

UNIVERSITY OF LIMPOPO
SCHOOL OF LAW

THE SOCIO-ECONOMIC IMPACTS OF MODIKWA PLATINUM MINE ON THE MAANDAGSOEK
COMMUNITY WITH REFERENCE TO THE APPLICABLE MINING LAW FRAMEWORK

RAMUSHU MAHLATSE ROSINAH
B.A DEGREE, UNIVERSITY OF LIMPOPO, B.A HONOURS (GEOGRAPHY)
UNIVERSITY OF LIMPOPO, DIPLOMA IN EDUCATIONAL MANAGEMENT,
UNIVERSITY OF PRETORIA

Submitted in (partial) compliance with the requirement prescribed for the MPhil
Master's Degree of Philosophy in Environmental Law and Management
School of Law of the University of Limpopo, Turfloop Campus

Supervisor: Prof T Scheepers

2009

DECLARATION

I declare that the mini-dissertation hereby to the University of Limpopo for the degree of Masters of Philosophy in Environmental Law and Management has not previously been submitted by for a degree at this institution or any other university, that is my own work in design and execution, and that all the material contained therein has duly acknowledged.

Name: Ramushu Mahlatse Rosinah

Signature.....

Date.....

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CHAPTER 1: INTRODUCTION AND BACKGROUND

Most of the rural areas in the Third World countries possess significant reserves of mineral resources. According to Hilson¹, exploitation of the mineral resources in the Third World countries contributes to improved environmental protection and extended socio-economic responsibilities. These responsibilities are regarded as the pillars of sustainable mining which leads to sustainable socio-economic development in the rural communities. Hilson², defines sustainable mining as mining operation that continuously promotes the socio-economic growth in its area of operation.

According to Fuggle and Rabie³, development brought about by any activity in a rural community helps to improve the quality of human life. It enables the members of the community to lead lives of dignity and fulfilment, and to raise their potential. This implies that the host community will be socially and economically developed. Poverty will be eradicated. There will be access to essential services such as educational facilities, employment opportunities, better health services and good infrastructure.

Scheepers⁴, defines development in rural communities as a people driven process of change. It takes place through critical phases and stages within the value and institutional framework. It promotes a meaningful and lasting improvement of the quality of life for all the people in a governed, stable and peaceful environment. Legislation and policies are established to govern development. They are also used to make sure that development has a positive impact in those rural communities.

¹ G Hilson 'Mining and Sustainable Development: The African Case' (2001) ICCET, 27-36

² G Hilson (note 1 above), 27-36

³ RF Fuggle & MA Rabie 'Environmental Management in South Africa' (1999), 2

⁴ T Scheepers 'A Practical Guide to Law and Development' (2000), 8

Section 24 (a) of the Constitution of the Republic of South Africa⁵, promotes a clean environment where people must live. It states that everyone has a right to an environment that is not harmful to his health and well-being. Section 24 (b) of the same Act⁶ deals with secured ecologically sustainable development and use of the resources, while promoting justifiable economic and social development. As the supreme law of the country, no other policy or legislation may contradict it.

The Constitution of the Republic of South Africa provides the fundamental pillars on which the Mineral and Petroleum Resources Development Act rests. The Mineral and Petroleum Resource Development Act is the main legislation developed by the state to govern the establishment of the mining activity in the country. The preamble of the Act⁷ recognises the need to promote local and rural development. It deals with the social upliftment of the rural communities affected by the mining activities. According to the fundamental principles of this legislation, one of its objects is to ensure that the holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.

According to Hilson⁸, the mining industry brings with it the wealth of social benefits manifested primarily in the form of infrastructure. Hospitals, schools, transport roads and restaurants should be established in the host communities. It should also provide employment opportunities and contributes to the pension funds of its workers. He cites an example of the Gold Fields Ltd in his case study, a South African based mining company that brought sustainable development in the South African rural communities.

The reality is however that in most of the South African rural communities, there is a chronic shortage of command and control of the legislation and policies. The mining industries do not

⁵ The Constitution of the Republic of South Africa Act, 1996, Sec 24 (a)

⁶ The Constitution of the Republic of South Africa (note 5 above), Sec 24 (b)

⁷ Mineral and Petroleum Resources Development Act 28 of 2002

⁸ G Hilson 'Mining and Sustainable Development: The African Case' (2001) ICCET, 27-36

always have a positive socio-economic impact on the rural communities where they operate. According to Mather and Chapman⁹, the mineral resources are created by natural processes and transformed by the cultural processes. They are finite or stock resources, which in the absence of recycling are effectively used up. They cannot be sustained indefinitely. This places most of the host rural communities in a dilemma about the reality of the anticipated sustainable socio-economic development during the establishment of the mine.

It always happens that however good the legislation may be, its impact does not reach the ordinary people in the area where the mine operates. According to Dibly¹⁰, the historically disadvantaged persons, especially the women in the rural communities are not given an opportunity to participate in the development of their own communities. They do not have a share on the wealth of their own country. Men are preferred as they are always available and are able to face dangerous situations in the mine. This leads to a negative impact on the socio-economic development of the rural communities.

1.1. EXPLANATION OF CONCEPTS

Socio-economic development is defined by Burkey¹¹ as investments or services carried out or provided to the community. They include educational facilities, health services, water supplies, energy, transport systems and communication. They can be provided by the government or private companies. The main aim of provision is to supply employment opportunities to the community members in order to improve the quality of life in the rural communities.

According to Greater Tubatse Municipality¹², a rural community is a community that depends on the natural resources or primary activities for a living. Examples of the primary activities are agriculture or farming, mining, fishing, forestry and hunting. It has a large population that is

⁹ AS Mather & K Chapman 'Environmental Resources' (1998), 163

¹⁰ C Dibly 'Mining as a Catalyst to Rural Development' (2002) ICMM, 1-8

¹¹ S Burkey 'People First: A Guide to Self-Reliant Participatory Rural Development' (1998), 39

¹² Greater Tubatse Municipality 'Integrated Development Plan' (2006/7-2011), 1-207

illiterate and unemployed. The area has limited infrastructure and poor educational facilities. It is under tribal leadership or kgoshi.

The Mineral and Petroleum Resources Development Act¹³, defines a mine as any operation or activity for the purpose of winning any minerals on, in or under the earth, water or any residue deposit, whether by underground or open working or otherwise and include any operation or activity incidental thereto.

1.2. POINT OF DEPARTURE

The research is conducted in the Limpopo Province in a rural community known as Maandagshoek. Maandagshoek rural community is situated in the Sekhukhuneland under the jurisdiction of the Greater Tubatse Municipality. According to Greater Tubatse Municipality¹⁴, the rural area is characterised by steep rising mountains that are linked by undulating river valleys. The soil is loamy, well drained, fertile and suitable for agricultural purpose. It is tribally owned, with scattered rural settlement pattern that by rural standards is fairly dense.

Modikwa Platinum Mine was established in the Maandagshoek rural community in 2001. According to Limpopo Leader¹⁵, the mine forms part of the Eastern Limbo of the Bushveld Igneous Complex. The complex was given a geological term referring to a saucer like subterranean formation, approximately 500 km in diameter and several kilometres thick. It is the main source of mineral wealth in the Limpopo Province.

Modikwa Platinum Mine is situated 25km from Burgersfort town. It covers the farms Maandagshoek, Winterveld, Hendrikplaats, Driekop and Onverwacht. It serves the rural

¹³ Mineral and Petroleum Resources Development Act 28 of 2002, Sec 1

¹⁴ Greater Tubatse Municipality 'Integrated Development Plan' (2006/7-2011), 1-207

¹⁵ D Robbins 'Limpopo Leader' Number 2 Summer (2004), 1-33

communities of both Limpopo and Mpumalanga Provinces. According to Steenberg¹⁶, an integral part of investment by the Modikwa mine is corporate social investment. Its commitment is based on the sustainable development of the rural communities, with special reference to the communities from which it sources labour. The mine has a vision of being a mining operation that will be known as the safest, healthiest and an environmentally friendly platinum operation in the Southern Hemisphere, which is incorporated in its mining plan.

1.3. PROBLEM STATEMENT

The Modikwa Mining Company is one of the mines that aim at developing the socio-economic status of the rural communities in which it operates. This is emphasised in the Integrated Development Plan of the Greater Tubatse Municipality¹⁷ and the objectives of the Social and Labour Plan from the Department of Minerals and Energy¹⁸ the mine submitted prior to the commencement of its operation.

The research will investigate the socio-economic impact of the Modikwa Platinum mine on the Maandagshoek rural community. The investigation will be done within a given legal framework. Maandagshoek is a typical rural community that is subsistence based. According to Greater Tubatse Municipality¹⁹, there are multiple socio-economic problems experienced in the community. The research will investigate the problems of unemployment, inadequate provision of school infrastructure and lack of access to scholarships, as well as lack of human resource development. The problems will be investigated with special reference to the role played by the local government or Municipality and the mine management in the implementation of the relevant legal framework to solve them.

