the federation for a sustainable environment

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NATIONAL STRATEGY FOR MINE CLOSURE AND THE MANAGEMENT OF DERELICT AND OWNERLESS MINES
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PREFATORY

In the previous series of consultations, the FSE highlighted the following loopholes in our current legislation:

There is lack of articulation between the closure requirements in the Mineral and Petroleum Resources Development Act, 28 of 2002 (MPRDA) and the process for winding up companies as set out in Chapter 14 of the Companies Act (1973).

The MPRDA places no specific obligation on the court to determine whether a company applying for liquidation has applied for a closure certificate, ensured the transfer of environmental liabilities or actually topped up any shortfall of funds.

The duties and potential liability of the business rescue practitioner and liquidator are unclear, that is, whether the liquidator is obliged to apply for a closure certificate.

One of the most serious consequences of liquidation is that the company ceases to exist as a legal person. The environmental obligations specified in the MPRDA is linked to a holder of a mining right, and this in turn is defined with reference to a person. If no person legally exists these obligations by extension cannot be enforced.

One of the most common practices for mining companies for mining companies avoiding their closure commitment is pass the parcel, that is, the selling of mines close to closure on to less

resourced companies who will relieve them of the responsibility and liability of dealing with the problems of closure. This pass the parcel approach to the custodianship of the closure plan allow for mines to end up in the hands of the weakest companies who neither have the resources, will or intention to manage closure responsibly.

Another loophole is the complex corporate structures of mining companies to obfuscate responsibility for closure. Listed mining companies currently have the option of exiting a liability escalating venture by changing the controlling interest of the corporate entity holding the right. There is no state oversight of this process at present.

These loopholes, we strongly recommended ought to be addressed in the National Mine Closure Strategy, and that the Strategy be incorporated into Regulations, which are legally binding.

THIS SUBMISSION

The following submission is submitted with deference and diffidence. If our comments are considered to be superfluous or lame or irrelevant, we apologise. We shall nonetheless appreciate to be supplied with reasons why our comments are not pertinent to the proposed National Mine Closure Strategy.

The FSE advocates for incorporation of the findings and recommendations of the following Reports in the National Mine Closure Strategy:

1. End of Mission Statement by the United Nations' Special Rapporteur on Toxics and Human Rights, Dr Marcos Orellana.
2. Report of the Portfolio Committee on Mineral Resources on its oversight visit North West and Gauteng on the 13-14 September 2018, dated 07 November 2018.
3. The Report by the South African Human Rights Commission pursuant to its National Hearing on the Underlying Socio-Economic Challenges of Mining-Affected Communities in South Africa.
4. Academic Reports:
    a. O'Conner, T.G. and Kuyler, P. (2005). National Grasslands Initiative: Identification of compatible land-uses for maintaining biodiversity integrity. Mining Addendum. Report for SANBI's National Grassland Biodiversity Programme.
    b. Sutton, M.W. and Weiersbye, I.M. South African Legislation Pertinent to Gold Mine Closure and Residual Risk. Mine Closure 2007 – A. Fourie, M. Tibbett and J. Wiertz (eds). 2007 Australian Centre for Geomechanics, Perth, ISBN 978-0-9804185-0-7.
    c. Van Eeden, E.S. (2024) "Towards Proactive Activities & Initiatives for a Sustainable Far West Rand in the 21st Century.
    d. Hoadley E.M. and Limpitlaw D., "Preparation for Closure – Community Engagement and Readiness Starting with Exploration". Mine Closure 2008 – A.B. Fourie, M. Tibbett, I.M. Weiersbye, P.J. Dye (eds). 2008 Australian Centre for Geomechanics, Perth. ISBN 978-0-9804185-6-9.

5. Global Industry Standard for Tailings Management[1].
6. The Artisanal and Small Scale Mining Policy.
7. The 2021 Audit Report of the Auditor General on the Department of Mineral Resources and Energy.

FINDINGS AND RECOMMENDATIONS OF THE UN SPECIAL RAPPORTEUR ON TOXICS AND HUMAN RIGHTS IN HIS END OF MISSION STATEMENT[2]

Marcos A. Orellana, the UN Special Rapporteur on Toxics and Human Rights on his visit to South Africa, 31 July - 11 August 2023 reported in its End of Mission Statement:

"South Africa faces the crude legacy of pre-1994 environmental racism. This abhorrent practice entailed the intentional siting of landfills and polluting industries along racial lines and in low-income and migrant communities. The challenges to overcoming the legacy of environmental racism are enormous, and they are compounded by structural inequality, widespread poverty, unemployment, corruption, a severe energy crisis and new environmental threats such as the climate emergency.

