

ARTICLE

Evolution of Mining Company Responses to Civil Society Mobilization in South Africa

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Corporate Social Responsibility (CSR) and the social license to operate (SLO) are widespread global phenomena in mining-dependent countries. These self-regulated frameworks are used to ensure local ownership and as a response to conflict by mining companies. Over the past two decades, CSR in the mining industry has only been more prevalent in Africa and South Africa. Studies on CSR and SLO primarily focus on community perspectives. This paper interrogates how mining companies respond to civic social pressure by considering two cases that have experienced much conflict in South Africa. Based on eighteen in-depth interviews and an analysis of company and media reports, our case studies demonstrate that mining companies primarily use CSR and SLO to assert and maintain corporate control under the guise of promoting local ownership and sustainable mining. Such strategies provide temporary relief and gradually erode CSR and SLO's legal and political imperatives.

Keywords: Extractive Industries, civil society mobilization, social license to operate, corporate social responsibility

Introduction

The conflict between communities and mining companies has received much scholarly attention over the past few decades, giving birth to the ‘conflict mineral’¹ narrative. This narrative indicates a long history of natural resources serving as sources for conflicts between communities and mining companies. However, most studies focus on the conflict from a community perspective.² Therefore, little is known about corporate responses to conflict.

1. Autesserre, “Dangerous Tales,” 222.

2. Abuya, “Mining Conflicts,” 481; Blesia, Dixon, and Lord, “Indigenous Experiences,” 1; Muhirwa et al., “Linking Large Extractive Industries,” 2; Putri, Zamroni, and Salaga, “Evaluation of Corporate,” 26.

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A significant source of conflict between communities and mining companies has been the mining policies and practices during the apartheid era in South Africa. This problem is rooted in early legislation regarding mineral rights and mineral development, such as the Native Land Act 27 of 1913 and the South African Development Act 18 of 1936, which considered the rights of indigenous communities unimportant. This way, the government protected private enterprise interests over those of communities.³ In a concerted attempt to redress the exploitative and discriminatory mining regulatory regime spanning decades of white domination, the South African government introduced several transformative legislations, including the Mineral and Petroleum Resources Development Act (MPRDA) 28 of 2002. The MPRDA was enacted to expand opportunities for historically disadvantaged people to enter the mineral and petroleum industries and benefit from exploiting these resources.⁴ One of the most significant and far-reaching modifications brought about by the MPRDA is the addition of an explicit reference to the duty of mining companies to consult mining-affected communities and stakeholders.⁵ However, these legislative and accompanying institutional frameworks reinforced established trends instead of ensuring effective local participation and ownership of mining benefits.⁶

Meanwhile, a cleavage between communities and mining companies emerged, driven by community struggles over land ownership, unfair compensational practices, inequitable resource distribution, environmental degradation, mine-induced poverty, and human rights abuses.⁷ As a result, popular movements seeking a just and equitable extractive industry and opposing attempts to advance the government and the extractive industry's narrow interests emerged. The movements forged an alliance under the banner of Mining Affected Communities United in Action (MACUA)—a national organization of over seventy affiliates and twenty civil society organizations (CSO)—in 2012. MACUA claims that since its formation, it has constantly advocated for a people-centered form of power, intending to end decades of land and resource exploitation and colonial displacement.⁸

In response to the realization that continued pressure from civil society for local communities to own their developmental paths, participate in decision-making, and manage or co-manage the utilization of mining resources, mining companies began to implement measures beyond legal imperatives to respond to the conflict that could potentially undermine the industry's public image. Overall, mining companies' response involved the adoption of two self-regulated frameworks that have no legal obligation to create a positive impact for the groups they purport to help: CSR and SLO. However, studies have shown how CSR and SLO enact corporate responses and strategies that are primarily aimed at ensuring industry viability and uninterrupted extraction.⁹ As a result, there is ongoing concern about the multiple risks of mining and a lack of substantive improvement to local socioeconomic development and outcomes, environmental protections, and human rights.¹⁰

3. Cawood and Minnitt, "Historical Perspective," 370.

4. Department of Mineral Resources, *Mineral and Petroleum Resources*.

5. Mitchell et al., "Avatar Syndrome," 112.

6. Matebesi and Marais, "Social Licensing," 372.

7. Abuya, "Mining Conflicts," 486.

8. MACUA, "History of MACUA."

9. Matebesi, *Social Licensing*, 35; Mayes, "Social Licence to Operate," S110; Owen, "Social License," 103; Putri, Zamroni, and Salaga, "Evaluation of Corporate," 26.