¹⁶ L Steenberg 'Limpopo Mining and Industry' (2004), 1-96

¹⁷ Greater Tubatse Municipality 'Integrated Development Plan' (2006/7-2011), 1-207

¹⁸ Department of Minerals and Energy 'Social and Labour Plan Guidelines for the Mining and Production Industries' (2002), Sec 1 (2)

¹⁹ Greater Tubatse Municipality 'Integrated Development Plan' (note 16 above), 1-207

During the investigation of the above stated problems, emphasis will be placed on whether the historically disadvantaged members of the community, especially the women will have an opportunity to benefit from the new wealth in their community. The research findings will be done to establish whether the mining company is transferring skills to the community members who are the mine employees, in a spirit of human resource development that will be used even after the eventual closure of the mine as envisaged in mining law.

1.4. ASSUMPTIONS

An establishment of a mine in a rural community will make the members of the community to anticipate socio-economic development in their area. According to Kotze²⁰, the members of the community will expect the reconstruction of their area with enhanced standards of physical planning and services. This involves the development of social and physical infrastructure such as schools, transport systems and communication networks, as well the implementation of development related rights and obligations of the community.

The community will expect that all the benefits from the mineral operation will be sustained beyond the life span of the mine. There will be many employment opportunities for its members coupled with skills training, of which 10% will be women. This is stated by the Department of Minerals and Energy²¹ in its Social and Labour Plan, which is a pre-served document for the granting of mining or production rights. The mine will also make initiatives that are geared towards the concerns of the employees who may loose their jobs. There will be a close relationship between the mine and the community, based on the recognition of the rights of the community, and the need for community participation in any decision making about the activities in the mine. This is supported by Section 2 (f) of the National Environment Management Act²²

²⁰ D Kotze 'Development Administration and Management: A Holistic Approach' (1997), 39

²¹ Department of Minerals and Energy 'Social and Labour Plan 'Guidelines for the Mining and Production Industries' (2002), Sec 2 (5)

²² National Environment Management Act 108 of 1998, Sec 2 (4)

which states that the parties affected by development must have an opportunity to develop the understanding, skills and the capacity necessary for achieving equitable and effective participation. It is assumed that the mine will accordingly comply with the relevant legislation in this regard.

1.5. HYPOTHESIS

Modikwa Mining Company has both a positive and a negative socio-economic impact on the Maandagshoek rural community. The mine will socially and economically develop the Maandagshoek rural community where it operates. This will take place because the community lacks other sources of development, and is otherwise unattractive to foreign investors. Compliance by Modikwa Mining Company with the relevant legal framework will contribute to a positive socio-economic impact on the community.

The reality is that the mining industry has some distinctive and awkward characteristics. Minerals are fixed in nature, have specific locations and are non-renewable. Once they are exploited, they cannot be renewed or replenished. Most of the mining companies are unable to prevent job losses resulting from the retrenchment of the mine employees due to low productivity or ultimate closure of the mine. This is because the mining companies are unable to provide the workers with additional training throughout the life span of the mine that will be utilised outside the mining industries. Mines are expensive operations. Most of them are owned by transnational companies. This means that most of the profits from the mining operation go to the shareholders rather than to the host communities, thus contributing to a negative impact on the host community.

1.6. THE RESEARCH FRAMEWORK

Various laws and policies were established to govern the socio-economic impact of mining activities in the communities where they are operating. Most of them support the host communities in terms of socio-economic development, as well as active participation by the community members in the projects funded by the mine.

The Constitution of the Republic of South Africa provides the pillars on which minerals and mining legislation rests. Chapter 2 of the Constitution deals with the fundamental rights. Section 24 (a) of the same Act²³ states that every person is entitled to an environment that is not harmful to his health and well-being. Section 24 (b)²⁴ emphasises the right to secure ecologically sustainable development and the use of the natural resources while promoting justifiable economic and social development. It places an obligation on the state to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.

The Mineral and Petroleum Resources Development Act is the main law established to govern the establishment of mining activities. Its preamble and fundamental principles are concerned with the socio-economic development of the communities in which the mine operates. Section 100 of the Act²⁵ emphasises the involvement of the historically disadvantaged South Africans into the mining industry. This section of the Act gives effect to Section 9 of the Constitution of the Republic of South Africa²⁶ which deals with equality before the law.

Section 2 (4) (d) of the National and Environmental Management Act²⁷ states that there must be equitable access to environmental resources, benefits and services to meet the basic human needs and ensure human well-being. Special measures are to be taken to ensure access to the resources by all people's disadvantaged by unfair discrimination. Section 2(4) (g)²⁸ emphasises that decisions about the development brought about by the mining of mineral resources must take into account the interest, needs and values of all affected persons. It must also recognise all

²³ The Constitution of the Republic of South Africa Act, 1996, Sec 24 (a)

²⁴ The Constitution of the Republic of South Africa (note 23 above), Sec 24 (b)

²⁵ Mineral and Petroleum Resources Development Act 28 of 2002, Sec 100 (2)

²⁶ The Constitution of the Republic of South Africa (note 23 above), Sec 9 (1)

²⁷ National and Environment Management Act 108 of 1998, Sec 2 (4)

²⁸ National and Environment Management Act (note 27 above), Sec 2 (4)

forms of knowledge such as traditional and ordinary knowledge. This is in line with what Kotze²⁹ states when he says that the affected community must be involved in the planning, designing and implementation of any kind of development in their area.

The Skills Development Act is concerned with the development of the skills of the South African workforce. According to Section 2 (1) (a) of the Act³⁰ the main purpose of the Act is to improve the quality of life of the workers, their prospects of work and labour mobility. The people from the surrounding communities, who were having the difficulties of being employed, must be given an opportunity to be employed after the completion of their training. This will also help the workers to become self employed or otherwise employed even after the eventual closure of the mine.

The Department of Minerals and Energy established the Social and Labour Plan which forms part of the 2002 Broad Based Socio-Economic Empowerment Charter. According to the Department of Minerals and Energy³¹, the Social and Labour Plan was established as a pre-requisite for the granting of the mining or production right. Its main objective is to promote employment and advance the state of socio-economic welfare of all South Africans. It ensures that the holders of the mining or production rights contribute towards the socio-economic development of the areas from which the mine sources its labour.

According to Cawood³², the 1994 Reconstruction and Development Programme is regarded as the main socio-economic policy document in South Africa. It was established by the ruling party, the African National Congress prior to its first election campaign. The policy document regards

²⁹ D Kotze 'Development Administration and Management: A Holistic Approach (1997), 63

³⁰ Skills Development Act 97 of 1998, Sec 2 (1)

³¹ Department of Mineral and Energy 'Social and Labour Plan Guidelines Mining and Production Industries' (2002), Sec 1 (2)

³² FT Cawood 'Keynote Address; The Mineral and Petroleum Resources Development Act of 2002: Likely impact on Black Economic Empowerment in South Africa' (2002), 200

the mineral resource as a natural asset, which should be developed for the benefit of all the citizens of a country. Its main objective is to meet the basic needs of the people, with special reference to human resource development in the rural communities.

1.7. DESCRIPTION OF THE RESEARCH METHOD

The research method to be used will be based on situational analysis as well as literature and research analysis. The study area will be surveyed through personal visits and observations. Structured interviews will be conducted to consult various people concerned. The main aim of the interview will be to obtain relevant research information. During the interview, much focus will be placed on the research content specified in the above stated research statement. The validity of the research hypothesis will be tested. Information will be gathered through integrating the information gathered in this manner with literature, other research and the applicable laws.

The following stakeholders will be interviewed; the traditional leader of Maandagshoek community (kgoshi), an elderly member of the community, two young members of the community and mine employees (male and female), one local Municipal official and a member of the mine management. Other sources such as books, journals, legislation and governmental policies will be used to supplement research information gathered from interviews in order to analyse the information in an integrated manner.

Selective interviewing formed part of the process of gathering information at ground level. Questionnaires were not used as the dissertation deals with qualitative information and some quantitative data. The method of interviewing people is much the same as the one an advocate will use when taking a statement from a client or a member of a commission of inquiry with an aim of gathering information. The information forms the basis for assessing the state of affairs on the ground. It further helps to understand the perceptions and experience of the people. It is not used to judge the mining company on the basis of statistical performance. The main aim is to get the feeling and understand the current reality on the ground in order to compare that with the ideal situation contemplated by the law, and those who have legally based aspirations for the mine as

well as the difference it can make to the quality of life of the people in the area in which the mine operates.

1.8. SOCIO-ECONOMIC DEVELOPMENT

1.8.1. EDUCATION AND EMPLOYMENT OPPORTUNITIES

According to Integrated Development Plan³³, the quality of education for the rural African population has long been poor and insufficient in terms of the standard requirements. It states that even the Limpopo Province's education achievement lag behind those of other provinces. Most of the people are illiterate. There is a high drop-out among learners whose parents are unemployed. Some schools are characterised by shortage of educational facilities.