"Today, despite the efforts by Government in setting up institutions and laws to address this legacy of environmental racism, pervasive air, water and chemical pollution still imposes a heavy toll, especially on disadvantaged communities. Overcoming it will require significant additional efforts, including structural, legislative, economic, and environmental changes."

FINDINGS AND RECOMMENDATIONS[3] OF THE PARLIAMENTARY PORTFOLIO COMMITTEE ON MINERAL AND PETROLEUM RESOURCES (PCMR)

Following the business rescue of Shiva Uranium (Pty) Ltd and Mintails Mining SA (Pty) Ltd and the danger of the two mining operations being liquidated in terms of company law, the PCMR needed to understand the challenges that the Department of Mineral Resources and Energy (DMRE) is facing in dealing with mines that may not have sufficient resources to cover

[1] A Global Tailings Standard on Tailings Management was developed (GISTM) and launched in August 2020. The International Council on Mining and Metals (ICMM), which represents the top 30 largest global mining companies in the world, requires compulsory compliance to GISTM requirements by its members. ICMM members commit to work towards designing, constructing, operating, monitoring and decommissioning tailings facilities in conformance with the Global Industry Standard on Tailings Management. The Standard strives to achieve the ultimate goal of zero harm to people and the environment with zero tolerance for human fatality. It requires Operators to take responsibility and prioritise the safety of tailings facilities, through all phases of a facility's lifecycle, including closure and post-closure. It also requires the disclosure of relevant information to support public accountability.

[2] The FSE was requested by the UN Special Rapporteur on Toxics and Human Rights to conduct the site visit of the Witwatersrand goldfields with Dr Orellana and UN Officials on the 2nd of August, 2023.

[3] Thursday, 22 November 2018 1. ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS NO 174─2018 FIFTH SESSION, FIFTH PARLIAMENT. PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA. Page 22 -

environmental rehabilitation costs in the event of closure. Pursuant to the oversight visit of the PCMR on Mineral and Petroleum Resources on the 13th and 14th of September 2018, the PCMR found:

- It is clear that some mining companies are still operating without adequate financial provision for repairing damage caused to the environment by mining activities, if they suddenly close.
- Neither Shiva Uranium (Pty) Ltd and Mintails Mining SA (Pty) Ltd has saved all the money they were supposed to set aside under the law to pay for environmental rehabilitation. The shortfalls are R36.6-million for Shiva and R460-million for Mintails.
- The state will inherit these liabilities if the mines are finally liquidated.
- The DMR has failed to implement effectively and carry out the intentions of Parliament to ensure that all mines rehabilitate the damage they cause.
- Changes to the mining law were made by Parliament after 2002 to ensure that in mining, as elsewhere, the polluter must pay.
- The new laws have not proven effective in avoiding this situation where the state and the taxpayer still ends up paying for the environmental harm caused by mining.
- There is a lack of clarity on the rules for the Department of Mineral Resources when it comes to Business Rescue Practitioners. It seems there is non-application of the law resulting in a free for all.
- The DMRT[4] allowed Mintails to operate between 2012 and 2018, despite the fact that the Department had never approved the environmental management plans of the mine and had never issued the company with a mining right under the law.
- There is a huge regulatory gap regarding the financial provision of environmental rehabilitation of a mine during the process of business rescue.

In the light of the above-mentioned findings, the PCMR recommended:

- The DMR must identify clearly and specifically the gaps between mining, insolvency and company law that have led to this ongoing situation, where the polluter does not pay, it is the state that ends up paying.
- DMR should get specific legal opinion on these complex issues.
- The DMR must report to the Committee in Parliament on what it will do [or needs to do] differently in future to ensure that this situation does not continue.
- DMR must report on what efforts they have made to hold directors and shareholders of Shiva and Mintails liable for the environmental debts of these failed ventures.
- The DMR must actively ensure that the licensing of mines goes with responsibility and accountability.
- The DMR should further explore the regulatory gaps resulting from the business rescue process and come up with regulations that will ensure full environmental compliance during the period when a mine is experiencing financial distress.