10. Van der Watt and Marais, "Implementing Social and Labour Plans," 1.

Against this background, this paper analyzes the evolution of corporate response to social pressure in two cases in Jagersfontein and Koffiefontein, South Africa. The first case concerns a community that has experienced considerable conflict because of the social licensing efforts of the mining company. The second case involves a community that has been exposed to multiple downscaling episodes that impacted on CSR initiatives. We argue that failures in CSR and SLO resulted in mining companies using covert operations, which negatively impacted on the relationships between companies and local communities. We emphasize that mining companies' response to social pressure through CSR and SLO is primarily to assert and maintain business-centric priorities. As a result, these strategies erode the legitimacy of companies.

The Literature

Historical Overview of Civil Society Mobilization Against Mining Companies in South Africa

This section discusses the CSOs' mobilization for representation, recognition, and bargaining over mining benefits. Globally, from the Bodo community in the oil-producing Niger Delta, the indigenous Shuar activists in Ecuador, to the Tacana community in Bolivia, we have witnessed the growth of social movements against mining.¹¹ Historically, organized labor unrest has been among the most notable concerns elevating South African extractive industry risk. However, due to the proliferation of trade unions and the accompanying union rivalry. These protests frequently suspended mining operations for up to three months, severely impacting the South African economy, mining production, investor confidence, and foreign direct investment. The unprotected labor action at Lonmin's Marikana mine in South Africa's North West province, when thirty-four striking mine workers were shot dead by police in August 2012, is a case in point.¹²

Since the advent of democracy in South Africa, CSOs have increasingly advanced the interests of ordinary citizens against mining companies and the government. In 2015, after several failed attempts to engage with the Minerals Council (formerly Chamber of Mines) and the minister of mineral resources, MACUA met with mining-affected communities and civil society to make their demands known for a fair and just extractive industry.¹³ This meeting spurred civil society into action, and a year later, in 2016, seven CSOs, including the Centre for Environmental Rights, the Highveld Environmental Justice Network, and Earthjustice, submitted a joint submission to the United Nations Human Rights Council, blaming South Africa's inadequate regulation of the extractive industry and coal-fired power plants for human rights violations in the country. The report spent a lot of time discussing how mining corporations should be held accountable for illegal acts through thorough and open

11. See, for example, Pegg and Zabbey, "Oil and Water," 392; Looby, "Empowering," 2; Riofrancos, "What Comes After Extractivism?" 56.

12. Hill and Maroun, "Assessing the Potential Impact," 586.

13. Rutledge, "Why Mining Communities."

compliance and enforcement programs. Government inaction was also criticized, with CSOs claiming that it had rendered the extractive industry one of the least transparent.¹⁴

The introduction of mining charters 2 and 3 in 2010 and 2018, respectively (the first one was implemented in 2004), further polarized the relationship between communities and the extractive industry. Two opposition issues are at the center of the challenge for or against mining charters: communities that support the transformative intervention and the Minerals Council that object to these changes. A mining charter is a tool for addressing inequity and encouraging transformation in South Africa's mining sector. However, these charters have historically been developed without the participation of the people they are supposed to help: mining-affected communities. Consequently, MACUA and Women Affected by Mining United in Action (WAMUA) joined a high court challenge in 2017 demanding modifications to the third charter. They won a landmark victory in February 2018 when the high court ruled that communities are significant partners in mining and must be engaged in laws and policies that affect them. Three years later, on September 21, 2021, a full bench of the Gauteng High Court delivered a unanimous judgment that mining charter 3 is simply policy and not legislation.¹⁵ This court, however, did not rule against the earlier ruling that gave communities a voice in the drafting and implementation of mining charters.