The high rate of drop-out and illiteracy lead to a high unemployment rate. High unemployment rate is a direct cause of poverty. The majority of the members of Maandagshoek community are unemployed. They greatly rely on farming for a living. The exploitation of the minerals in this rural community presented an opportunity to address the problem of unemployment. Mining represents a new source of income, and is the most important reason for the physical expansion of the area where they live. The members of the community have low skills levels that pose a threat to their employment by the mine. The mining activities are geared towards their skills and abilities.

³³ Greater Tubatse Municipality 'Integrated Development Plan' (2006/7-2011) 1-207

CHAPTER 2: THE CURRENT SITUATION OF THE MAANDAGSHOEK COMMUNITY

2.1. INTRODUCTION

In an interview with the traditional leader³⁴, he stated that Maandagshoek community consists of approximately 3000 households. He said that before the establishment of the mine in his area, the community depended on agriculture as a source of living. They owned a large tract of land on which they were practising crop and stock farming. The land was highly productive. This is supported by Greater Tubatse Municipality³⁵, which states that the area consists of well drained fertile soil, which is suitable for grazing and cultivating a variety of agricultural products.

2.2. THE NEGOTIATION PROCESS

The traditional leader³⁶ stated that Modikwa Platinum mine was established in his community in 2001. Initially the mine was known as Maandagshoek Platinum Mine. According to him, the name changed to Modikwa because the mine is surrounded by many tribal leaders. He stated that he shares the mining area with the other three neighbouring communities. The mine is operating on 90% of his community's agricultural land. During the negotiation process the community was given an opportunity to participate in all forms of decision making process. The mine promised to develop the community in a form of infrastructure, including a tarred road from the R37 main road to Maandagshoek Hospital, build and renovate schools, relocate families next to the mine, provide scholarships to learners from disadvantaged families, and create employment opportunities to the

³⁴ Mohlala Bethuel 'Traditional Leader Maandagshoek Community (kgoshi)' 01 May 2008

³⁵ Greater Tubatse Municipality 'Integrated Development Plan' (2006/7-2011), 1-207

³⁶ Mohlala Bethuel (note 34 above) 01 May 2008

members of the community in exchange for their agricultural land. He also stated that the mine did not pay any compensation to the community. This is supported by Spoor³⁷, who stated that the mine obtained access to the community land free of charge. He was more concerned about the devastating impact that the mine has on the community. It destroys the community's productive land, its way of life, culture, identity and dignity. According to him, a Memorandum of Understanding was signed between the community and the mine. A committee known as the Section 21 Company was constituted, which forms a link between the community and the mine.

It was clear from what the traditional leader³⁸ said that there was a division among the community members as to whether the mine should be allowed to be established on their agricultural land. This is also clear from the discussion with an elderly member of the community³⁹ who is a stock farmer, and enjoys great authority in the community. He based his argument on the fact that the agricultural lands are part of the community's heritage and survival, and that most of the farmers in the community cannot afford to lose because of the mine. This contradicts the argument brought forward by one of the young members of the community⁴⁰. He stated that the establishment of the mine is the best opportunity that they need for the benefit of their community. The voices of the elderly members of the community were not heard, because according to the traditional leader they were in minority, forming only 20% of the community. The minority is against the establishment of the mine, and also that the mine is established on the land of the other three traditional leaders adjacent to them. If one of the traditional leaders is against the mine, he is no longer consulted, and the mine officials concentrate on the traditional leaders that agree with its establishment.

³⁷ R Spoor ' Mines and Communities: Communities take shine off Platinum Players in South Africa's Bushveld' (2006), 1-10

³⁸ Mohlala Bethuel 'Traditional Leader Maandagshoek Community (Kgoshi) 01 May 2008

³⁹ Nkoana Mabule 'Elderly Member of the Community (male)' 01 May 2008

⁴⁰ Mashabela Rufus 'Young member of the Community and Mine Employee (male)' 24 May 2008

In the interview with an official from the local government⁴¹, he clearly said that Modikwa mine has submitted a Mining Charter prior to its establishment. According to her, the charter contains a Human Resource Programme Plan, an Employment Equity Plan, and a Local development Plan for the Maandagshoek community. A member of the mine management⁴², however said that the negotiation process was well conducted, the community was consulted and were given an opportunity to participate in the discussion of the Mining Charter.

2.3. SOCIO-ECONOMIC DEVELOPMENT

2.3.1. EDUCATION

In terms of education as part of the socio-economic development where the mine operates, an interview was conducted with the elderly and the young members of the community. The interview was based on the school infrastructure and the provision of scholarships to the learners, with special reference to the learners from disadvantaged families.

2.3.1.1. SCHOOL INFRASTRUCTURE

During an interview with the member of the mine management⁴³, he stated that the mine is committed to the establishment of infrastructure in the communities in which it is operating. He stated that the mine did not build and renovate schools as stipulated in the Mining Charter; instead it built the Community Hall and the Community Training Centre. According to him the hall will assist the community during community gatherings, and the Training Centre will be used to train and transfer skills to community members who are employed at the mine.

⁴¹ Lingwati Rose 'Greater Tubatse Municipality Official (female)' 08 June 2008

⁴² Magale Stephen 'Member of the Mine Management (male)' 01 June and 05 October 2008

⁴³ Magale Stephen (note 42 above) 01 June and 05 October 2008

The traditional leader⁴⁴ however was very disappointed during the discussion about the infrastructure. He stated that the mine has done what was not agreed upon. The mine promised to build and renovate schools, and to provide scholarship to learners gifted in Maths and Sciences. The traditional leader⁴⁵ said that most of the projects that the mine promised appear on paper, and cannot be pointed out in his area. According to him, the mine allocates a lump sum of money for the development of the three communities. The money ends up in the hands of the traditional leaders who fight against each other because of it. Socio-economic development takes place in the community whose traditional leader wins the battle. This led to some of the traditional leaders and their community members being arrested due to the mismanagement of the funds from the mine. This is supported by Mohale⁴⁶ who stated that although the management of the mine continues to strive to form a sustainable long term relationship with the communities, the relationship sometimes goes through challenging moments. She stated that the implementation of some of the projects, especially between 2006 and 2007, were delayed due to misunderstanding and poor cooperation from the side of the communities.

2.3.1.2. SCHOLARSHIPS

It is clear from the discussion with the traditional leader⁴⁷, that the mine does not participate in the educational upliftment of the learners in his community. He said that the mine does not provide scholarships to learners as promised. According to him, only one learner, Mr Sihlangu from Maroga High School, was chosen from a list of learners, and was provided with a scholarship study at a tertiary level. The boy was gifted in Maths and Sciences, but he was not from a disadvantaged family. He was enrolled at Harry Oppenheimer Agricultural College based in Mokopane. He passed matric with an exemption. He was sent to Edu Map Programme for mining

⁴⁴ Mohlala Bethuel 'Traditional leader Maandashoek Community (Kgoshi)' 01 May 2009

⁴⁵ Mohlala Bethuel (note 44 above) 01 May 2009

⁴⁶ M Mohale 'Modikwa Mirror Community Edition: Modikwa Platinum Mine' (June 2008), 1-4

⁴⁷ Mohlala Bethuel (note 44 above) 01 May 2008

in Rustenburg, and then to Wits University for Metallurgy from 2004 to 2007. He was paid while studying and he is presently working at the Modikwa mine

.In an interview with one of the mine employee⁴⁸ who is also a parent, it is clear that she was not satisfied with the limited number of scholarships that their children are unable to access them. He said that their children are unable to benefit from the natural resources in their own community.

2.3.2. EMPLOYMENT OPPORTUNITIES

Employment opportunities are the basis for socio-economic development in the community where the mine operates. The mine is responsible for the improvement of the standard of living of the members of that community. The criteria used to employ the members of the community and the amount of income they earned in the mine was discussed during the interview.

2.3.2.1. CRITERIA USED TO EMPLOY MEMBERS OF THE COMMUNITY

It is clear from the discussion with the mine employee⁴⁹ that he was pleased with the criteria used by the mine to employ the community members. He stated that from 2001 to 2006 the mine was using Grade 12 certificate as a criteria to employ the community members. As from 2007 to date, the mine no longer requires any certificate. This is supported by Mohale⁵⁰ who stated that the mine has introduced the learnership programme for the novices in the mining related fields. The candidates first undergo an assessment to accommodate even those with lower levels of education. The traditional leader⁵¹ stated that the recruitment of his community members is done through the Section 21 Company. According to him, it is a modern committee which possesses a certificate from the Recruiting Agency. A list of the community members, men and women who

⁴⁸ Mohlala Nene ‘Young member of the Community and Mine Employee (female)’ 24 May 2009

⁴⁹ Mashabela Rufus ‘Young Member of the Community and Mine Employee (male)’ 24 May 2008

⁵⁰ M Mohale ‘Modikwa Mirror Community Edition Modikwa platinum Mine’ (2008) 1-4

⁵¹ Mohlala Bethuel ‘Traditional Leader Maandagshoek Community (Kgoshi)’ 01 May 2008

want to work at the mine is submitted to the Section 21 Company at Moshate. The Company submits the list to the Human Resource Section of the mine. An assessment test is given to the applicants, testing literacy and basic numeric skills. The results are sent back to the Section 21 Company which notifies the community members who did well in the test and qualify to be employed as a mine employee. Those who are unable to pass the assessment test are not employed.