The DMR failed to hold the directors and shareholders Mintails liable for the environmental debts of these failed ventures instead the entire issued share capital held

[4] The Regional Manager (Gauteng) of the DMRE, at the time, was Mr Sunday Mabaso.

by West Wits SA (Pty) Ltd. in West Wits Monarch (Pty) Ltd. was transferred to Amatshe Mining by the former Director General of the DMRE on the 19th of January 2021.

The application was received on the 27th of January 2020 by Mr Sunday Mabaso, the Regional Manager (Gauteng) of DMRE, who allowed Mintails to operate unlawfully from 2012 to 2018 and who now acts as consultant for Amatshe Mining. The CEO of Amatshe Mining is Mr Eddie Milne, a former director and Chief Financial Officer (CFO) of Mintails, who operated unlawfully from 2012 to 2018. The unlawful operations pertained to MR 132 and MR 133.

In his application to the High Court[5] to seek an order to discontinue the business rescue proceedings of Mintails and to place Mintails under final winding up, Mr Dave Lake of Lake Strategic Solutions, submitted that "*Mintails became obliged to raise an unforeseen VAT liability in its books due to the incorrect historical accounting treatment by its chief financial officer on certain revenue streams*", which also actuated the request for the above order.

The DMR's practice to allow delinquent directors of companies to continue to operate albeit under a different company name is contrary to the provisions of Section 23 of the MPRDA, which directs:

"*23. (1) Subject to subsection (4) the Minister must grant a mining right if (g) the applicant is not in contravention of any provisions of this Act…"*

Of great concern too is international holding companies' strategies of disengagement with South African subsidiaries when these subsidiaries experience financial and environmental difficulties. The bankruptcy case of Mintails provides an example of irresponsible disengagement by investors, leaving the state of South Africa and the local communities around the mines with the burden of uncovered post-mining environmental rehabilitation costs in the midst of a business rescue. Mintails Limited (MLI), the holding company, divested itself from Mintails SA by spinning-off its South African subsidiaries. MLI was then renamed Orminex Limited, completing what looks like a manoeuvre to avoid liability for the environmental reparations owed by Mintails SA.

It is strongly recommended that the drafters of the Strategy ensure that the Strategy addresses the above-mentioned problems, and that the Strategy be incorporated into Regulations, which are legally binding.

FINDINGS AND RECOMMENATIONS OF THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION PURSUANT TO ITS NATIONAL HEARING ON THE UNDERLYING

[5] 2018/2868

SOCIO-ECONOMIC CHALLENGS FOR MINING AFFECTED COMUNITIES IN SOUTH AFRICA[6]

The Commission found that the DMR appears to systematically disregard key pieces of legislation, particularly the Municipal Systems Act, 32 of 2000, the Spatial Land Use Management Act, 16 of 2013 (SPLUMA) and the Interim protection of Informal Land Rights Act, 31 of 1996 (IPILRA).

The Commission also found that the DMR has not taken adequate steps to secure financial provision for rehabilitating damage to the environment and water resources and there is an immediate need for all Environmental Impact Assessments (EIAs) and Environmental Management Programme Reports (EMPrs) to clearly detail land quality and potential post-closure land use. Licences should not be granted where long-term sustainable land use cannot be guaranteed.

With reference to closure, the Commission directed that the DMR must "*report on the progress and anticipated timelines for finalisation of the National Closure Strategy. This strategy should consider the issues that are relevant to mine rehabilitation ad closure more broadly and develop a strategic framework within which individual mine closure plans will fit and developmental goals are emphasised. The DMR must ensure that stakeholders such as communities and mineworkers participate in the development of the National Closure strategy*."

We interpose: The FSE laments the fact that the 2008 Regional Mine Closure Strategies have never been finalised and implemented, and that the finalisation and formal proclamation of the National Mine Closure Strategy, notwithstanding the directives of the SAHRC, have been held in abeyance since .

To resume: The Commission directed the DMR to "*consider legislative reform to address the gaps in partial and full mine closures. Specifically, the DMR must: a. Provide clarity on the process for closure including all processes followed by the Department prior to issuing of closure certificates, such as the need to ensure community participation, and monies set aside; b. Provide a detailed list of all mines under 'care and maintenance'. The list should include monitoring measures undertaken by the Department; and c. Consider the establishment of a trust account where mining companies deposit funds, which the State can access to remedy water and other impacts caused by unrehabilitated, abandoned or derelict mines*".

