail themselves of the opportunity to provide clarification and their perspectives during the information gathering process of the audit.

4. Findings

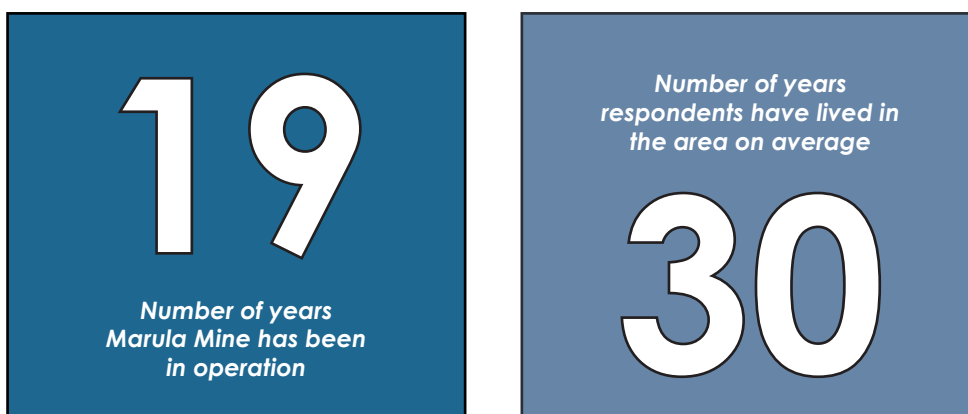
The projects in the SLPs are, at least in their broad conception, relevant to pressing needs identified by the communities and which include, for example, access to water, improvement to roads, and upgrading of school infrastructure. However, it does not appear from the responses of the interviewees that there has been meaningful community involvement in the design and execution of these projects. In many instances interviewees describe their experience of consultation as that of the mine promising to bring a particular service or infrastructure, which suggests a one-way communication. Another indication as to the meaningful nature of consultation is role players' familiarity with the concept of SLPs. In most cases, respondents did not know what SLPs are which indicates that meaningful engagement did not occur.

Meaningful engagement also requires transparency. It was striking how few of the community respondents had ever seen copies of the SLPs. This is not surprising given that only the Twickenham SLP has been made available online. With the exception of Twickenham Mine, an overwhelming majority of respondents reported having very negative contact with representatives from the companies and most rated them 'very unprofessional.'

What also emerged was a seemingly arbitrary selection of beneficiaries in cases of projects which appear to have seen high levels of compliance such as installing electricity which was reported as significant. For example, houses on one side of a road might get electricity, while houses on the other side did not. This gave rise to a perception that SLPs are used as a means of sowing division in communities to prevent unity in demanding respect for their rights. There were instances in which community members described consultative forums being used to create a limited set of beneficiaries.



View of Marula Mine from the nearby community



Marula Mine

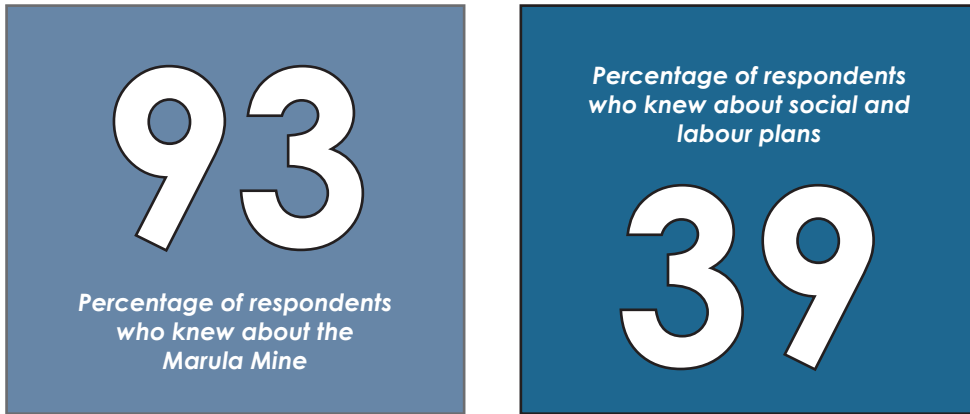
The Marula Mine is one of the larger operations in the greater Sekhukhune area. The mining right is held by Marula Platinum (Pty) Ltd, a subsidiary of Impala Platinum Holdings Ltd (Implats) in which the latter has a 73% ownership stake.¹⁰ The mine is an underground operation which exploits the rich platinum belt of the eastern limb.¹¹ The Marula project, according to the SLP, commenced in 2000.

Details of respondents

In all questionnaires, the first set of questions pertained to details of the respondents. This was primarily to enable recording where respondents were the beneficiaries designated in the SLPs. Firstly, the vast majority of respondents are from villages on the Driekop farm one of the four farms specifically identified in the SLP as beneficiaries for the purpose of LED projects. The social audit core group did not travel to all the farms due to safety risks. Second, respondents are in a community that pre-dates the commencement of the mining operations. Of the majority (76.7%) who did specify the number of years they had lived in this community, the average was over 30 years.

Thematic responses

In addition to the specific questions that varied with each project in each SLP, all questionnaires directed at community members contained the same set of questions designed to assess their overall experience regarding the company's SLP performance and which related to areas such as access to information, participation, and whether there was a sense the SLP benefited the community. Considered together, the responses revealed that the dominant experiences of the interviewees in relation to the Marula SLP was of a lack of meaningful participation, access to information and benefit. Further, the abiding impression of the mine representatives was a poor one.