As South Africa has now clearly entered a period of contentious politics in mining-affected communities, the high cost of litigation did not deter local civil society movements. It supported national organizations to initiate legal challenges against mining projects. Alongside the significant rise in activism in local mining communities nationwide, 2018 yielded major legal victories for mining-affected communities. For instance, in early 2018, MACUA and other concerned civil society actors also launched an online petition based on the free, prior, and consent principle, titled "Right to Say No." The petition's purpose was to show support for the Xolobeni community on South Africa's Wild Coast, which was in court fighting to challenge the application by an Australian mining firm to mine titanium in its community. MACUA's plan was also for the court to issue a declaration order that forbids the Department of Mineral Resources (DMR) from issuing a mining license against the will of the Xolobeni.¹⁶ The Amadiba Crisis Committee, a local community-based organization, has fought mining in South Africa's Wild Coast for over sixteen years. The proposed titanium opencast Xolobeni mine, by the Australian mining company Transworld Energy and Minerals, was first given a mining license in 2008. However, the mining business failed to address various outstanding environmental issues reported by DMR at the time of application, and the permit was revoked three years later, in 2011. Due to the government's repeated delays in deciding on the mining license, the Amadiba Crisis Committee withdrew its complaint with the Public Protector. Instead, it launched a court battle. The organization was adamant that the farming community favored natural resource-based livelihoods and heritage-based ecotourism over harmful

14. Dineo Faku, "Civil Society Takes Mining Concerns to UN 2016," *Independent Online*, October 12, 2016, accessed November 12, 2021, www.iol.co.za/business-report/economy/civil-society-takes-mining-concerns-to-un-2078801.

15. Maphuthing Morolong, "High Court Ruling on Mining Charter 2018: 'Once Empowered, Always Empowered,'" *Fasken*, September 23, 2021, accessed February 22, 2022, <https://www.fasken.com/en/knowledge/2021/09/23-high-court-ruling-on-mining-charter-2018>.

16. Ernest Mabuza, "Massive Victory' for Small Community in Mining Rights Case – LHR," *TimesLive*, October 25, 2018, accessed December 16, 2021, <https://www.timeslive.co.za/news/south-africa/2018-10-25-massive-victory-for-small-community-in-mining-rights-case-lhr/>.

mining.¹⁷ In November 2018, in yet another landmark judgment, the North Gauteng High Court in Pretoria ruled in favor of the Xolobeni community. The judge declared that the minister of mineral resources must obtain consent from the community as the holders of the rights on land before granting any mining right to the Australian mining company.¹⁸

The cases of community struggles are a microcosm of how the democratic government's neoliberal goal and economic development approach are often at the expense of and marginalization of rural communities. Under the pretense of development, the democratic government of South Africa and mining companies have been depriving communities of their landrights and livelihood methods without their consent. Thus, the government, like the colonial and apartheid regimes, is encouraging the displacement of Black people and the transfer of resources from Black and impoverished people to wealthy multinational companies.¹⁹ This problem is rooted in the historical exclusion of Black communities from mainstream economic activities. As a result, some scholars view mining areas as "locked into pathways of conflict that persist irrespective of the institutional arrangements" and strategies designed by mining companies to address this reality.²⁰ Others contend that state-recognized traditional authorities—contested or not—fuel grievances and facilitate mobilization against mining-initiated development trusts and mining projects.²¹ We now turn to how the mining companies have responded to the growing civil mobilization in the extractive industry.

Mining Company Responses to Civil Society Mobilization

Organizations develop strategies that respond to the external environment and enable them to survive in the ever-changing environment within which they operate. As a result, organizations need to be strategically responsive to external threats to be sustainable and avoid losses. The political environment is an integral part of the external business environment. Consequently, the political environment is one of the factors that most businesses must deal with. Scholars have shown increasing interest in how companies respond to external threats. This section extends the scholarship by focusing on the strategic responses of the extractive industry to civil society mobilization against the lack of accountability, engagement, and local ownership of extractive resources. It is important to place the response strategies in a broad historical perspective, recognizing that the extractive industry's response has been philanthropic. The latter had significant potential for reaching development goals, improving social and process-driven outcomes, increasing community participation, and enhancing socio-economic transformation.²² The central point is that political, regulatory, and civil society mobilization has shaped this corporate response.

17. Fatima Moosa, "The Xolobeni Community Is Fighting for a Voice in Mining Decisions," *Daily Vox*, April 19, 2018, accessed February 22, 2022, www.thedailyvox.co.za/the-xolobeni-community-is-fighting-for-a-voice-in-mining-decisions-fatima-moosa/.

18. Alex Mitchley, "High Court Rules in Favour of Xolobeni Community in Historic Mining Rights Case 2018," *Mail & Guardian*, November 22, 2018, accessed January 12, 2022, <https://mg.co.za/article/2018-11-22-high-court-rules-in-favour-of-xolobeni-community-in-historic-mining-rights-case/>.