During the discussion with the traditional leader⁵², it was clear that he is pleased with the number of women from his community that form part of the mine labour force. He said that from 2001 to 2007 the women formed 40% of the mine labour force, which is more than what the Mining Charter requires. He also stated that they form part of the employees who were assessed before they are employed. In an interview with one of the mine employee who is a woman⁵³, she explained that as from 2006 the mine was faced with high pregnancy rate among the newly employed young women, as well as high level of family responsibility which always lead to high absenteeism from work. These made the mine to decrease the percentage of women employment from 2007. The member of the mine management did not want to comment on this issue. He complained about a decrease in productivity, but promised that the mine is planning to increase the number of women to 50% early in 2009.

According to the member of the mine management⁵⁴ who was interviewed, 27% of the labour force are the migrant labourers. They are from Lesotho (20%), Botswana (5%) and Mozambique (2%). He stated that most of them came when the mine was established in 2001. It is clear from the discussion with the mine employee⁵⁵ that the migrant labourers are the pillars of the mine. They have all the skills required by the mine in all the sections. They operate the complicated machines in the mine. In 2007, the employment of migrant labourers caused some problems between the

⁵² Mohlala Bethuel 'Traditional Leader Maandagshoek Community (Kgoshi)' 01 May 2008

⁵³ Mohlala Nene: 'Young Member of the Community and Mine Employee (female)' 24 May 2008

⁵⁴ Magale Stephen 'Member of the mine management (male)' 01 June and 05 October 2008

⁵⁵ Mashabela Rufus 'Young Member of the Community and Mine Employee (male)' 24 May 2008

mine and the community. Presently, the mine has stopped employing people from outside countries. In an interview with the traditional leader⁵⁶, he showed more concern about the employment of the migrant labourers. He wishes that they could transfer the mining skills to the members of the community.

According to one of the mine employees⁵⁷, 5% of the management in the mine are women. The majority are white women who came with their husbands and children to work at the mine. There is only one black woman from the Limpopo Province who manages the Human Resource Section. There is no member from the community who is employed at the management level. The percentages of women in management according to racial groups are as follows; white (80%), blacks (20%) and Indians (0%).

2.3.2.2. INCOME

During the discussion with the member of the mine management⁵⁸, it became clear that the mine is striving to fight poverty by remunerating the employees with sufficient income that will improve their quality of life. The amount of income earned by the employees is sufficient, especially to the historically disadvantaged people who were depending on agriculture as a source of living. According to the member of the mine management⁵⁹, the income for the entry level in 2001 was R1500-00 per month. As from 2007, it has increased to R2700-00 per month. He also stated that the mine has introduced a system of job grading in which each worker is paid according to reward productivity. The entry level for the management position ranges from R38000-00 to R45000-00 per month, depending on the post held the management level.

⁵⁶ Mohlala Bethuel 'Traditional Leader Maandagshoek Community (Kgoshi)' 01 May 2008

⁵⁷ Mohlala Nene 'Young Member of the Community and Mine Employee (female)' 24 May 2008

⁵⁸ Magale Stephen 'Member of the Mine Management (male)' 01 June and 05 October 2008

⁵⁹ Magale Stephen (note 58 above) 01 June and 05 October 2008

According to the traditional leader⁶⁰, 75% of the families in his community have experienced some poverty alleviation. He stated that the amount of income paid to the employees is sufficient enough to raise the standard of living in his community, especially as most of the community members were initially depending on agriculture as a source of living income. This is because at least one or two members of each family in the community are employed in the mine. He also said that even if 35% of the members of his community are not mine employees, they are involved with mine related jobs such as small business enterprises, making a living from tenders called for by the mine.

2.3.3. HUMAN RESOURCE DEVELOPMENT

In an interview with a member of the mine management⁶¹, it became clear that the mine is training the employees as soon as they have passed the assessment test. The trainees are taken to Rustenburg for basic mine multiskills development. After three months of training, they are issued with certificates which allow them to qualify as mine employees. One of the mine employees⁶² however feels that the mine is not training them intensively for the work. He said that the only type of training that they have attended is for the basic mine multiskills which the mine was engaged with from 2001 to 2003. According to him, as from 2004 to date, there has never been any training for skills development for the newly employed mine workers. The mine has introduced a learnership programme for the novices in the mining related fields. The main aim of the mine learnership programme in the mine is to accommodate even the community members with lower levels of education. This is supported by Mohale⁶³, who states that in 2007, 44 community members went through the training and were employed by the mine upon the completion of their training.

⁶⁰ Mohlala Bethuel 'Traditional Leader Maandagshoek Community (Kgoshi)' 01 May 2008

⁶¹ Magale Stephen 'Member of the mine management (male)' 01 June and 05 October 2008

⁶² Mashabela Rufus 'Young Member of the Community and Mine Employee (male)' 24 May 2008

⁶³ M Mohale 'Modikwa Mirror Community Edition Modikwa Platinum Mine' (2008), 1-4

The mine employee⁶⁴ interviewed, however feels that the mine is not providing the employees with proper training and skills development in specific areas of mining, such as shift manager, shaft manager, supervisors, team leader, miner and human resource manager which must involve the attending of workshops at different Technical Training Centres and Colleges. He also stated that the Community Training Centre established by the mine is not achieving its mission due to lack of facilities and limited number of trainers. According to him this has a negative impact on the promotion of the employees. Whenever there is a vacancy in the highest position in the mine, no one will qualify. The mine will employ an experienced employee from another mining company with better skills. This makes the employees to remain at the same position as long as they work in the Modikwa mine. He also stated that most of the trainers are from Vaal Reefs and Amandelbult in Rustenburg. They only train the mine employees, but do not transfer more advanced skills to them.

The traditional leader⁶⁵ however feels that the mine is not complying with the provisions as stipulated in the Human Resource Programme Plan compiled in accordance with the Mining Charter. He said that he foresees a serious problem of lack of employment, especially to the members of his community after the closure of the mine which will have a negative impact on the community as a whole.

⁶⁴ Mashabela Rufus 'Young Member of the Community and Mine Employee' 24 May 2008

⁶⁵ Mohlala Bethuel 'Traditional Leader Maandagshoek Community (Kgoshi)' 01 May 2008

3: LEGAL FRAMEWORK FOR SOCIO-ECONOMIC DEVELOPMENT

3.1. INTRODUCTION

Cawood⁶⁶ states that the evolution of mineral law in South Africa can be traced back by examining the mineral history from the time when the Dutch colonized the Cape in 1662, up to the time when the country held its first democratic elections in 1994. According to him, a period of influx in respect of mineral policy and its supporting legislative documents commenced with the coming into power of a democratically elected African National Congress. The South African economy remains a mineral based economy. This calls for a responsible attitude of all stakeholders, so that the store of mineral wealth can be unlocked for the benefit of all the citizens. South Africa's new mining law, the Mineral and Petroleum Resources Development Act, will probably have a significant impact on the mining companies operating in the South African communities.

3.2. THE NEGOTIATION PROCESS

In terms of Section 10(1) of the Mineral and Petroleum Resources Development Act⁶⁷, the Regional Director must within 14 days after accepting an application lodged in terms of Section 22 (application for mining right) of the Act, inform the interested and affected parties about the application they will have an impact on their land. He must also request them to submit their comments regarding the application within 30 days from the date of notice. In terms of Section 10(2) of the Act⁶⁸, if a member of the community objects to the granting of the application, the Regional Director must refer the objection to the Regional Mining Development and the Environmental Committee to consider the objection and to advise the minister about it.

⁶⁶ FT Cawood 'Keynote Address: The Mineral and Petroleum Resource Development Act of 2002: Likely impact on Black Economic Empowerment in South Africa' (2003), 200

⁶⁷ Mineral and Petroleum Resources Development Act 28 of 2002, Sec 10 (1)

⁶⁸ Mineral and Petroleum Resources Development Act (note 67above), Sec 10 (2)

The Maandagshoek community was consulted before the establishment of Modikwa mine. They were involved in the negotiation and participated fully in the decision making process. The mine has complied with this Section of the Act. This is supported by Kotze⁶⁹, who states that during the commencement of any developmental project in an area, the community must be involved in the process of planning, designing and implementation of that project. He emphasizes community involvement which according to him will be a way to secure sustainability of that project. The problem was that the objection of the elderly members of the community was not considered in terms of Section 10 (2) of the Act. According to the traditional leader⁷⁰, no one was consulted to deal with the objection, more so that those who object were in the minority. Instead the Representative of Anglo American, Patrice Motsepe, considered only the voice of the community that agreed with the establishment of the mine in the area, and the mine was established in the area owned by the three traditional leaders. This Section of the Act was contravened.