Participation and access to information

Not surprisingly, given their close proximity, the vast majority of respondents (93.2%) reported that they knew of Marula mine.¹⁴ Nearly as many (86.4%) had heard of the promises made by the mine. It is concerning that despite this, a majority of respondents (61.4%) did not know what social and labour plan projects are. This suggests a lack of meaningful participation. In response to the question of how respondents had come to know of the mine's development projects, 15.9% found out through consultation with the mine and 4.5% found out through consultation with the Municipality. The overall indication is that participation processes by the mine only reached a very limited segment of the population. In response to the direct questions as to whether community members were consulted on what goes in an SLP the overwhelming majority (70.5%) did not provide responses with a small minority (18.2%) answering 'no' and an even smaller minority (11.4%) answering 'yes'.¹⁸

Experienced benefit

Very few respondents (4.5%) stated that they had seen a copy of the SLP with the vast majority (90.9%) stating that they had not and the remainder (4.5%) providing responses falling into the 'not applicable' category.¹⁹ The majority of respondents (88.6%) reported that they did know someone who benefited from the SLP.²⁰ This must be borne in the context that the interview sheets show nearly everyone interviewed was from Driekop – one of the four farms that were specified in the SLP as the beneficiaries of LED projects.

Community treatment

Respondents were directly asked what their assessment was of the officials from the mine who were the points of contact. The largest group (47.7%) did not answer the questions.²¹ While this could be for a number of reasons, a possible explanation is that they had no direct contact with mine representatives. The experience of those who did answer the question was that officials were 'very unprofessional', with far less (9.1%) choosing 'adequate' and only 2.3% 'very professional'.²² This again suggests that their experience was of a company that seldom engages and when it does, does not do so meaningfully.

Issues raised

In the additional column 'anything else' which contains comments on questionnaires not specifically in response to a particular question (found on several interview sheets) the issues raised include water, roads, employment and cracked houses. Also one respondent referred to broken promises (regarding water, employment as well as 'projects' which are not specified).

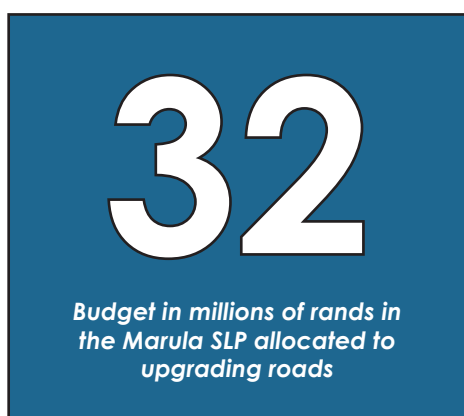
Specific project findings

Roads

The Marula SLP contains a project with a total budget of R32 million to upgrade community roads to address challenges with dust.²³ The farm Driekop is identified as the target area and the project was due to be completed in 2017 (the last year of the SLP cycle). It should be noted that the Marula SLP annual compliance report for 2018 admits that the project has not been completed on time and provides a 'revised completion date' of February 2019.²⁵ On the face of it, Marula appears to be in non-compliance.

As was visible during the gathering of information, many if not most roads in the villages were dust roads of poor quality. Not surprisingly the vast majority of respondents (70.5%) stated that they had problems with their roads.²⁶ Many respondents described how the roads were very difficult to travel on especially during the wet season and some even reported that public transport would not come to their village for that reason (which leads to isolation). Most stated that the road has worsened and/or remained the same since the arrival of the mine.

The largest group of respondents (68.2%) stated that Implats had not consulted them on a road project.²⁷ Only 18.2% reported that they had been consulted on the road project.²⁸ This 18.2% includes 3 respondents who state that consultation had occurred but commented that these consultations resulted in 'empty promises'. In response to the question of whether the mining company had done work on the road, the most common response was 'no' (63.6%).²⁹ This is critical as the deadline for the completion of the roads project has passed (the SLP is for the 2013 – 2017 period).



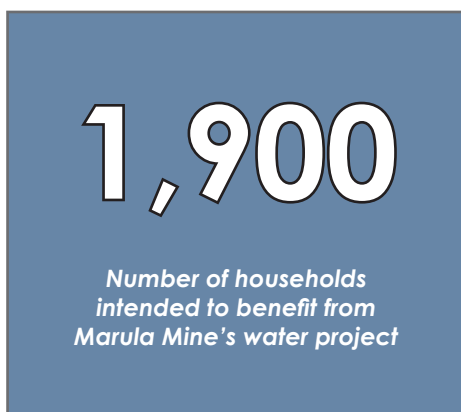
Electricity

The Electrical Engineering Infrastructure Project was aimed at installing electricity infrastructure and connecting the residents of the four farms Forest Hill, Winaarshoek, Driekop and Clapham to electricity.³⁰ No target number of households to be connected was provided, nor was it limited to specified villages. The budget was R2 million.³¹ The deadline for completion of the project was 2014.³²

The electricity project appears to have been complied with insofar as it seems a large number of households were electrified in the villages on Driekop farm but several respondents reported that the manner in which the project was undertaken seemed inconsistent. For example, villages or neighbourhoods appear to have been randomly selected for electrification while those adjacent were not. It seems that out of the areas covered in the survey, the bulk of the work was done in the village Magabaneng.