19. Madiya, "Neoliberalism," 2.

20. Matebesi and Marais, "Social Licensing," 372.

21. Matebesi, *Social Licensing*, 68; Mustasilta, "Implications," 457.

22. Mottiar, "Philanthropy," 1.

Early Corporate Response—The Anglo American Chairman’s Fund

Corporate response to threats or avoiding reputational damage underscored by CSR is not new and occurred throughout history. In South Africa, CSR in its modern form dates to the 1950s, when Anglo American realized the significance of the convergence of corporate, political, and societal interests around mining and the need to make a permanent contribution to the welfare of mining-affected communities. In 1974, the company formalized its community investment approach by launching the Anglo American Chairman’s Fund—one of the largest donors in South Africa. The Chairman’s Fund sought to help the company forge sustainable relationships with external stakeholders, including civil society.²³

At the time, the Chairman’s Fund aimed to address a systemic change through the Urban Foundation and the Joint Education Trust. The fund historically invested in a range of areas, supporting community-based organizations that further the company’s goals to sustainable development. In addition, the fund also focused on funding priorities such as early childhood development, maths, science, and language development at the school level and strengthening the public healthcare system. However, Judge Jan Steyn, the Urban Foundation’s director, stated publicly that the organization’s goal was not only to promote community and housing development for Black South Africans, which it did admirably, but also to act as an outspoken and key agent of change, pressuring the government to repeal apartheid legislation. The Foundation’s efforts were essential in eliminating apartheid’s two cornerstones, the pass laws and the Group Districts Act, and persuading the government to recognize the importance of Black house ownership in South Africa’s metropolitan areas. Anglo American’s consistent, moral stance against the state’s rising repression of South African citizens during the apartheid years was demonstrated when the company assisted several notable South Africans who faced treason charges because of their Defiance Campaign. In 1974, the company also called for state recognition of Black trade unions. Almost a decade later, the company’s mines became the most unionized in South Africa. In the face of growing civil society antagonism toward apartheid and mining in general, Anglo’s chairperson wrote in his annual Anglo American chairperson’s statement that “racial discrimination and free enterprise are incompatible; failure to eradicate the one will ultimately destroy the other.”²⁴

The Anglo American chairperson’s stance was significant because the close link between companies and the apartheid government undermined the legitimacy of companies among the majority of Black South Africans. Given that most of the challenges faced by mining companies were political and regulatory, when the interests of companies were charged with those of mining-affected communities, the interests of the former prevailed.²⁵ However, through its visionary leadership, the company launched the Anglo American Zimele Enterprise model in 1989, which targeted Black enterprise development in South Africa. Anglo Zimele provides financial and hands-on technical support to entrepreneurs in mining-impacted communities and labor-sending areas. These small and medium enterprises, the Anglo purports, met the company’s procurement or processing requirements. A few years later, Anglo American

23. Hall, “Anglo American’s History”; Kane-Berman, “Mining in SA.”

24. Oppenheimer, “See What Is Right,” 1.

25. Matebesi, *Social Licensing*, 32.

exported the model to its operations in Chile, Botswana, Peru, and Brazil.²⁶ However, many observers have noted that despite the good intentions of such initiatives, the overall goal remains to promote business-centric interests.

Corporate Social Responsibility in the Mining Sector: 1990s–2020

Historically, the mining sector has taken a lackadaisical approach toward the consequences of its activities, such as operating in places with no social legitimacy, causing local damage, and leaving when an area's economically significant resources have been depleted. However, the global mining sector has begun to confront its social and environmental responsibilities in recent years, as seen by current debates about social and environmental sustainability. As a result, several mining corporations have created CSR programs that tend to focus on local community activities because they feel their economic, social, and environmental influence is felt most locally. Thus, what began as ad hoc damage control responses by mining companies to the threats posed to their projects, evolved into fully-fledged corporate commitments to sustainable development and stakeholder engagement. Internationally, the impetus for the increased focus on community relations within mining stems from unprecedented pressure from social movements and other CSOs for mining companies to take greater responsibility for socioeconomic and environmental impacts. However, community relations are often seen as work done to meet policy commitments within the extractive industry.²⁷

Notwithstanding the growth of an industry subset of specialized mining CSR professionals, the lack of substantive improvement to local socioeconomic development and outcomes, environmental protections, and human rights continued in South Africa. The adoption of this corporate rationale ensured the uninterrupted continuation of mining projects.²⁸ This view was extended to the dangers of mining companies adhering to and prioritizing the technical and logistical parts of due diligence while paying insufficient attention to the corporate culture's relational, communicative, and emergent aspects.²⁹