In terms of Section 27 (7) (c) of the Act⁷¹, the holder of the mining right must pay royalties to the State. But Modikwa mine is not paying any compensation to the Maandagshoek rural community. According to the traditional leader⁷², the mine obtained access to the community land for free. It pays nothing for the agricultural lands it occupies. Instead it pays ‘shyster’ lawyers, politicians and government officials to facilitate agreement with the community. The mine uses cash, lucrative sub contracts, Black Economic Empowerment shares and expensive cars as incentives to the members of the community who agree with it. The traditional leaders who do not ‘play ball’ and who refuse to compromise their communities rights are threatened, excluded from any beneficial participation in the mine, and often find the mine endorsing and supporting the rivals to the traditional leadership. Section 2 (f) and (g) of the National

⁶⁹ D Kotze ‘Development Administration and Management: A Holistic Approach’(1997), 39

⁷⁰ Mohlala Bethuel ‘Traditional Leader Maandagshoek Community (Kgoshi) 01 May 2008

⁷¹ Mineral and Petroleum Resources Development Act 28 of 2002, Sec 27 (7)

⁷² Mohlala Bethuel (note 70 above) 01 May 2008

Management Act⁷³, also emphasizes the involvement of all interested and affected parties in any environmental development taking place in an area. In terms of the Act, decisions made must take into consideration the interests, needs and values of all the interested and affected parties. It must always be done in an open and transparent manner, and access to information must be provided in accordance to the law. The values of the elderly members of the community were not considered. Their voices were not heard. According to Hamann⁷⁴, these diminish the authority which was initially accorded to them in the community.

3.3. SOCIO-ECONOMIC DEVELOPMENT

Most of the mining legislation emphasizes the promotion of socio-economic development in the communities that the mining industry operates. They support Section 24 (b) of the Constitution of the Republic of South Africa⁷⁵, which deals with the sustainable use of the natural resources while promoting justifiable economic and social development. Sustainability in the use of natural resources can be achieved through the application of reasonable legislative action such as the Mineral and Petroleum Resources Development Act, and other legislation that regulate mining in South Africa. The way on which the mine deals with the Maandagshoek community does not contribute to sustainable socio-economic development of that community.

3.3.1. EDUCATION

The provision of educational facilities in a form of school infrastructure and provision of scholarships to the learners, forms part of the socio-economic development in the host community. This is another area in which the mine fails to ensure that the community as a whole benefit from the mineral resources in its area.

⁷³ National and Environment Management Act 108 of 1998, Sec 2 (1)

⁷⁴ R Hamann ‘Mining Companies’ Role in Sustainable Development’ (2003), 238-254

⁷⁵ The Constitution of the Republic of South Africa Act, 1996, Sec 24 (b)

3.3.1.1. SCHOOL INFRASTRUCTURE

The preamble of the Mineral and Petroleum Resources Development Act⁷⁶, recognizes the need to promote local and rural development, and the social upliftment of the community affected by the mining industry. Section 2 (i) of the Act⁷⁷ which deals with the fundamental principles of the Act, states that the holders of the mining right must contribute to the socio-economic development of the rural communities in which they operate. This is supported by Hilson⁷⁸ who regards the socio-economic development of the rural communities as the pillar for sustainable development. In terms of the infrastructure, Modikwa mining company could be expected to build schools and renovate the classrooms for the Maandagshoek community. Modikwa mining company has not built or renovate any school. The community is still using the old, dilapidated and crowded classrooms even if the mining company has more than five years operating in its area.

3.3.1.2. SCHOLARSHIPS

The provision of scholarships to the learners in the Maandagshoek community forms part of the Human Resource Development Plan that Modikwa mining company has submitted prior to its establishment. Section 4.1 of the Mining Charter⁷⁹ states that the mining company must ensure that there is provision of scholarships to the learners from the community. In terms of the Charter⁸⁰, the mining company must interface with the educational authorities, and provide scholarships to promote mining related educational advancement, especially in Mathematics and Sciences at school level. The mine was able to provide a scholarship to one learner from a number of learners in the community who needed scholarships. He was provided with the

⁷⁶ Mineral and Petroleum Resources Development Act 28 of 2002

⁷⁷ Mineral and Petroleum Resources Development Act 28 (note 76 above), Sec 2 (i)

⁷⁸ G Hilson 'Mining and Sustainable Development: The African Case' (2001) ICCET, 27-36

⁷⁹ Mining Charter 'Broad Based Socio Economic Empowerment Charter' (2002), Sec 4 (1)

⁸⁰ Mining Charter (note 79 above), Sec 4 (1)

with a scholarship because he was gifted in both Mathematics and Sciences, but was not from a historically disadvantaged family. This is contrary to both Section 2 (c) of the Mineral and Petroleum Resource Development Act⁸¹, and one of the objectives of the Mining Charter⁸², which emphasize the promotion of equitable access to the nation's mineral resource to all the South Africans. The mining legislation are supported by the 1994 Reconstruction And Development Programme Policy⁸³ which states that a mineral resource is a national asset which should be develop for the benefit of all the citizens of South Africa. As all parties have agreed to the charter, the mine is also in breach of this agreement.

3.3.2. EMPLOYMENT OPPORTUNITIES

According to Cawood⁸⁴, the preamble of the new mining legislation, the Mineral and Petroleum Resources Development Act 28 of 2002, is different from any of its predecessors. The most noticeable difference is the incorporation of social aspects. The role of mining in local and rural development, the social upliftment of the community that have been affected by mining operations and redressing the results of the past racial discrimination are common themes throughout the Act. The Act also paves the way for the substantial and meaningful empowerment of historically disadvantaged South Africans.

Section 25 (f) of the Act⁸⁵ states that the holder of the mining right must comply with the requirement of the prescribed Social and Labour Plan or the Mining Charter. The holder of the mining right must also submit the prescribed annual report, detailing the extent of compliance

⁸¹ Mineral and Petroleum Resources Development Act 28 2002, Sec 2 (c)

⁸² Mining Charter 'Broad Based Socio-Economic Empowerment Charter' (2002), Sec 2

⁸³ ANC 'Reconstruction and Development Programme; A Policy Framework (1994), 99

⁸⁴ FT Cawood 'Keynote Address; Mineral and Petroleum Resource Development Act 28 of 2002 Likely impact on Black Economic Empowerment in South Africa' (2003), 200

⁸⁵ Mineral and Petroleum Resources Development Act (note 81 above), Sec 25 (2) (f)

with the provisions of Section 2 (d) of the Act⁸⁶, dealing with the expansion of opportunities for the historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral resources and petroleum resources, as well as Section 2 (f) of the Act⁸⁷, dealing with the promotion of employment and advance the social economic welfare of all South Africans.

Modikwa mining company is complying with these sections of the Act. Most of the members of Maandagshoek community are employed and their standard of living has improved. In 2007, it was able to establish its Employment Equity Plan for the period ending on the 31 May, under Section 20 (1) of the Employment and Equity Act⁸⁸ which emphasizes the establishment and submission of the Employment Equity Plan. In terms of this section, the plan will indicate the objectives to be achieved for each year of the plan, and the affirmative action measures to be implemented as stated in Section 15 of this Act⁸⁹. This section of the Act is a direct result of an agreement reached by the delegates during the Presidential Jobs Summit held in October 1998⁹⁰ about the establishment of the Social and Labour Plan, which has an aim of preventing job losses or a decline in employment, and seek to manage retrenchment and reduce its effect on individual and local economies.

Section 100 of the Mineral and Petroleum Resources Act⁹¹ emphasizes the right to equality as stated in Section 9 (2) of the Constitution of the Republic of South Africa⁹². The section is used to attain the Government's objectives of redressing historical, social and economic inequalities in

⁸⁶ Mineral and Petroleum Resources Development Act 28 of 2002, Sec 2 (d)

⁸⁷ Mineral and Petroleum Resources Development Act 28 (note 86 above), Sec 2 (f)

⁸⁸ Employment Equity Act 55 of 1998, Sec 20 (1)

⁸⁹ Employment Equity Act 55 (note 88 above), Sec 15 (1)

⁹⁰ Mbeki 'Social and Labour Approach' (1999), 11-18

⁹¹ Mineral and Petroleum Resources Development Act 28 (note 86 above), Sec 100 (2)

⁹² The Constitution of the Republic of South Africa Act, 1996 ,Sec 9 (2)

the mining industry. In terms of this Section⁹³, the Minister must within six months from the date on which the Act takes effect, develop a Broad Based Socio Economic Employment Charter which will set the framework, targets and time-tables for effecting the entry of the historically disadvantaged South Africans into the mining industry, and to allow such South Africans to benefit from the exploitation of the mineral resources.