The largest number of respondents (47.7%) stated that the mine was laying down infrastructure to bring electricity to the community. The largest group of respondents (54.5%) reported that their houses had electricity.³³ The respondents were fairly evenly split between those who knew of neighbours who had been connected to electricity by the mine (43.2%) and those who had not (47.7%)³⁴ with a few not responding.³⁵ An important comment made in a few of the responses was that 'two streets were fighting each other' as only one was selected for electrification, which resulted in a halt to the project. Some also said electricity was not working or intermittent.

While the findings of the audit suggest that Marula has complied with the project obligations, access to electricity remains a challenge in the community with 31.8% of respondents stating they did not have electricity in their homes.³⁶ One of the respondents vividly described the impact of their lack of access to electricity as follows: 'It was only promises from 2013 up to date... We live in a dark city. People are using candles for educators to read or study.' They also reported that people have been bitten by snakes due to the absence of lighting at night.



“ They promised water, it was not done; they promised employment, no-one works in the family; they promised projects, these are not done. ”

Response from one of the interviews on Marula Mine

Water

The Water Supply and Reticulation Design Project is an extension of a previous SLP project which involved the supply of stand pipes and tanks to 1,900 households.³⁷ This project was aimed at connecting further households to this infrastructure and supplying water. Like the other local economic development projects by Marula, the beneficiaries are the same four farms (Forest Hill, Winaarshoek, Driekop and Clapham).³⁸ The project acted as a collaboration between the mining company and the District and Local Municipalities, the Marula Community Trust and the then Department of Water Affairs and Forestry.³⁹ The allocation of roles and responsibilities was unclear. The project was meant to be completed by 1 June 2013 and R4 million was budgeted for it.⁴⁰ It is not certain whether this was a project not completed in the previous SLP cycle and rolled over into the 2013 – 2017 SLP cycle.

This project is of particular importance. Burgersfort is a water-scarce area (in which recent trends in weather suggest the impact of climate change) and mining has significant impacts on both water availability and quality. Respondents reported, by some margin, that the most common way of accessing water both for their households and their neighbours was through buying water, whether from trucks or neighbours with boreholes. Half of respondents said their household accessed water through buying and a further 52.3% respondents said their neighbours accessed water this way. This shows the lack of water infrastructure and access to safe potable water.

Three respondents said they fetched water from the river and the same number of respondents said their neighbours did as well. Some respondents simply said water was accessed via boreholes (four respondents in relation to their own household, and four respondents for their neighbours). Two respondents said their household accessed water from the municipality (same numbers for neighbours) and one said 'pipes' (same for neighbours). For these reasons, delivery on large scale water projects is of the highest importance and, in fact, a life and death question for community members.

While Marula did commit to providing access to water in the identified farms, the responses from community members (mostly from villages in Driekop) suggest very little has been done to date. This is in spite of everything in the SLP being due by the end of 2017. There was a near-even split between respondents who report having been consulted by the mine on a water project (40%) and those who said they had not (43.2%), with the remainder not providing responses.⁴² By a margin of 68.2%, the respondents stated that Implats Marula mine had not connected their household to water supply and installed infrastructure, with a few respondents (6.8%) stating that the infrastructure had been installed but nothing coming out of the taps.⁴³ Unsurprisingly, the vast majority of respondents (81.8%) knew of no neighbours who had been connected to water because of the mine and only a small minority (13.6%) knew of neighbours who had been connected because of the mine.⁴⁴



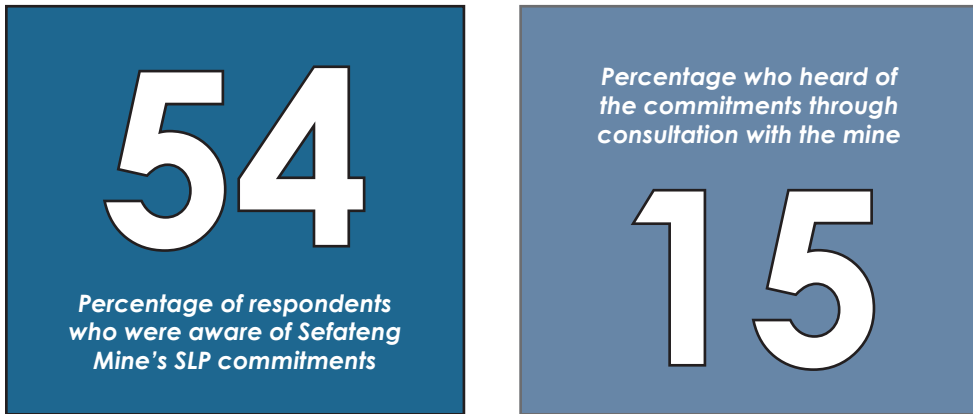
Houses on dirt roads with no water reticulation near Sefateng Mine

Sefateng Mine

The Sefateng Chrome Mine (Pty) Ltd lies in immediate proximity to the Ga-Mampa and Ga-Phasha villages. According to an integrated annual report by its parent company at the time, it received its mining right in the second half of 2015 but commenced mining in February 2015.⁴⁵ There have been reports of serious rights violations in the area surrounding the mine including forced removals, intimidation and assault.