Mine housing is an example of how mining companies advance CSR projects to enhance their public image while discriminating against Black employees. During apartheid, the mines accommodated Black migrants in high-density compounds while white mine workers were given corporate residences. Most company towns had been "normalized," the extractive industry had eliminated the compound system, and homeownership had become the major policy goal by the early 2000s.³⁰ However, for decades, apartheid policy placed power and privilege in the white minority. As a result, one of the most dangerous current systems of political violence was born. Violence became increasingly widespread and less manageable by the authorities in South Africa, including in mines.³¹ In what has been defined as extreme apartheid, the migrant labor system was a historical institution that colonial capitalists used

26. African Development Bank, *Anglo American Corporation's Zimele*, 11–12.

27. Kemp, "Community Relations," 4–5.

28. Campbell, "Corporate," 139; Hilson, "Corporate Social Responsibility," 131.

29. Farrell, Hamann, and Mackres, "Clash of Cultures," 1.

30. Cloete and Marais, "Mine Housing," 1388; L. Marais, "Housing Policy," 1.

31. Abrahams, "Synopsis of Urban Violence," 498.

apartheid authorities to reconcile the competing needs for cheap labor in mines to confine Black people to rural areas far from white cities.³² Black males were obliged to migrate to employment locations as part of this system. Still, they were not allowed to do so with their families or stay permanently, resulting in an oscillating migrancy system. The hostels, which were a significant component of the system, were and continue to be tangible remnants of South Africa's systematic policy of racial discrimination and flagrant economic exploitation of the indigenous people. As a result, hostels became a problematic type of housing and a complicated type of urban growth, and thus an urban planning issue.³³ Disputes between ethnic groups became commonplace.

What sense can we make about these conflicting commitments undertaken by the extractive industry in South Africa by voluntarily declaring to improve the living conditions of employees and local communities through CSR initiatives, while using the migrant labor hostels as tools of control and repression?

We believe we can make sense, provided we note that the extractive industry thought it was appropriate and creative to develop and promote discriminatory practices because of the political climate. Generally, this did not necessarily prevent the escalation of labor unrest and ethnic violence. Many of the repercussions of the migrant laborer hostels must be viewed as unforeseen that would eventually lead to its demise. Hence, the two points we want to make in this regard. First, as Black mine workers were banned from forming trade unions from 1946 to 1982, it became easy for resistance forces to form inside the limited environment of hostel accommodation. While the apartheid system eroded the structural power of organized labor, Black mine workers expanded their associational power, leading to the growth of a highly marginalized labor force. Consequently, it became easy to organize these workers through unions after the unbanning of trade unions. Second, hostels were sometimes leveraged for political party support, which led to violence between hostel dwellers and adjacent communities in the 1990s.³⁴ This exacerbated conflict between communities and mining companies and hastened an era of labor unrest in the extractive industry.

Thus, much of the labor unrest in the extractive industry was fueled by mining company's race-based policies. Similarly, mining CSR initiatives in underdeveloped nations, particularly in Africa, have a shady history. Many people believe that the limited projects implemented as part of this program have done nothing to fulfil the requirements of the affected mining communities.³⁵ Concerns have also been raised about infrastructure project ownership and maintenance. This concern relates to the fact that mining companies' CSR programs can do nothing to safeguard the long-term viability of communities that rely on their operations as their primary source of livelihood.³⁶ Meanwhile, community grievances about mining moved from issue-based claims such as employee wages, accommodation, and development initiatives to much broader calls for wide-ranging reforms of the extractive industry regarding local ownership.

32. Vosloo, "Extreme Apartheid," 2.

33. *Ibid.*

34. Sitas, "New Tribalism," 235.

35. Abuya, "Mining Conflicts," 481.

36. A. Marais, "Assessing Corporate," 100.

The international literature also demonstrates that complete adherence to local or national regulations standards has become a less and less effective way to meet community or societal expectations for industries operating in those communities. As a result, CSR and SLO became standard practices in the mining sector.³⁷ However, there are diverse views about the rationale for these approaches. For example, some scholars view CSR as a response to the demands for attention to communities' social problems. In contrast, others understand it as reflecting a public relations exercise³⁸ or the potential of SLOs to affect the financial prosperity of mining.³⁹