Modikwa mining company has promoted the notion of equality in its labour force. It has ensured a higher level of inclusiveness and advancement of women in the industry which consists of 40% of the labour force and 5% of management, as stipulated in Section 4.2 of the Mining Charter⁹⁴. In terms of Section 2 (d) of the Mineral and Petroleum Resource Development Act⁹⁵ women are regarded as the historically disadvantaged South Africans who also have the right to benefit from the exploitation of the mineral resources in their own country.

The Mineral and Petroleum Resource and Development Act is supported by Section 2 (a) of the Employment Equity Act⁹⁶. It states that the main purpose of the Act is to promote equal opportunity and fair treatment in employment through elimination of unfair discrimination. This Section of the Act emphasises that the main purpose can be achieved by implementing affirmative action measures to redress the disadvantages in employment experienced by the designated groups. This will ensure equitable representation of all groups in all occupational categories and levels in the workplace. This was supported by President Mandela during his State of the Nation address in 1994⁹⁷, who maintained that true freedom in our country can only be achieved when women have been emancipated from all forms of oppression and discrimination, and are empowered to intervene in all aspects of life as equals with any other member of the society.

⁹³ Mineral and Petroleum and Resources Development Act 28 of 2002, Sec 100 (2)

⁹⁴ Mining Charter 'Broad Based Economic Empowerment Charter' (2002), Sec 4 (2)

⁹⁵ Mineral and Petroleum Resources Development Act (note 93 above), Sec 2 (d)

⁹⁶ Employment Equity Act 55 of 1998, Sec 2 (a)

⁹⁷ Sadie and Loots 'RDP Project in South Africa: Gender Perspective Analysis (1998), 1-8

3.3.3. HUMAN RESOURCE DEVELOPMENT

Landis and Grossett⁹⁸ state that human resource development involves the acquisition and development of knowledge and skills in the workplace. According to them, this can be achieved through the implementation of policies and practices that are fair, non-discriminatory and proactive. It is regulated and directed by legislation and government strategies.

The Skills Development Act regulates human resource development. In terms of Section 2 (1) (a) of the Act⁹⁹, the purpose of the Act is to develop the skills of the South African workforce, and to provide employees with the opportunities to acquire new skills. The skills acquired will help the employees to improve their quality of life, their prospects of work and labour mobility. They will also provide opportunities for new entrants to the labour market with an aim of gaining work experience. Modikwa mining company was able to train and transfer the newly employed members of the community for basic mining multi-skills which enable them to qualify as mine employees. According to the young member of the community who is a mine employee, the training was not effective because they were trained in large groups and not all were able to do the practical part of it. After the training, they always depend on those who had the opportunity to be involved in the practical part of the training. This is the only training and skills transfer that took place in the mine.

Section 2 (1) (e) of the Act¹⁰⁰ emphasises the empowerment of the historically disadvantaged persons. It promotes the improvement of the employment prospects of persons previously disadvantaged by unfair discrimination. It makes sure that they are redressed through education and training in and for the workplace. Section 2 (1) (a)¹⁰¹ emphasises self employment and makes sure that those who are not employed will have the opportunity to be employed. The mine

⁹⁸Landis and Grossett: Employment and the Law; A Practical guide in the workplace (2005), 56

⁹⁹Skills Development Act 97 of 1998, Sec 2 (1)

¹⁰⁰Skills Development Act (note 99 above), Sec 2 (1)

¹⁰¹Skills Development Act (note 99 above), Sec 2 (1)

has done nothing to achieve what is stipulated in this section of the Act. Section 10 (1) (b) of the Act¹⁰² promotes the provision of the learnership programme to all the employees. In terms of the section of the Act, the learnership programme is provided by Sector Education and Training Authority (SETA), established by the Minister of Labour. The mine employee will be permitted to attend specialised education and training under the supervision of the training provider accredited by the South African Qualification Authority (SAQA).

The type of training and skills transfer that the members of the Maandagshoek rural community have acquired as mine employees is not sufficient for them to be self employed in case the mine closed down or retrenchment of employees occurs. The community members employed in the mine are still faced with a serious problem of scarcity of relevant skills to be utilized in the mine. Modikwa mining company does not provide training and skills transfer for the positions of team leaders, shift managers, shaft managers as well as human resource managers. This was identified by the preamble of the Mining Charter¹⁰³ as one of the barriers that the historically disadvantaged South Africans are faced in order to enter into the mining sector.

The quality and the standard of life in the community cannot be improved, because no one will qualify for the promotion in the higher positions due to lack of the mining skills. Most of the employees who obtain higher positions or promoted in the mine, are not from the Maandagshoek community. They came with the mining skills from the other mining industries in which they were previously employed. The community members do not have the skills required by any mining industry in the country.

¹⁰² Skills Development Act 97 of 1998, Sec 10 (1)

¹⁰³ Mining Charter ‘Broad Based Socio Economic Empowerment Charter’ (2002), 1-7

CHAPTER 4: THE STATE OF LEGAL COMPLIANCE BY THE MODIKWA MINING COMPANY

4.1. INTRODUCTION

The relationship between Maandagshoek rural community and Modikwa mining company operating in its area is admittedly a complex one. The existing vulnerabilities of this rural community have not been adequately addressed. There is still a gap that exists between the legal framework governing Modikwa mining company in Maandagshoek rural community and the real situation in which the host community find itself. There are a number of alarming issues that the Minister of Minerals and Energy must address in this rural community that will lead to sustainable mining.

4.2. THE NEGOTIATION PROCESS

Modikwa mining company is operating on 90% of the community's agricultural lands. There is no compensation that is paid to the community. In terms of its Mining Charter, the mine promised to provide employment opportunities in exchange of the community's agricultural lands. During the consultation process the community was consulted through the Section 21 Company, which acts as link between the community and the mine. The community was given an opportunity to participate in all forms of decision making process in terms of the socio-economic development of its own area. There were 20% of the members of the community, specifically the elderly people who were against the establishment of the mine on their agricultural lands. They stated that the agricultural lands are part of their heritage and means of survival which most farmers in the community cannot afford to loose. This was contrary to the young members of the community who were happy that they are going to be employed by the mining company. The objection was not heard and the mine was established.

When the mine was established, the mining company did not comply with Section 10 (2) (b) of

the Mineral and Petroleum Resources Development Act¹⁰⁴, which states that if a person from the affected and interested parties objects to the granting of the mine right, the Regional Manager must refer the objection to the Regional Mining Development and Environmental Committee to consider the objection and to advise the Minister of Mineral and Energy about it. In terms of Section 10 (1) (b)¹⁰⁵, this must be done after the interested and affected parties, which is the Maandagshoek community has been consulted. The mining company has not submitted the results of the consultation with the community in terms of Section 16 (4) (b) of the same Act¹⁰⁶. The mining company has also violated the provisions in Section 2(f) and (g) in the National and Environmental Management Act¹⁰⁷, which states that decisions made about any environmental development in an area must take into consideration the interests, needs and the values of the affected parties.

When dealing with the issue of community's objection on their agricultural lands, the administrative procedure must be followed. The elderly members of the community must consult the Section 21 Company. According to Curtis¹⁰⁸ the Section 21 Company is regarded by the Anglo Platinum Company as a legitimate representative of the communities in which it operates. It is also a community representative consultation committee formulated at the beginning of the consultation process. It is constituted by major stakeholders such as the tribal authorities and other members of the community. The Section 21 Company must consult with the Greater Tubatse Municipality which is concerned with the local economic development of its area of jurisdiction by the existing mining company. The Section 21 Company and the representative from the municipality will approach the manager of Modikwa mining company about the objection. If the Manager of the mining company cannot provide an alternative way to satisfy the

¹⁰⁴ Mineral and Petroleum Resources Development Act 28 of 2002, Sec 10 (2)

¹⁰⁵ Mineral and Petroleum Resources Development Act (note 104 above), Sec 10 (1)

¹⁰⁶ Mineral and Petroleum Resources Development Act (note 104 above), Sec 16 (4)

¹⁰⁷ National Environment and Management Act 108 of 1998, Sec 2 (1)

¹⁰⁸ Curtis M: Action Aid; Precious Metal: The Impact of Anglo American Platinum on Poor Communities: South Africa (March 2008), 1-57

elderly members of the community, the matter must be taken further to the Regional Manager in the Department of Minerals and Energy.