Details of respondents

Respondents were primarily split between the Ga-Mampa (50%) and Ga-Phasha (39.1%) villages.⁴⁶ The responses clearly show a community that has long pre-dated the mining operation with the average length of time living in the area being 40 years.



Thematic findings

The findings discussed below indicate that the dominant experience of the Sefateng SLP amongst respondents was of a lack of meaningful participation, a lack of tangible positive impact, and an unsatisfactory approach to engagement.

Participation and access to information

Around half of respondents were aware of promises made by the mine to the community.⁴⁷ The majority of respondents (67.6%) did not know what SLP projects are.⁴⁸ Of those with responses / applicable responses, the largest group of respondents had heard of Sefateng SLP development projects by word of mouth (21.7%) and 15.2% had heard of them though consultation with the mine.⁴⁹

Only 23.9% of respondents reported having been consulted by the mining company on the projects to go into the SLP.⁵⁰ The findings indicate that access to information is a severe challenge – only a single respondent had ever seen the SLP.

Experienced benefit

A minority of respondents (28.26%) reported that they knew of any one in the community who had benefited from the SLPs with a large majority (71.7%) reporting the opposite.⁵¹

Community treatment

A majority of respondents (67.39%) rated officials from Sefateng as very unprofessional in their encounters with a minority rating them as adequate, none rating them as very professional with the remainder not responding.⁵²

Specific Project Findings

Water

This project is aimed at mitigating the difficulties with water supply in the Tjibeng, Seokpdibeng, Ga-Phasha and Ga-Mampa communities.⁵³ The main difficulties identified relate to the source, distribution and standpipes. This project was intended to be planned and implemented in collaboration with the Sekhukhune District and then-Fetakgomo Local Municipalities.⁵⁴ Key performance indicators include:⁵⁵

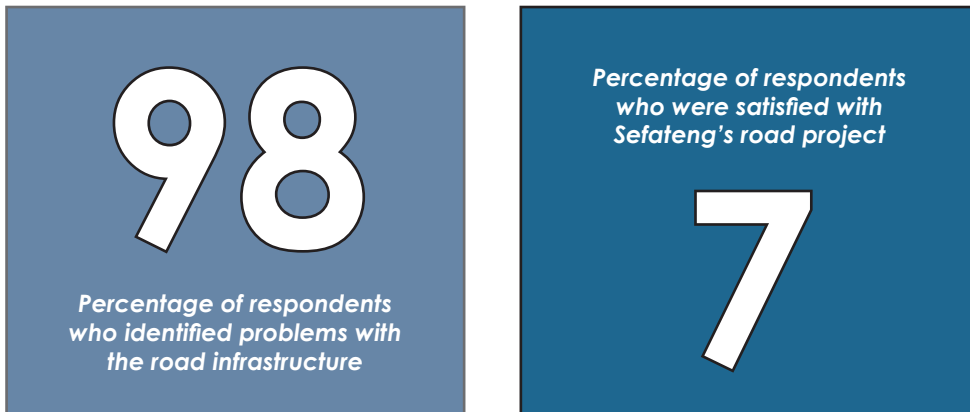
- Installation of 1,5 km pipe in Ga-Mampa (Q1 2017 – Q4 2017)
- Replacement of two hand pump boreholes in Ga-Mampa (Q1 2017 – Q4 2017)
- Refurbishment of 15 standpipes in Ga-Mampa village (Q1 2017 – Q4 2017)
- Installation of additional borehole in Ga-Phasha (Q1 2018 – Q4 2018)
- Refurbishment of 30 standpipes in the village (Q1 2018 – Q4 2018)
- Installation of 1,5 km pipe (Q1 2018 – Q4 2018)
- Replacement of hand pump borehole in Tjibeng (Q1 2019 – Q4 2019)
- Installation of additional borehole (Q1 2019 – Q4 2019)
- Refurbishment of 15 standpipes in the village (Q1 2019 – Q4 2019)
- Installation of additional borehole in Seokodibeng (Q1 2020 – Q4 2020)
- Installation of 3 km pipe (Q1 2020 – Q4 2020)
- Refurbishment of 30 standpipes in the village (Q1 2020 – Q4 2020)

It must be noted that the social audit was only conducted in the villages of Ga-Phasha and Ga-Mampa because these were due to be completed by the end of 2018. A total of R5 million was allocated to this project which was a collaboration between Sefateng, the Sekhukhune District Municipality and the Fetakgomo Local Municipality. For all actions, all role players are cited as responsible which means the division of responsibilities is not clear.

The vast majority of respondents (89.1%) reported that the mine had installed no pipes or water facilities.⁵⁶ Well over two thirds (76.1%) stated that no hand pump boreholes had been replaced by Sefateng.⁵⁷ Only two respondents specified numbers with both stating there was only a single borehole and one stating that the borehole could not be accessed due to safety concerns. Not a single respondent answered in the affirmative to the question of whether standpipes were refurbished which was another component of the water project.