The DMR was further directed to "*together with relevant stakeholders, develop a Regional Master Plan aimed at addressing environmental rehabilitation and the remediation of derelict and ownerless mines. The Plan should specifically refer to legacy issues such as acid mine drainage and illegal miners, as well as sites with potential nuclear contamination and must include timelines and funding mechanisms*".

SAHRC Mining communities report Fl

[6]

COMMENTS ON THE POST-MINING ECONOMIC ALTERNATIVES

In terms of Regulation 56 of the MPRD Regulations, which prescribes the principles for mine closure "*the land is rehabilitated as far as practicable to its natural state, or to a predetermined and agreed standard or land use which conforms with the* ***concept of sustainable development***."

The social/community component of sustainable development is premised on both **inter- and intra-generational equity**. In communities which are characterized by widespread poverty the notion of sustainable development, particularly intra-generational equity, with its medium-long term horizons, does not resonate.

The drafters of proposed National Strategy for Mine closure ought to ensure that the Strategy addresses the interests of both current and future generations, and post-closure land-use, with its implications for socio-economic and environmental sustainability is possibly the most important component of planning in mining affected communities.

Sloping, grassing/re-vegetation, wilderness status, phyto-remediation, stockpiling for road building material, etc. cannot be considered a sustainable future land use and are at best measures for interim stabilisation, unless it can be demonstrated that the implementation of these measures will facilitate the agreed future land use.

End land uses frequently proposed for Tailings Storage Facilities (TSFs), TSF footprints and other contaminated sites in many South African Mine Environmental Management Plans (EMPs) are 'agriculture' or 'grazing', which may imply edible crop production or pasture, and rangelands populated by livestock. Residential townships, edible crop production and livestock grazing are considered to be high risk land-uses for TSFs, TSF footprints and areas within the aqueous or aerial zone of influence of TSFs and metallurgical plants in South Africa.[7] Failure ty the regulators and industry to agree on suitable 'soft' end land-uses and buffer zones could exacerbate liabilities for closing mines by resulting in subsequent land-uses that are sub-economic or risky.

A description of the range of soft land-uses suitable for interim and end-land uses need to be included in the proposed Strategy in order to support mining companies in their decisions and financial provisioning.

Sutton and Weiersbye[8] recommend that provision should also be made for environmental compensations for irreparable damage and/or irreversible loss of ecosystem services to be paid to affected parties (i.e. downstream users) and for trade-offs of devasted land for land in better conditions. These actions should complement, and not replace technically achievable methods of land and water rehabilitation.

[7] O'Conner, T.G. and Kuyler, P. (2005). National Grasslands Initiative: Identification of compatible land-uses for maintaining biodiversity integrity. Mining Addendum/ Report for SANBI's National Grassland Biodiversity Programme, www.sanbi.org , 40 p.

[8] Sutton, M.W. and Weiersbye, I.M. South African Legislation Pertinent to Gold Mine Closure and Residual Risk. Mine Closure 2007 – A. Fourie, M. Tibbett and J. Wiertz (eds). 2007 Australian Centre for Geomechanics, Perth, ISBN 978-0-9804185-0-7. Pages 89 – 102.

The land-uses that are recommended to be potentially suitable for mine closure outcomes in the semi-arid South African climate include industrial sites, lined landfills, graveyards, sewage sludge disposal and land farming, and carbon sinks facilitated by the growth of low-water demand and high root-biomass crops, such as fibre, pharmaceutical and biofuel species.

The FSE recommends that the drafters of the proposed Strategy also consider the research findings and recommendations of the Report titled "*Towards Proactive Activities & Initiatives for a Sustainable Far West Rand in the 21st Century*". This research was conducted for Sibanye-Stillwater by the North West University, and coordinated by Prof Elize S. van Eeden and a multidisciplinary team of researchers. They collectively outlined a strategic vision for transitioning the Far West Rand region in South Africa from a mining-dependent economy to one centred on sustainable development. The report emphasises leveraging heritage tourism, environmental conservation, socio-economic revitalisation, and the establishment of a mining heritage tourism hub, with extended education possibilities, on mine property (with several integrated possibilities for other mines and locations) as a key driver for this transition.