Sources and Methods

The study employed fieldwork and literature studies to analyze mining companies' responses to civil society mobilization. The study used a qualitative, exploratory, and descriptive research design to elicit eighteen participants' perspectives on CSR and SLO in Jagersfontein and Koffiefontein. De Beers owned both mines, and for many years, mine workers migrated between the two diamond mines. Many retired mine workers and their families now live in these towns.⁴⁰ In this regard, semistructured interviews were conducted by the first author with randomly selected ex-mine workers, former municipal councillors, mining representatives, municipal officials, and community leaders. Other data sources included mining company reports, documents from local municipalities, and news reports. The first author transcribed the recorded data from the in-depth interviews verbatim and analyzed the transcriptions inductively. Here, the focus was on recurring themes in the interviews.

Case Study 1: Jagersfontein—Sustained Resistance to Mining

Jagersfontein is a typical rural town in the Free State province of South Africa. Historically, the town is known as a diamond mine epicenter, and is home to the world's largest and oldest diamond mine hole.⁴¹ Mining in the town started in 1870, and the pit was dug by hand for thirty-nine years until 1909. The mine closed in the early 1930s due to the Great Depression and reopened in the late 1940s until 1973 when the operation was finally shut down.⁴² De Beers then sold the tailings to Jagersfontein Developments (Pty) Ltd—a consortium consisting of Superkolong, Sonop Diamond Mining, and Reinet Investments. The Jagersfontein Community Trust—a community group founded in 2009—lost out on the sale. In 2010, Jagersfontein Developments began operations, and a year later, the Itumeleng Community Trust was established. In the context of South Africa, community trusts are structures—independent of

37. Banks et al., "Conceptualizing Corporate," 246.

38. Ibid.

39. Bickford et al., "Evaluating the Role," 2.

40. Itumeleng Community Trust, "Initiatives," 1.

41. Britannica, "Jagersfontein."

42. Itumeleng Community Trust, "Initiatives," 1.

mining companies—used to implement CSR or SLO projects.⁴³ The Jagersfontein mine dam wall collapsed due to structural failure on September 11, 2022. The mudslide destroyed nine houses and damaged more than twenty others.⁴⁴

The 2022 Jagersfontein mine dam disaster again highlighted the challenges mining communities face in South Africa. This community has a protracted history of conflict between the residents, the mining company, and the community trust.⁴⁵ Several factors contributed to this conflict. These factors include De Beer's exclusion of mine workers from selling the mining dumps in 2010.⁴⁶ This is in conflict with South Africa's regulatory framework, which fosters collaborative planning in the form of social and labor plans. These plans aim to ensure the well-being of mine workers even during mine closure.⁴⁷ Other factors related to the governance and lack of consultation by the Itumeleng Community Trust.⁴⁸

According to the interviewees, there is a high distrust in the mine and community trust. This distrust, one community leader remarked, is fueled by the “complete lack of accountability and unilateral decisions by the Itumeleng Community Trust.” However, according to the community trust, attempts have been made to consult with the community, but each meeting ends up in chaos. Several community leaders, however, emphasized that the new mine owners took over the CSR responsibilities of De Beers, hence establishing the community trust. The community trust was to hold 10 percent equity ownership in the company that bought De Beer's assets.⁴⁹ Despite all the promises made about the role the mine will play in developing Jagersfontein, the town remains one of the poorest, with high unemployment rates.⁵⁰ The community of Jagersfontein, the findings show, has been enraged by the divide-and-rule tactics used by the mine. The main concerns of the community leaders include how the mine recruited two prominent leaders to become liaison officers, and the lack of accountability by community members who are trustees of the community trust. One community leader emphasized that “this was a dirty trick to weaken the community.” The interviewees also stressed that they have witnessed no distinct development since Jagersfontein Developments started to mine the dumps.

Case Study 2: Koffiefontein—A History of Mine Downscaling

Mining in Koffiefontein spans more than 150 years, starting in 1870.⁵¹ Several factors and events shaped the evolution of the Koffiefontein mine's CSR. An oft-cited factor in the

43. Matebesi and Marais, “Social Licensing,” 374.

44. Nonkululeko Njilo, “Jagersfontein Tragedy: Free State Mine Dam Burst Floods Kill Three; Four People Critically Injured,” *Daily Maverick*, September 12, 2022, accessed January 12, 2022, <https://www.dailymaverick.co.za/article/2022-09-12-free-state-mine-dam-burst-floods-kill-three-four-people-critically-injured/>.