““ During the rainy season, children are prevented from going to school due to the poor state of the road. ””

Response from one of the interviews on Sefateng Mine



Roads

The Sefateng SLP contains a 'Main Road Improved Gravel Upgrade Project'.⁵⁸ The commitment is to improving the gravel road linking Ga-Phasha and Ga-Mampa communities using dump rock from the mine and other local materials.⁵⁹ The total budget was R2.2 million and the project plan clearly states that it is Sefateng's sole responsibility.⁶⁰

Every respondent bar one stated that there were problems with the road linking Ga-Phasha and Ga-Mampa.⁶¹ Problems commonly cited included dust, the road becoming muddy during rains and damage to vehicles such as from stones. A proportion of respondents (41.3%) provided specific numbers of kilometres as to how much of the road Sefateng had worked on.⁶² Numbers ranged from 2 to 12km but most fell into the 2 to 5km range. The vast majority of respondents (80.43%) were not satisfied that the project had addressed their difficulties with the road, with a small minority (6.5%) responding that they were satisfied and the remainder of responses falling into the 'not applicable' category.⁶³

School infrastructure

The educational support (school infrastructure) project involved the construction of classrooms, administrative blocks and science labs for specified schools in Ga-Phasha and Ga-Mampa.⁶⁴ The project is to continue until the end of 2020, but the obligations due by the end of 2018 were:⁶⁵

- Completion of Ga-Phasha Education Project in 2017 by construction of two additional classrooms at Makgalanoto Primary school with a total size of 40 sqm
- Construction of an additional room at Ga-Phasha's Selatole Secondary School to be utilised as a science lab with a total size of 30 sqm
- Procuring equipment for the above science lab
- Construction of an admin block at Malegase primary school to be utilised by teachers and admin staff with a size of 30sqm by the end of 2018
- Construction of 3 additional classrooms at the existing school with a size of 60 sqm by the end of 2018

The total budget for the project was set at R3.5 million. Completion is Sefateng's sole responsibility.⁶⁶ The vast majority (84.8%) of respondents stated that Sefateng had never consulted them on the infrastructure needed at the school.⁶⁷ Only a small minority (6.5%) reported that Sefateng had provided infrastructure at their school.⁶⁸ Not a single respondent answered in the affirmative to the question as to whether Sefateng provided everything that was promised. Neither did any respondents report being satisfied with the quality of the work.

Only a very small minority (4.4%) of respondents answered in the affirmative to the question of whether the project met the needs of the school.⁶⁹ This is significant as these interviews took place in the villages of Ga-Phasha and Ga-Mampa that are immediately adjacent to Sefateng and which are named in the SLP as beneficiaries of the school infrastructure project.



Construction site near Twickenham Mine

Twickenham Mine

Twickenham Mine is located on the farms Twickenham, Hackney, Forest Hill and Balmoral.⁷⁰ Twickenham's mining right is held by Rustenburg Platinum Mines Limited which is a wholly owned subsidiary of Anglo American Platinum.⁷¹ The establishment of the mine was announced in 2001.⁷² The mine is currently in care and maintenance yet must maintain all required licences and social and labour plan commitments.⁷³

Details of respondents

The responses clearly record communities that have pre-existed the mining operations. The average time respondents had lived in the area was 41 years. The main community needs identified were water, roads, employment and consultation.

Thematic findings

Participation and access to information

The vast majority of respondents (79.2%) reported having heard of Twickenham Mine.⁷⁴ Even more (83.3%) were aware that promises had been made by the mine to the community.⁷⁵ Only a small minority (16.7%), however, knew what SLP projects are as a concept.⁷⁶ Reflecting this, the question as to how people came to know of the development project was unanswered for two thirds of respondents.⁷⁷ Of the number who did respond, two stated they had heard by word of mouth, none through consultation with the mine, five through consultation with the municipality and one selected 'other'. A majority of respondents (62.5%) stated they were not consulted on what projects were to be in the SLP.⁷⁸ Not one of the respondents had ever seen a copy of the Twickenham SLP.

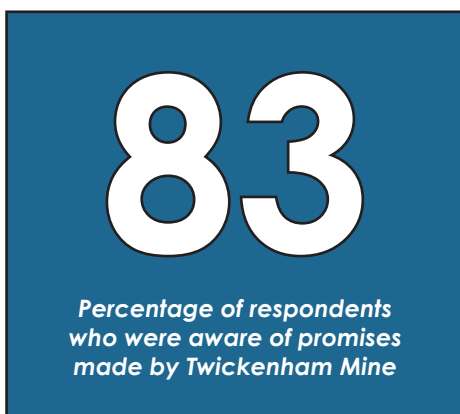
Experienced benefit

The vast majority (70.8%) did not know of anyone who benefited from the SLP with the remainder knowing people who benefited (in some cases naming the villages).⁷⁹

Specific project findings

Water

The 2016 – 2020 SLP commits to the provision of water to twelve villages in the Greater Tubatse Local Municipality area, but the villages are not identified.⁸⁰ Specifically, the SLP commits to deliver 700,000 litres of water per day to 14,000 people, with each person getting 50 litres per day.⁸¹ Water provisioning and metering is to occur from the third quarter of 2017 to the end of 2020.⁸² This means that, as of 2019, a substantial number of households should have already benefited, though the project would not yet need to be completed. The total budget was set at R11.145 million with R4.5 million budgeted for 2016, 2017 and 2018 combined.⁸³ It is clear that the project is a collaboration with local government with the IDP manager named though roles and responsibility allocation is not clear.



The 2018 annual compliance report indicates that this project will be implemented in the third quarter of 2019. This shows that the company is behind on its targets.