COMMENTS ON COMMUNITY INVOLVEMENT IN MINE CLOSURE

In terms of Regulation 56 of the MPRD Regulations, which prescribes the principles for mine closure "*the closure of a prospecting or mining operation incorporates a process which* ***must start at the commencement of the operation and continue throughout the life of the operation***" and "*the land is rehabilitated as far as practicable to its natural state, or to a* ***predetermined and agreed standard or land use ….***"

(Emphasis added.)

It follows hence that specific objectives for rehabilitation must be established at the commencement of the operation and these objectives must be agreed upon.

Since they are the ultimate recipients of potential, ongoing and historical pollution and the potential future land users, the requirements of the MPRD Regulations entail that project affected people[9] must be involved in the agreements regarding these objectives and regarding future land use of affected areas, and thus in the decisions regarding the establishment of objectives for such future land use, as well as in discussing the alternatives for engineering interventions, where decisions regarding such options will affect the future land use.

E.M. Hoadley and D. Limpitlaw, in their treatise, titled "*Preparation for Closure – Community Engagement and Readiness Starting with Exploration*"[10] posits that communities in southern Africa are often poor, disempowered and in need of employment. They lack experience with large development projects and the knowledge of potential impacts and benefits. They have

[9] "Project-Affected People" are defined in the Global Industry Standard for Tailings Management (GISTM) as "people who may experience impacts from a tailings facility. People affected by a tailings facility may include, for example, people who live nearby; people who hear, smell or see the facility; or people who might own, reside on, or use the land on which the facility is to be located or may potentially inundate.

[10] Mine Closure 2008 – A.B. Fourie, M. Tibbett, I.M. Weiersbye, P.J. Dye (eds). 2008 Australian Centre for Geomechanics, Perth. ISBN 978-0-9804185-6-9. Pages 845 – 851.

high, often unrealistic expectations, and inadequate awareness of their own rights or the capacity to exercise these rights. These factors combine to make meaning engagement[11] with communities from the commencement of mining project, during operation, decommissioning, closure and post-closure critical.

The drafters of the proposed National Mine Closure Strategy ought to ensure that the Strategy includes the following requirements, and that these requirements be incorporated into Regulations, which are legally binding:

1. Consultation with affected communities ought to include awareness raising and disclosure. This limits the potential for external exploitation of the community and enhances community participation in identifying post-project options and ultimately taking ownership of post-closure initiatives.
2. Consultation must be done in a culturally appropriate way, acknowledging community dynamics and structures; recognising local sensitivities and understanding perceptions of communities.
3. Consultation is usually conducted along formulaic lines. Stakeholder mapping identifies a range of stakeholder groups (often applying the same groups template for every project and attempts to engage with representatives from each group. This mechanistic approach does not encourage serendipitous input from communities.

COMMENTS ON THE INTERCONNECTION BETWEEN MINES AND THE APPORTIONMENT OF LIABILITY

Interconnection between mines and areas where mines have cumulative and integrated impacts complicates the closure of individual mines and apportionment of liability is proposed. The proposed Strategy refers to the National Mine Water Management Policy in this regard.

Apportionment of liability ought also to include not only addressing apportionment of liabilities interconnected and co-liabilities but also the 'restrospective liability'.

Both the NEMA[12] and the NWA[13] use the words '*has caused*" indicating the retrospective application of the polluter pays principle and the proposed Strategy ought to recognise the

[11] "Meaningful Engagement" is defined in the GISTM as "A process of mutual dialogue and decision-making whereby Operators have an obligation to consult and listen to stakeholder perspectives, and integrate those perspectives into their business decisions. Meaningful engagement involves measures to overcome structural and practical barriers to the participation of diverse and vulnerable groups of people. Strategies for addressing barriers must be appropriate to the context and the stakeholders involved, and may include, for example, logistics and other support to enable participation. Preconditions to meaningful engagement include: access to material information that can be reasonably understood; a structure that enables transparent communication; and accountability for engagement processes and outcomes.

[12] 28(1) of NEMA reads "Every person how causes, **has caused** or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation for occurring, continuing or recurring, or in so far as such harm to the environment is authorized by law or cannot be avoided or stopped, to minimize and rectify such pollution or degradation of the environment." (Emphasis added.)