45. Matebesi and Marais, “Social Licensing,” 376.

46. Derby, “De Beers sells Anger.”

47. Van der Watt and Marais, “Implementing Social and Labour Plans,” 1.

48. Matebesi and Marais, “Social Licensing,” 377.

49. Philip, “Jagersfontein,” 91.

50. *Ibid.*, 94.

51. McGill, *History of Koffiefontein*, 2.

literature is the repeated downscaling—including closures and reopenings—of the mine De Beers owned. The company sold the mine to Petra Diamonds in July 2007. In early 2023, Petra Diamonds also announced its intention to sell the mine because it was not profitable.⁵²

According to the Centre for Development Support (CSD), De Beers has been instrumental in various CSR initiatives and beyond to ensure the well-being of the Koffiefontein community. These initiatives included contributions to education, health, and welfare facilities, maintenance of public entertainment facilities, sewage works, and the donation of land to the local municipality.⁵³ These community development initiatives took place at the height of the De Beers operations. However, as confirmed by the international literature, mining creates high levels of dependence, and as a result, mine downscaling or closure has negative socioeconomic impacts on mining towns.⁵⁴ Similarly, interviewees confirmed how they appreciated what De Beers has done for the community. However, there were mixed feelings about the company's sincerity about employee wellness.

According to a municipal official, although the gradual downscaling of mining in Koffiefontein ensured that at least a few locals could access jobs, mining companies show varying degrees of understanding of the importance of CSR and SLO. As a result, one community leader remarked that new mine owners often make many promises about CSR at the inception of ownership, but these are never realized. One recurring issue among community leaders has been how CSR projects have become De Beers' strategic and operating perspective that "did not account for the awareness of the evolving expectations of the community." These leaders also reported how dissatisfied they were with the local municipality as it should have played a leading role in preparing the community for life after the mine closure.

Although some ex-miners benefited from the houses provided by De Beers, they stressed that the most challenging part for them has been the failure of the mine to implement commitments to the social and labor plans, which included providing sustainable income-generating projects and enterprise development, and to equip workers with transferrable skills through training. Some ex-mine workers strongly believed that De Beers took a narrow strategy for implementing sustainable CSR projects, which have been prioritized only to appease community discontent.

Discussion

This study provides qualitative evidence of mining companies' responses to social pressure through civil society mobilization. In both cases, community perspectives on CSR and SLO indicate an appreciation of the benefits of mining, but they also feel deeply aggrieved that these measures were merely an attempt to ensure the mining companies' smooth operations. This is in line with the international literature that highlights the mining industry's recognized

52. McKay, "Petra Diamonds," 1.

53. Centre for Development Support, *Application for a New Mining Right*, 41–42.

54. Monosky and Keeling, "Planning for Social," 1; Syahrir, Wall, and Diallo, "Coping with Sudden Mine Closure," 1.

clandestine uses of CSR and SLO.⁵⁵ For instance, in South Africa, the mining sector is heavily regulated regarding social and environmental performance. Companies must adhere to strict standards, some of which go beyond the requirements of many international best practice guidelines, to keep their operating licenses. As a result, maintaining legal compliance to obtain a license to operate has been a priority for mining companies.

The study also raises concerns about the efficacy of mining regulation in South Africa. As stated before, publishing information related to social investments through social and labor plans became a legal requirement in 2004. These plans must also include financial information on the plan's implementation and an undertaking by the holder of the mining right to follow the plan and make it known to the employees, according to Regulation 46 of the MPRDA.⁵⁶ However, a major shortcoming is that the regulation does not mandate the public publication of the plan to purported beneficiaries (in this case, mining host communities) to monitor implementation and hold firms accountable for compliance. Furthermore, the minister serves as an oversight mechanism, but the mineral resources minister's powers are discretionary, weakening the oversight process because the powers are not always exercised. As a result, mining rights holders have interpreted these plans' wording unilaterally.⁵⁷ Therefore, despite the lofty promise of the MPRDA that failure to fulfil the obligations presented in the plans can lead to legal ramifications—a fine or loss of a mining license—there have been no real consequences for mining companies. This explains why the case study communities of Jagersfontein and Koffiefontein have been struggling to ensure sustainable mining occurs in their areas.