The respondents did not answer the question as to how they access water or how their neighbours in the community access water. The vast majority (76%) also did not respond as to whether Twickenham consulted them on a water project.⁸⁴ A majority of respondents (64%) stated the mine had not connected the household to water supply and installed water infrastructure.⁸⁵ A minority (32%) stated that Twickenham had done so and the remainder provided no answer.⁸⁶

With regard to satisfaction with work done it is not surprising that the vast majority (68%) did not respond or answered 'not applicable' as they reported that the company had not installed water infrastructure.⁸⁷ All that did provide applicable responses (32%) stated that they were not satisfied.⁸⁸ This is not surprising as in response to the question of whether Twickenham had connected them to water the response was generally that infrastructure had been provided but water was not coming out of the taps.⁸⁹

Water and sanitation at schools

The SLP committed to upgrading water and sanitation at the following schools:⁹⁰

- Mangatane school
- Maboragane school

The project is described as being:

'a chamber suitable for the reception and processing of sewage. It is used for the clarification of sewage by simple settling and sedimentation, along with anaerobic digestion of the extracted sludge, it consists of an upper chamber in which sedimentation takes place, from which collected solids slide down inclined bottom slopes to an entrance into a lower chamber in which the sludge is collected and digested.'

800

*Number of learners
intended to benefit from
Twickenham's water and
sanitation project*

*Year Twickenham's school
water and sanitation project
was meant to be completed*

2019

The project is intended to benefit over 800 learners. The project is to be completed by the end of 2018 at a total cost of R1.978 million.⁹¹ While the audit was not able to get sufficiently clear responses on this question to generate field research findings, the 2018 annual compliance report expressly states that this project was to be implemented during 2019 which means that, on the face of it, the mine was in non-compliance during 2018.

School infrastructure project

The SLP commits to building four admin blocks at the following four schools (one for each school):⁹²

- Masebudi Primary School (Ditwebeleng village) - admin block and additional classrooms
- Hlakanang School
- Tekanang School
- Maboragane School

The total budget for the project is R13.3 million.⁹³ While the social audit did not yield clear answers in this field, the 2018 annual compliance report states that the construction of the admin block at Masebudi school and four classrooms was complete and handed over to the Department of Education.⁹⁴ While the SLP was not clear about the exact work to be completed at which school by which date, from the project duration (until the end of 2020) and budgets allocated per year it does appear that the company was in compliance with its commitments for this project.

5. Recommendations

1. Complete transparency of SLPs and compliance reports

Obtaining the SLPs for Marula and Sefateng was costly and time-consuming, and SCMAC and CALS were unable to obtain the full set of annual compliance reports for either of the two mines. This is an illustration of how secrecy undermines accountability. The barriers to obtaining SLPs, which have meant that most communities have never read SLPs meant for their own benefit, must be broken through mandatory placement of all SLPs and annual compliance reports online and the dissemination of SLPs, annual compliance reports and summaries in the predominant languages spoken by communities.

2. Inclusive community engagement forums

Firstly, the proceedings of community engagement forums must be transparent. Secondly, participants must be furnished with all information required for informed participation, including, but not limited to:

- SLPs, associated documents such as annual compliance reports and any applications to amend the SLPs;
- Environmental Authorisations, Environmental Management Programmes, and all reports pertaining to compliance with environmental legislation;
- the mining works programme; and
- any information relating to changes in the mining operation, and licence conditions.

The forum should include a budget for legal and technical specialists of the community representatives' choosing. Finally, there should be a clear, consistent and accessible process for community-based organisations to join the forums.

3. Accelerated time frame for outstanding SLP commitments

Where companies have not met their commitments in full they must develop an accelerated action plan with clear deadlines to meet their commitments in full.

4. Enforcement action by DMR

The DMR is the authority invested with the power, by the MPRDA, to monitor and enforce compliance with its mining legislation and regulations and this includes SLPs. The DMR should use the evidence contained in this report of possible and likely non-compliance to conduct inspections and take enforcement action where necessary.

6. Conclusion

Summary of findings

A common theme that cut across the three SLPs, but particularly Sefateng and Marula is a lack of meaningful community participation. While it is not fair to say that no engagement took place, the processes evidently suffered from severe flaws. Firstly, engagement did not reach a large percentage of respondents. Secondly, it appeared to be more of a one-way engagement than meaningful participation. One indication was the fact that most respondents were not knowledgeable of the concept of SLPs. Access to information was also a severe challenge. Few respondents had seen copies of the SLPs, especially for Marula and Sefateng which, at the time of writing, were not on the companies' websites (unlike the Twickenham SLP). Likewise, for these two mines, the experience community members had with mine representatives was overwhelmingly negative.

In general, community members reported few tangible benefits from SLP projects. The responses raise questions with regard to compliance with the Marula roads and water projects; with the Sefateng water, road and school infrastructure projects; and the Twickenham water project. Of note is that Marula's 2018 annual compliance report shows that it missed its roads project deadline for the 2013 – 2017 SLP period, that Twickenham's 2018 report shows that its water infrastructure programme is behind schedule, and that Sefateng appeared to have brought no tangible benefits to the villages where it is located through its SLP projects. There were several responses by respondents alleging that a small number of people improperly benefited from SLP programmes (including contracts).