[13] 19(1) of the NWA provides that "an owner of land, a person in control of land or a person who occupies or uses the land on which any activity or process is or **was** performed or undertaken or any other situation eixits, which causes, **has caused** or is likely to cause pollution of a water resource, must take all reasonable measures to prevent any such pollution for occurring, continuing or recurring." (Emphasis added.)

retrospective application of the pollution pays principle. Section 19(1) of the NWA and section 28 of the NEMA provides for the retrospective duty of care. The responsibility for damage caused remains even though a mine is no longer the owner of the operation, and regardless of whether a mine has been granted a closure certificate.

In addition, the person to whom the operation was transferred must also take reasonable measures to prevent, minimise or rectify the pollution or degradation, regardless of when the pollution or degradation occurred.

Although the MPRDA provides for the transfer of environmental liabilities in 43(2) of the MPRDA, the provisions of the National Environmental Management Act, 107 of 1998 (NEMA) and the National Water Act, 36 of 1998 will still apply.

The duty to take reasonable measures to prevent significant pollution or degradation of the environment from occurring, continuing or recurring ("the duty of care") also applies to pollution that occurred before NEMA or the NWA commenced; to pollution that might arise at a different time from the actual activity that caused the contamination and to pollution that may arise following an action that changes pre-existing contamination.

It is therefore no defence to say that the pollution is historic, indirect or underlying – the responsibility to take reasonable steps remains.

We now refer to the following two criteria, which the drafters of the Strategy identified for the delineation of the closure areas:

Firstly: "*Areas of hydraulic interconnection of mine workings, where specific strategies are needed to manage mine closure, health and safety issues related to mine flooding and long-term mine water management. The interconnected underground workings of the Witwatersrand mines are examples of such areas*".

With reference to the rewatering dewatered dolomitic compartments of the Far West Rand (FWR) goldfields, it is of utmost importance that the re-watering of the mine void in the FWR and the associated effects on the dolomitic compartments are well understood to avoid uncontrolled re-watering and pollution as was seen in the West Rand. Where potential decant points of mining contaminated water will be and what the quality of this decanting water will be are still not confidently defined. The hypothesis that a mega-compartment will be formed that will have no impact on water security and treatment is not the only possibility and due to geological mechanisms and forces in deep level mining should therefore not be the exclusive model used in post-rewatering impact planning

As the karst aquifers are considered strategic water source areas (SWSAs) of national importance the integrated water resource management of this resource requires involvement of all governmental spheres.

Although historic structures such as the FWRDWA and SCTC has the obligation to maintain control of the impacts of rewatering, the functioning of these committees is uncertain and cannot be considered as a safeguard against potential threats to water security and land stability.

The proposed 2008 Regional Mine Closure Strategy for the Far West Rand goldfields was not implemented leaving the question as to how mine closure within the Far West Randis being coordinated and whether sufficient attention is paid to long-term impacts beyond the gold

mining basin. No evidence could be found of prior research constructing a cooperative governance framework that could guide and assist mining companies in the Far West Rand in their decision-making and actions when dealing with the imminent mine closure and postmining impacts on the region[14].

Secondly: "*Exceptional areas, where the integrated and cumulative impact of mining extends beyond municipal boundaries and areas of hydraulic interconnection. Where such areas are identified, specific strategies may be necessary to address these impacts. The pollution of the Wonderfonteinspruit by mining in the West Rand and Far West Rand Goldfields is an example of such an area*".

With reference to the Wonderfonteinspruit, the Wonderfonteinspruit is arguably the most studied catchment in South Africa. The bibliography of relevant literature that has been compiled would, if printed, run to nearly one hundred and twenty pages[15]. Given the mass of data, documents and reports that have accumulated since the first study of the Wonderfonteinspruit by Hunter and Duff in 1904, what is needed is not the development of new strategies but the long overdue **implementation** of existing strategies, plans, and recommendations of e.g.

- Coetzee, H. (compiler) 2004: An assessment of sources, pathways, mechanisms and risks of current and potential future pollution of water and sediments in gold-mining areas of the Wonderfonteinspruit catchment. WRC Report No 1214/1/06, Pretoria, 266 pp.
- Winde, F. (2008) Development of a map ranking sites with known radioactive pollution in the Wonderfonteinspruit catchment according to the urgency of required intervention - Underlying methodology and results. Compiled for: Joint Coordinating Committee of the Department of Water Affairs and Forestry and the National Nuclear Regulator.
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- National Nuclear Regulator 2007, Radiological Impacts of the Mining Activities to the Public in the Wonderfonteinspruit Catchment Area, report TR-RRD-07-0006.
  National Nuclear Regulator (2015), Remediation Criteria and Requirements, position paper 0018.
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[14] Van Tonder, D. M & Carel B. Schoeman, C.B. (2021). Re-watering of West Rand Dolomitic Compartments: Implications for JB Marks Local Municipality.