Overall, corporate responses against community activists have been hostile. The study has demonstrated that litigation is another strategy used by mining companies to deal with dissent. Of note is Strategic Litigation Against Public Participation (SLAPP) suits used against people who fight and defend their rights. SLAPP cases can take many forms, including the abusive use of criminal and civil court proceedings to intimidate, suppress, censor, scare, and hinder public exposure and debate. Courts and legal processes are invariably weaponized as places of censorship by entangling people in protracted and expensive legal battles that sap the plaintiffs' money, energy, and passion. This is accomplished by imposing huge legal expenses on them until they retract their criticism. For this reason, it is widely believed that the plaintiffs do not want to win the case—as the case's merits are frequently poor, unsustainable, or overblown—but are merely aiming to emotionally and financially drain defendants.⁵⁸

Although the findings demonstrate the sustained struggle by different stakeholders to ensure mining compliance with regulations, there was no evidence of physical harassment of community activists as is the case in other parts of the country. For instance, a Human Rights Watch report, “‘We Know Our Lives Are in Danger’: Environment of Fear in South Africa's Mining-Affected Communities,” details how community activists in mining areas are subjected to harassment, intimidation, and violence. Responses from activists,

55. Mayes, “Social Licence to Operate,” S110; Owen, “Social License,” 103; Putri, Zamroni, and Salaga, “Evaluation of Corporate,” 26.

56. Department of Mineral Resources, *Mineral and Petroleum Resources*.

57. Mandela Institute, *Public Regulation*, 20.

58. Riyadi and Hadi, “Strategic Lawsuit,” 141.

community leaders, environmental groups, lawyers representing activists, police, and municipal officials from four provinces in South Africa described the targeting of community rights activists who face assault, property destruction, and disproportionate force during peaceful protests. The attacks and harassment have created a fearful climate for community people mobilizing to voice their concerns about the substantial environmental and health threats that mining and coal-fired power plants pose to their livelihoods.⁵⁹ We contend that, although it is difficult to assess the extent to which mine officials are directly involved in the harassment of community activists, the indirect contribution of mining to the climate of fear can never be fully avoided.

Mining-affected communities are often poor, have high unemployment rates, and are divided over mining development. As a result, politicians, traditional leaders, and businesspeople typically exploit the governance of community trusts and equitable shares for their benefit. It has been reported that mining companies in countries such as Australia and Canada created distrust among community members to sow divisions.⁶⁰

Conclusion

One of the major challenges facing the extractive industry is the need to devise strategies to respond to complex entanglements, including responding to increasing demands for local ownership of mining and community engagement. This paper has shown that mining companies in South Africa responded in various ways to civil society mobilization and protests. Given this reality, the history of mining company response to political, economic, and social challenges has been steeped in controversy, whether related to regulatory changes or just the general decline in the performance of companies with respect to seeking community consent to operate. Nevertheless, the expectations created by changes to legislation and policy placed tremendous pressure on the extractive industry to engage in sustainable yet responsible mining.

Overall, the two cases and international studies have demonstrated that the extractive industry struggles to respond effectively to the complexities of relationships between companies and local communities. However, it is evident that mining companies are entangled in complex relations with mining-affected communities and, therefore, must respond responsibly to civic mobilization. The case studies further demonstrate that corporate response to local concerns has been to assert and maintain corporate control through CSR and SLO in the face of increasing legal coercion to concede to the demands of mining-affected communities. We believe that many of these philanthropic initiatives were genuine attempts by mining companies to make significant contributions to the livelihood of marginalized communities. Despite this honest attempt at creating some local ownership, disputes continued between the mining company and aggrieved mining communities because some companies only want to enhance their public reputations. This paper, therefore, emphasizes the need for mining companies to manage the perceptions of important stakeholder groups and effect functional changes at the community level. Attempts to demobilize community activists are not a

59. Human Rights Watch, "We Know," 1–6.

60. Lopez and McDonagh, "Anti-Mining Struggle," 1.

permanent solution to a fundamental challenge: failure to meaningfully engage with local communities transparently. Such corporate strategies provide temporary relief and gradually erode CSR and SLO's legal and political imperatives.

At the very least, the preceding assertions have practical implications for the extractive industry. Although there is widespread consensus among civil society about regulatory changes, there are increasing doubts about the willingness of the extractive industry to empower local communities. Therefore, we argue that the global shift to the central role of mining-affected communities in mining should be accompanied by corporate strategies to build resilient and sustainable partnerships between mining companies, communities, and the government.

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