The Regional Manager will convene a meeting with the members of the Section 21 Company, the officials from the Municipality, as well as the Manager of the mine to hear their sides of the story. The Regional Manager will consult the Mining Charter drawn by Modikwa mining company before its establishment. He will then look for an alternative way, such as relocating the community to an area where it will be able to practice agriculture. If the mining company agrees with the alternative method, it must sign an agreement with the Section 21 Company and the Municipality which the Regional Manager must endorse. If the mining company does not want to comply, the Regional Manager has the authority to force it to comply, or suspend its mining right until it is ready to comply. If the community is not satisfied with the administrative procedure followed, it has the right to have an independent legal advisor and take the mining company to the court of law. In the court of law the company will be convicted and be given a penalty or a fine to be paid. It will have to apply again for the mining right to the Regional Manager and wait for the approval from the Department of Minerals and Energy.

4.3. SOCIO-ECONOMIC DEVELOPMENT

4.3.1. EDUCATION

4.3.1.1. SCHOOL INFRASTRUCTURE

Modikwa mining company has promised to construct schools and renovates classrooms in the Maandagshoek community. None of them was done as stipulated in its Mining Charter. Instead, the mining company has built a Community Hall and a Community Training Centre which were not agreed upon. The mining company has not complied with the provisions stipulated in the preamble of the Mineral and Petroleum Resources Development Act¹⁰⁹, which emphasises the

¹⁰⁹ Mineral and Petroleum Resources Development Act 28 of 2002, Sec 2

promotion of local and rural development, as well as the social upliftment of the communities affected by the mining operation. The mining company has also violated the Section 2 (i) which deals with the fundamental principles of the Mineral and Petroleum Resource Development Act¹¹⁰. It ensures that the holders of the mining right must contribute to the socio-economic development of the areas they are operating.

The Section 21 Company together with the Municipality is responsible to contact with the mine management about the issue of school infrastructure. During the meeting, the mine management must explain why the company is unable to comply with the provisions concerning school infrastructure as stated in its Mining Charter. If the mining company does not promise them anything, the matter must be taken up with the Regional Manager in the Department of Minerals and Energy. The Regional Manager will send an official from his Department of Mineral and Energy to do side inspection in order to prove non-compliance. The Department of Mineral and Energy will notify the mining company in a written form, giving it a time frame to comply. If the mining company does not comply and the agreed period lapses, the Regional Manager has the power to suspend the mining activity in the community until the mine complies. This can even leads to the closure of the mine due to non-compliance.

4. 3.1.2. SCHOLARSHIPS AND HUMAN RESOURCE DEVELOPMENT

The provision of scholarships forms part of human resource development that Modikwa Mining Company is entitled to promote in the Maandagshoek community. The mining company has included it in its Mining Charter. The mine has promised to provide scholarships to the learners who specialize in Maths and Sciences. What was surprising was that the mine was able to provide scholarship to one learner from the community. The majority of the learners provided with scholarships were from Praktiseer, a township next to Burgersfort, which does not form part Maandagshoek community. Others were from the community around Maandagshoek where the mine does not operate. The mining company has violated Section 4.1 of the Mining Charter¹¹¹

¹¹⁰ Mineral and Petroleum Resources Development Act of 2002, Sec 2 (i)

¹¹¹ Mining Charter ‘Broad Based Socio Economic Empowerment Charter’ (2002), Sec 4 (1)

which emphasises the provision of scholarships to the learners in its area of operation.

The mining company was not able to train and transfer the mining skills effectively to the mine workers. They were only trained for mine multi-skills which enable them to qualify as mine workers. They were not trained and transferred skills for the positions of team leaders, shift managers, shaft managers, and human resource managers which will enable them to get better positions in the mine. The mining company has violated Section 2 (1) (a) of the Skills Development Act¹¹² which deals with the main purposes of the Act. This Section aims at developing the skills of the South Africans workforce and to provide the employees with the opportunities to acquire new skills. The mining company has also violated Section 10 (1) (b) of the same Act¹¹³ which emphasizes the provision of leadership programme to all the employees. The learnership programme allows the employees to attend specified education and training under the supervision of the training provider accredited by South African Qualification Authority.

In order to deal with the issue of inadequate provision of scholarships, the members of the community must approach the Section 21 Company and the Municipality, who must consult with the mine management to establish the reasons for non-compliance. If there is no positive response, the matter must be reported to the Regional Manager in the Department of Mineral and Energy, who must request the mine management to submit the Employment Equity Plan, in order to see the number of workers that are employed and were effectively trained for the job. If the Regional Manager discovers that not enough training has been done, the mine management will be given an opportunity to go and train the workers as required by the Human Resource Development Programme which was submitted by the mining company in its Mining Charter. If the mining company does not comply, the mine will be suspended until the time that it has complied with the training and transferring of skills to the mine workers.

¹¹² Skills development Act 97 of 1998, Sec 2 (1)

¹¹³ Skills Development Act 97 (note 112 above), Sec 10 (1)

4.3.2. EMPLOYMENT OPPORTUNITIES

Modikwa Mining Company has promised to provide the members of the Maandashoek community with employment opportunities in exchange to its agricultural lands. This form part of the provisions stipulated in its Mining Charter. The mining company has complied with the provisions of Section 2 (f) of the Mineral and Petroleum Resources Development Act¹¹⁴, which deals with the promotion of the employment and advancement of the social and economic welfare for all the South Africans. More than 70% of the community members are employed in the mine. Most of them are the youth who are more excited about the establishment of the mine in their area, even if it has occupied their parents' agricultural lands. The mine has also ensured a higher inclusiveness and advancement of women in its company which makes 40% of the labour force, and 5% holding the management positions. This is in terms of Section 2 (d) of Mineral and Petroleum Resources Development Act¹¹⁵, which states that the mine must expand the opportunities for the historically disadvantaged persons, including women to enter into the mineral and petroleum industries, and to benefit from the exploitation of the nation's mineral resources.

Although the mining company has complied with the provisions of Section 2 (d) of the Mineral and Petroleum Resources Act, by providing employment opportunities to the community members and the historically South Africans, it has violated Section 100 of the same Act¹¹⁶. The Section emphasizes the attainment of the right to equality by redressing historical, social and economic inequalities as it is also stated in Section 9 of the Constitution of the Republic of South Africa¹¹⁷. The two Acts that are violated are supported by Section 2 (b) of the Employment Equity Act¹¹⁸, which aims at achieving equality in the workplace, by promoting equal

¹¹⁴ Mineral and Petroleum Resources Development Act 28 of 2002, Sec 2 (f)

¹¹⁵ Mineral and Petroleum Resources Development Act 28 (note 114 above), Sec 2 (d)

¹¹⁶ Mineral and Petroleum Resources Development Act (note 114 above), Sec 100 (a)

¹¹⁷ The Constitution of the Republic of South Africa, 1996, Sec 9 (1)

¹¹⁸ Employment Equity Act 55 of 1998, Sec 2 (b)

opportunity and implementing affirmative action to redress the disadvantages in employment experienced by designated groups such as women. The mining company has violated the provisions of these Acts, because it terminated the employment of women due to high pregnancy rate. According to the mine management, the issue of high pregnancy rate leads to high absenteeism at work and had a negative impact on the productivity in the mine.

The denial of Modikwa mining company to employ more women on the basis of their gender, calls for the woman in the community to fight for their rights. They must approach the Section 21 Company and the municipality, who must contact the mine management about this issue. If the mine manager does not do anything about the issue, the matter must be taken up with the Regional Manager in the Department of Minerals and Energy. The Regional Manager will consult the Mining Charter submitted by the company. He will give the mining company a time frame to make sure that it comply with Section 2 (a) of the Employment Equity Act¹¹⁹, which emphasizes the promotion of equal opportunity and fair treatment in the workplace through the elimination of unfair discrimination. The Regional Manager will force the mine to employ the women as it did in the past. If the Mining Company does not comply, the Regional Manager will take the matter up with the Minister of Minerals and Energy, who has the right to suspend or cancel the mining activities until the company complies. This can even leads to the closure of the mine.

¹¹⁹ Employment Equity Act 55 of 1998, Sec 2 (a)

CHAPTER 5: FINDINGS AND RECOMMENDATIONS

5.1. GENERAL FINDINGS

Modikwa Mining Company is faced with a growing demand that sufficient portion of the benefits from its mining operation should flow to the Maandagshoek community. The aim is to ensure a positive impact on the socio-economic development of the community. Though it provides a high percentage of employment opportunities to the community members, it is crucial that it further contributes to the improvement of the standard of living within the rural community. Mining is the only means that the community members have to secure a capital base for involvement in the wider economy. It is potentially a means of helping to achieve the locally defined economic and social goals.

Most of the members of the community regard Modikwa mining company as a two-edged sword. According to them, the mine is seen as presenting opportunities for the production of substantial wealth for itself, the government and the community, while at the same time it contributes to the destruction of their social lives and inability to improve the socio-economic status of their community. This shows that Modikwa mining company has both a positive and a negative impact on the Maandagshoek rural community where it operates. The mining company can only be considered as acceptable to the community when any of its negative impact is promptly remediated and contributes to sustainable development of the socio-economic needs of the community.