Going forward

The compilation of the findings of the compliance audit into a report is far from the final step in the process for SCMAC for whom this is a tool to achieve the greater goals of accountability and real change in lived conditions on the ground. SCMAC, assisted by CALS and other partners, will pursue efforts to engage with all three mining companies, as well as the Local Municipality and the DMR on the findings and ways forward to rectify the failures to deliver indicated in the audit. With regards to the mining companies, the engagement will focus on ensuring the full implementation of projects and expeditiously tackling any barriers to completion. With regards to the DMR, the focus will be on seeking to work with the DMR to vigorously enforce compliance.

SCMAC will explore further ways to use the findings of the audit to hold the companies accountable including the use of media, protest and, where necessary, exploring legal interventions. SCMAC will not rest until the communities of Sekhukhune have brought an end to environmentally, economically and socially harmful practices by mining companies and enjoy a share in the wealth generated by the minerals under their land.

Endnotes

- ¹ For further reading see V Allen *The history of black mineworkers in South Africa: the techniques of resistance 1871 – 1948* (Volume I); M Legassick 'Capital accumulation and violence' (1974) 3 *Economy and Violence*. 253; H Wolpe 'Capitalism and cheap labour-power in South Africa: From segregation to apartheid' (1972) 1 *Economy and Society* 425.
- ² M Legassick 'Capital accumulation and violence' (1974) 3 *Economy and Violence* 253; H Wolpe 'Capitalism and cheap labour-power in South Africa: From segregation to apartheid' (1972) 1 *Economy and Society* 425.
- ³ Ibid.
- ⁴ In this report, the South African Human Rights Commission stated that 'Despite the entire community experiencing the negative impacts of mining, there is no overall improvement in the socio-economic circumstances of the community as a whole.' *South African Human Rights Commission Hearing Report on the Underlying Socio-Economic Challenges of Mining-Affected Communities* (August 2018) 56.
- ⁵ <https://municipalities.co.za/locals/view/243/Fetakgomo-Greater-Tubatse-Local-Municipality>.
- ⁶ http://www.statssa.gov.za/?page_id=993&id=greater-tubatse-municipality;
- ⁷ <https://municipalities.co.za/locals/view/243/Fetakgomo-Greater-Tubatse-Local-Municipality>.
- ⁸ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* para 277 and 278.
- ⁹ *Social Audits Network A Pocket Guide to Conducting Social Audits in South Africa* (2015).
- ¹⁰ Marula Platinum Mine social and labour plan 2013 – 2017 (Marula Platinum SLP) at 7.
- ¹¹ http://www.implats.co.za/downloads/2006/annual_report/review06/marula.htm.
- ¹² Marula Platinum SLP at 7.
- ¹³ Respondents living in the area for 19 years and more – 21/43 (48.8%). Respondents either living in area for 19 year or more, or for entire lifetime (where age not specified) – 31/43 (72.1%). Average length of time living in area (excluding respondents that do not specify length – out of 33) – 30.5years.
- ¹⁴ 41 out of 44 respondents.
- ¹⁵ 38 out of 44 respondents.
- ¹⁶ 27 out 44 respondent. Note that 5 respondents provided 'no' or 'not applicable' responses (coded as 'n/a').
- ¹⁷ This represents 7 out of 44 respondents and 2 out of 44 respondents respectively.
- ¹⁸ This represents 31 out of 44 respondents, 8 respondents and 5 respondents respectively.
- ¹⁹ This represents 2 out of 44 respondent, 40 respondents, and 2 respondents respectively.
- ²⁰ This represents 39 out of 44 respondents
- ²¹ This represents 21 out of 44 respondents.
- ²² This represents 18 out of 44 respondents, 4 out of 44 respondents and 1 out of 44 respondents respectively.
- ²³ Marula 2013 – 2017 SLP at 59.
- ²⁴ Ibid.
- ²⁵ Marula 2018 SLP Annual Compliance Report at 34.
- ²⁶ This represents 31 out of 44 respondents.
- ²⁷ This represents 30 out of 44 respondents.
- ²⁸ This represents 8 out of 44 respondents.
- ²⁹ This represents 28 out of 44 respondents.
- ³⁰ Marula 2013 – 2017 SLP at 60.

³¹ Ibid.

³² Ibid.

³³ This represents 21 out of 44 respondents.

³⁴ This represents 19 out of 44 respondents and 21 out of 44 respondents respectively.

³⁵ 6 out of 44 respondents.

³⁶ This represents 24 out of 44 respondents and 14 out of 44 respectively.

³⁷ Marula 2013 – 2017 SLP at 61.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Readers will see that the numbers do not add up to exactly 44 (number of respondents) because there were several respondents who accessed water in more than one way.

⁴² This represents 18 out of 44 respondents and 19 out of 44 respondents respectively.

⁴³ This represents 30 out of 44 respondents and 3 out of 44 respondents respectively.

⁴⁴ This represents 36 out of 44 respondents and 6 out of 44 respondents respectively.

⁴⁵ Metmar Limited Integrated Annual Report 2015 at 2.

⁴⁶ Representing 23 out of 46 respondents and 18 out of 46 respondents respectively.

⁴⁷ Representing 25 out of 46 respondents.

⁴⁸ Representing 31 out of 46 respondents.

⁴⁹ Representing 10 out of 46 respondents and 7 out of 46 respondents respectively. It should be noted that the majority of respondents did not provide a response or one that addressed the question and therefore their answers were coded as 'n/a'.

⁵⁰ Representing 11 out of 46 respondents.