[15] Stoch E.J., Winde F and Erasmus E. (2008). Karst, Mining and Conflict - A Historical perspective of the consequences of mining.

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Of relevance too are the findings and recommendations of the subjoined reports, which adduce evidence that South Africa is very rich in policies, strategies, reports, etc. but exceptionally poor in implementation.

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COMMENTS ON THE TRANSFER OF INFRASTRUCTURE

Once a mine closes the buildings and equipment are either left to dilapidate posing a health and safety impact on the community or alternatively the buildings are demolished.

On closure of a mine, every opportunity must be taken to ensure the continued availability of useful infrastructure, without transferring the liabilities to third parties who do not have the resources to maintain the infrastructure.

COMMENTS ON SMALL SCALE AND ARTISANAL MINING

Small-scale mining opportunities in reprocessing and beneficiation of old discard facilities should be identified and clarification should be provided regarding the longstanding regulatory uncertainties in relation to residue stockpiles and residue deposits, including that (i) in addition to an Environmental Authorisation (EA), authorisation is required in terms of the MPRDA for reclamation of residue stockpiles and residue deposits; and (ii) reclamation or expansion of historical pre-MPRDA residue stockpiles and residue deposits requires an EA, but does not constitute mining.

Furthermore, the proposed Strategy ought to be aligned with the published Artisanal and Small Scale Mining Policy, which directs:

- Artisanal and Small-scale mining to be reserved for South Africans
- Preference to issue permits to co-operatives and not individuals
- ASM to be limited to surface and open cast mining
- ASM to co-exist with large operations through contributing agreements, equipment leasing, technical support and participation in the supply chain
- The Government is to train, empower and educate ASM Miners
- The Policy and legal framework must clearly distinguish illegal mining from ASM

- The Government must strengthen laws re criminalisation of illegal mining to deter illegal mining activities and a trained detective unit is proposed.

OWNERLESS AND DERELICT MINES

The Department of Mineral Resources published the National Strategy for the Management of Derelict and Ownerless Mines in South Africa in 2009[16]. Notwithstanding the effluxion of 15 years since its publication, the Auditor-General (AG) Tsakani Maluleke has found that the Department of Mineral Resources and Energy (DMRE) has been mismanaging its responsibilities for the rehabilitation of the derelict and ownerless mines — or D&O mines — that scar much of South Africa's landscape.

"*In its 2009 audit, the AGSA found that the department did not have an integrated information system to record and report on the status of abandoned mines. As a result of the department's inadequate capacity, systems and funds, the D&O mines database had not been regularly updated*."

The 2021 report "*reveals that the database contains errors, resulting in data being inaccurate, outdated and incomplete*".

The AG said in a statement in March 2022 that D&O mines "*pose serious health, safety and environmental hazards for nearby communities*". In this audit, the auditors found that the DMRE's management of the 6,100 abandoned mines and 1,170 mine openings were ineffective and did not address the environmental, social and health impact of unrehabilitated mines within a set time frame."

And according to the AG report, the DMRE is having problems figuring out which derelict mines still have mining rights. "*The department is using a manual process to determine whether 2,238 D&O mines have mineral rights or private property ownership, which would potentially reduce the government's legal liability to rehabilitate these mines. There is also no process and procedure to direct this determination and finalise government's legal liability for these mines*," the report said.

The AG's recommendations include finalising the National Mine Closure Strategy and determining the government's actual liability regarding such mines.

"*Citizens have a constitutional right to a safe, healthy environment that promotes conservation. The department's slow progress in dealing with these D&O mines and mine openings leaves unrehabilitated mining sites that often change the natural environment. This takes the form of air pollution from dust or toxic gases, infertile soil and severely degraded water resources that are often devoid of life*," Maluleke said. Abandoned mines are also hives of zama zama activity, and so are key sources for organised crime.

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16 D & O strategy(FINAL).doc

The FSE's recommends that the Strategy addresses these problems and that the Strategy be incorporated in Regulations, which are legally binding.

SUBMITTED BY:
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30 September 2024.