5.2. SPECIFIC FINDINGS

5.2.1. THE CONSULTATION PROCESS

During the negotiation process Modikwa mining company has deprived Maandagshoek community of its source of livelihood. It has taken 90% of its agricultural land which was traditionally used for crop farming and grazing field. Although there has been community participation through effective consultation, there has never been ‘audi alteram rule’ (hear the

other side) in all the decision-making process. The voice of the elderly members of the community was not heard. They were not given the right to appeal since their objection about the invasion of their agricultural land was not considered. This has resulted not only in increased hunger and poverty, but also in the destruction of their traditional way of life. It impacted negatively on them, because they are now unable to practice agriculture and produce food as they did in the past.

5.2.2. COMPLIANCE WITH THE CHARTER

Although the mining company has discussed its Mining Charter with the community, socio-economic development was not properly implemented in the community. The main thing is that the members of the Maandagshoek community do not have a better understanding of their human rights and how to access them. Even if they have voiced out their objection through the Section 21 Company early during the negotiation process, they did not know who must be the next to be consulted. The Mining Company has violated their human rights. The community's lack of knowledge regarding its basic rights led to an imbalance of power that favours the mining company. Modikwa mining company has invested huge amount of capital in the Maandagshoek community for mining development, but is unable to contribute to the socio-economic development of the community. In reality the elderly members of the community were bypassed because the mining company wants to benefit from their agricultural lands. They have been left in a marginalized state in which they are far worse off than before the mine was established in their community. They felt the disruption of their traditional lifestyle, livelihood systems and disregard for their traditional culture even more. The mine is not giving effect to the Mining Charter as agreed with the community.

5.2.3. EMPLOYMENT OPPORTUNITIES

When Modikwa Mining Company was established in the Maandagshoek community, it employed a high percentage of the members of the community. Most of them are the economically young members of the community with special reference to women. This has improved the standard of living community, and even the traditional leader, Kgoshi Bethuel

Mohlala is happy about it. This shows that the Maandagshoek community has a share in the natural resources found in their own area as stated by Section 2 (c) and (f) of the Mineral and Petroleum Resources Act. The provision of employment opportunities promotes a positive socio-economic impact on the young members of the community, who were provided with job opportunities at the expense of their parents' agricultural lands.

The impact of the mining company on the community started to be negative when the mine terminated the employment of women. The main reason advanced by the mining company was the high pregnancy rate that leads to a decrease in production. This is true because most of the women employed are still in their child bearing years. The issue of terminating their jobs due to high pregnancy rate shows that Modikwa mining company is designed in a gender biased way. It does not recognize women as the economic agents in their community. The role of women in the development of their own community is masked by putting the women at the back. On the other hand, the mining company is abusing the maternity rights by preventing the women to enjoy their human rights. This indicates that the mining company is still governed by the past laws and practices that make the women to be presided by men. The mine is not complying with the Bill of Rights.

Modikwa mining company does not apply the similar employment policies and practices for males and women. The women are not equally treated as men in the workplace. Discrimination is the main factor that forces the mining company to terminate the employment of women. It is discrimination to refuse to employ women because of pregnancy. The mining company has violated Section 9 of the Constitution of the Republic of South Africa, which states that equality before the law is the basic right that must be observed to all people in South Africa. The women in the Maandagshoek community are also entitled to this right. Our country does not have the relevant legislative measures governing pregnancy that are effective in ensuring substantial equality for women. This is particularly in respect of the most disadvantaged women in the rural communities.

5.2.4. SCHOLARSHIPS AND HUMAN RESOURCE DEVELOPMENT

Modikwa Mining Company is not committed to the promotion of a Human Resource Development Programme and the provision of scholarships as stipulated in its Mining Charter. Although the company is offering the mine employees the opportunities of becoming functionally literate and numerate, there is no skill transfer and technological empowerment for them. Implementation of the Skill Development Plan as stated in the company's Human Resource Development Programme is neglected. The main problem which hinders human resource development by the Modikwa Mining Company is the fact that it has placed most of its responsibilities in the hands of the white employees. They are the imported expatriate personnel who came with the mining company being highly skilled and well qualified in the mining field. They are the ones who operate the complex machines in the mine. The management of the mine is usually in their hands. They are not interested in transferring the mining and technical skills to the members of the community.

This has a negative impact on the mine employees who are the members of the Maandagshoek community. Modikwa Mining Company is using modern mining methods. It is highly capital intensive rather than labour intensive. This limits the number and the type of job opportunities provided to the members of the Maandashoek community, because they have limited mining skills and is ill-equipped. They are engaged with repetitive work in the mine. They are still characterized by scarcity of the relevant skills required by the mining company in their own area. This situation creates a barrier to entry into the mining sector by most of the members of the rural community.

The community Centre built by the mining company instead of building or renovating school infrastructure in the community is not effective due to lack of qualified trainers that the mining company must provide. This also has a negative impact on the community members as they are unable to compete for the top management positions in and outside the mining industries. These positions are always allocated to the white minority who are qualified. The black majority are not deriving any benefits from the natural resources found in their own country.

5.3. CONCLUSION

The establishment of the mining legislation has played an important role in the mining operation in most of the rural communities. The Constitution of the Republic of South Africa and the Mineral and Petroleum Resources Development Act, together with the Government policies regulating mining operation provide a broad mandate from which a mining industry must operate. Based on the legislative framework, sustainable socio-economic development should be the main objective for the established of the mining activities in the rural communities and where the mines source its labour force.

With regard to the information gathered during the research, it became clear that Modikwa Mining Company has both a positive and a negative impact on the socio-economic development of the Maandagshoek community. The company has provided employment opportunities to some of the members of the community, which has improved their standard of living. On the other hand, the mining company has failed to comply with some of the Sections as stipulated in the South African legislation that govern its mining operation in the Maandagshoek rural community. The socio-economic development promised by the mining company is not implemented. It appears only on paper. The traditional leader (kgoshi) and some of the members of the community feel that the mining company is not fully prepared to develop the socio-economic status in their community, but wants to benefit from the natural resources available in their area. This indicates that sustainable development that the community expected during the establishment of the mine in their area is different to what they get when the mine is operating.

This calls for the Minister of Minerals and Energy to ensure that Modikwa Mining Company that was issued the mining right on the Maandagshoek rural community in terms of Section 5 (3) of the Mineral and Petroleum Resource and Development Act 218 of 2002 must comply to the requirement of the prescribed Mining Charter and the Social Labour Plan in Section 25 (f) of the same Act.

5.4. RECOMMENDATIONS

Modikwa Mining Company must embark on a sustainable mining and development process. It will help the company to promote the socio-economic development and improved environmental protection in the Maandagshoek rural community. During its operation in the community, the mining company must make sure that there is provision of improved services and infrastructure, capacity building, employment for all and useful local economic development initiatives as promised in its Mining Charter.

It is important for the Mining Company to use a Social Development Needs Analysis. It will help the mining company to address the challenges of how to reconcile its needs with the community needs in a sustainable development paradigm. The Social Development Needs Analysis will help to enhance social impact assessment methods that are needed to facilitate positive socio-economic development in the Maandagshoek community. The company will be able to adopt the measures and the strategies that would significantly minimize the negative socio-economic impact during the ultimate closure of the mine.

The participation of the Maandagshoek rural community in all forms of decision making during the operation of the mine is of outmost importance. Participation of the affected communities is regarded as the key issue of sustainable development. It will help the rural community to open up the debate to the current need for action that leads to better implementation of sustainable development in their area. The community will be encouraged to influence and share control over decisions, and resources that affect them. The vulnerable or the most marginalized and the least vocal members of the community will be reached, rather than dealing only with the members who are highly educated, better informed, and have high level of interest on the mining operation. The rural community will be empowered to actively participate in the development that affects them.

Modikwa Mining Company must have a thorough knowledge of the profile of the Maandagshoek Community. The community profile is the key element which describes the past and the existing conditions associated with human environment in which the mining operation

takes place. This will help the rural community to anticipate the likely impact of the mining operation in their area. The Mining Company will in turn have thorough knowledge of how the community is organised, its views and whether it will be able to adapt to the changes brought about by development in their community. The company will develop a strategy that will benefit the wellbeing and livelihood of the community, while respecting its culture, customs, beliefs and values.

It will also be of great benefit to the Maandagshoek community to have a thorough knowledge of its human rights with respect to the mining operation in their area. The rural community must also have a better understanding on how to access them. Section 21 Company that forms a link between Modikwa Mining Company and the community must consult the South African Human Rights Commission. The Commission will provide an experienced specialist consultant who will offer educational programme concerning the human right awareness, knowledge of all rights and obligations arising from the mining operation. He or she will also enlighten them on the knowledge of all the processes of grievances redress mechanisms.

The Greater Tubatse Municipality must be included as a stakeholder in all relevant engagement during decision making processes. It is through him that the local economic development in the community will be effectively developed by the mining company.

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