⁵¹ Representing 13 out of 46 respondents and 33 out of 46 respondents respectively.

⁵² Representing 31 out of 46 respondents, 8 out of 46 respondents, 0 out of 46 respondents and 7 out of 46 respondents respectively.

⁵³ Sefateng 2016 – 2020 SLP at 24.

⁵⁴ Ibid.

⁵⁵ Ibid at 24 – 25.

⁵⁶ Representing 41 out of 46 respondents.

⁵⁷ Representing 35 out of 46 respondents

⁵⁸ Sefateng 2016 – 2020 SLP at 25.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Representing 45 out of 46 respondents.

⁶² Representing 19 out of 46 respondents.

⁶³ Representing 37 out of 46 respondents, 3 out of 46 respondents and 6 out of 46 respondents respectively.

⁶⁴ Ibid at 26 – 28.

⁶⁵ Ibid at 26 – 27.

⁶⁶ Ibid at 26 – 28.

⁶⁷ Representing 39 out of 46 respondents.

⁶⁸ Representing 3 out of 46 respondents.

⁶⁹ Representing 2 out of 46 respondents.

⁷⁰ Twickenham social and labour plan 2016 – 2020 at 5.

⁷¹ Ibid at 4 and 6.

⁷² <https://www.angloamericanplatinum.com/media/press-releases/archive/2001/06-09-2001>.

⁷³ Ibid at 8.

⁷⁴ Representing 19 out of 24 respondents.

⁷⁵ Representing 20 out of 24 respondents.

⁷⁶ Representing 4 out of 24 respondents.

⁷⁷ Representing 16 out of 24 respondents.

⁷⁸ Representing 15 out of 24 respondents.

⁷⁹ Representing 17 out of 24 respondents.

⁸⁰ Twickenham 2016 – 2020 SLP at 59.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Representing 19 out of 25 respondents.

⁸⁵ Representing 16 out of 25 respondents.

⁸⁶ Representing 8 out of 25 respondents and 1 out of 25 respondents respectively.

⁸⁷ Representing 17 out of 25 respondents.

⁸⁸ Representing 8 out of 25 respondents.

⁸⁹ To cite some examples: Yes, Twickenham connected pipes but there is no water being reticulated; No, they've made a borehole but the water never reached the community members; Yes, they've installed pipes and Jojo tanks but there is no water; Yes, not complete, they promised in 2012 to source water.

⁹⁰ Twickenham 2016 – 2020 SLP at 62.

⁹¹ Ibid.

⁹² Twickenham 2016 – 2020 SLP at 61.

⁹³ Ibid.

⁹⁴ Twickenham 2018 SLP Annual Compliance Report at 3.

Annexure

Social and Labour Plan Audit – SEFATENG

SETAGENG SPECIFIC COMMUNITY MEMBERS QUESTIONNAIRE

GENERAL

Date: _____

Name of auditor: _____

Name of the community member: _____

Contact numbers: _____

Address: _____

How long have you lived in the area? _____ years

SLP General

1. Have you heard of Sefateng Mine ? [Yes/No]

2. Are you aware of any promises that were made to your community by the mine? [Yes/No]

3. Do you know what SLP developments/projects are?

4. If yes, how did you come to know about these developments/projects?

[Please tick]

Word of mouth	Consultation with the mine	Consultation with the municipality	Other [Specify]

5. Were community members consulted on what projects they would like to see in the community?

6. Have you seen a copy of the S.L.P?

7. Have you or someone you know benefited anything from the S.L.P?

SLP – projects

8. [Note: the community water supply project is in the Ga-phasha and Ga-mampa villages. In Tjibeng work should be underway but not complete yet. The Sefateng water supply questions only need to be asked in these villages]

Did the mine install any pipes or water facility?

9. How many hand-pump boreholes were replaced in your community by Sefateng?

10. How many new boreholes were installed in your community by Sefateng?

11. Were standpipes refurbished in your community by Sefateng?

12. [only for members of GaPhasha and Ga-Mampha communities] What are the problems you are experiencing with the road linking Ga-Phasha and Ga-Mampha?

13. About how much of the road (kms) has Sefateng refurbished/worked on?

14. [if the company has done work] has the state of the road improved since the work was done?

15. Has Sefateng addressed the main challenges you have with this road

16. [note that the questions relating to the schools must only be in the schools listed in the SLP. These are Makgalanotho Primary School, Ga-Phasha's Selatole Secondary School, and Malegase primary school. These are the schools where work needs to have been done as of now. At Tjibeng's Matianyane and Morwasi primary school work should be underway this year]

17. Has Sefateng Mine done a needs assessment and consulted you on the infrastructure your school needs?

18. Has Sefateng Mine provided infrastructure at your school?

19. If the answer to the previous question is 'yes' what has Sefateng built and has it built everything it promised?

20. (if the mine has provided infrastructure) Are you satisfied with the quality of the work – are the new facilities complete and usable?

21. Overall, has the project met the needs of the school?

22. Please rate your experience with the officials from the mine when trying to communicate with them about SLPs.

Very unprofessional: they did not seem to know what they were doing	Adequate: they were reasonably professional and were able to help you but you would like to see the service improved	Very professional: they helped you immediately and addressed your challenges

Declaration:

I hereby agree to be interviewed for this social audit and I agree that the information can be used for reports and further engagements about the state of sanitation in my community.



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