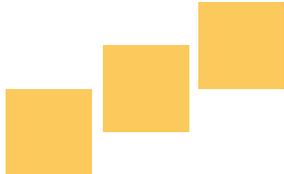




**Mining-related observations and recommendations:
Anglo Platinum, affected communities and other
stakeholders, in and around the PPL Mine, Limpopo**





FOREWORD

The relationship between South Africa, South African communities, and mining is admittedly a complex relationship which has evolved over a substantial period of time. Where the existing vulnerabilities of communities have not been adequately addressed, adding business, and extractive industries in this instance, to the landscape may in fact exacerbate these vulnerabilities and bring inequalities starkly into focus. Consequently, a number of issues raised by affected communities or observed by the South African Human Rights Commission (“SAHRC”) during this investigation are symptomatic of systemic inequalities in addition to possible institutional problems in the relocation processes undertaken.

By placing this report in context, the SAHRC acknowledges the specifically situated and lived experiences of communities in communal land tenure and aspires to confirm their human dignity as one of the core values entrenched in the Bill of Rights. The SAHRC further aims to fulfil its mandate through contributing this constructive analysis of the way flaws in processes may result in potential human rights violations. The SAHRC makes general and specific recommendations in acknowledgement of the complexity of the specific factual context, the technical processes involved as well as the myriad of stakeholder relationships and interests.

These are not simple tasks, nor are the analyses and recommendations made in this report simplistic. The SAHRC has emphasised elsewhere, and wishes to reiterate, that the impact of the activities of business upon communities changes and develops much like peoples’ lives evolve. The impact of business can therefore not always be determined at one point in time like a snapshot, but is often more accurately reflected over a period of time. It is consequently imperative that business continue to monitor the impact of its activities, whether positive or negative. This is a recommendation which aims to counter minimalistic legal compliance by business, promote the contextualisation of the activities of business, and the recognition of the impact of actions beyond a fixed point in time.

I would like to thank all stakeholders and specifically the affected communities for their active engagement with the SAHRC during the course of this investigation. In applying a rights-based approach the SAHRC emphasises active and meaningful participation in processes as a means of empowerment and an essential element of a participatory democracy. The SAHRC acknowledges the collaborative efforts of staff at national and provincial offices, including Sello Hatang, Christine Jesseman, Jo Mdhlela, Jeffrey Nkuna, Mankese Thema, Elelwani Muthivhi and Kleinbooi Matsetela.

Let us continue to work towards making our Constitution an everyday reality, and every action an expression of its values and a confirmation of our own commitment as reflected in the human dignity of others.



Jody Kollapen
Chairperson, South African Human Rights Commission



EXECUTIVE SUMMARY

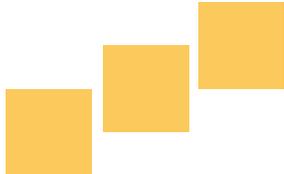
The investigation initiated by the South African Human Rights Commission (“SAHRC”) at the end of March 2008 was intended to focus on the **broad human rights context** surrounding the resettlement process undertaken by Anglo Platinum’s Potgietersrust Platinums Limited (“PPL”) Mine near Mokopane, Limpopo. The basis for further investigation was informed in part by the ActionAid report entitled *Precious metals; The impact of Anglo Platinum on poor communities in Limpopo, South Africa* which was launched at Human Rights House in March 2008.

In its search for clarity the SAHRC engaged with a broad range of stakeholders to better understand the key relationships and interplay between PPL and the affected communities surrounding this mine in Limpopo. The **role of the SAHRC** in this context has been to conduct its own investigations, formulate observations, and from this assert progressive recommendations to overcome what has been seen as an impasse between certain communities and PPL in undertaking its resettlement programme.

There is a view among some stakeholders that the majority of community members identified for relocation have successfully relocated and this must be acknowledged in the context of the following analysis. However, it is necessary to emphasise that physical relocation in itself is not a barometer for determining the success of the relocation of a community, but merely one factor. Consequently, one of the SAHRC’s primary objectives in this investigation has been to **identify and reduce vulnerability**. From this preliminary analysis key vulnerabilities exist both within communities resisting relocation, but in many ways more acutely within communities not included as part of the relocation process but affected by the operation of the PPL and located within the surrounding area.

The overriding challenge that the SAHRC has recognised during this investigation is the almost total **disintegration of trust in the relocation process**. This is a product of a dislocation between many community members and the multi stakeholder institutions undertaking the relocation including the Section 21 (“s21”) companies, the Mapela Tribal Authority (“MTA”), the Mogalakwena Municipality (“the Municipality”) and PPL as a result of a perceived lack of agency among affected communities to either challenge the resettlement, provide input on its planning, affect its progress or lodge complaints against its process. This dislocation has created a perception in some elements of the community that organisations set up to consult and seek consent, and to deliver community concerns to the relocation sponsors are not working on behalf of the community, but on behalf of PPL, the relocation project sponsors. This dislocation is evident not just through community testimonial, but through visible and structural divisions which have developed within the communities, but most clearly through members of the communities refusing to relocate.

Whether or not this perception is based on fact becomes almost irrelevant. In the eyes of those resisting relocation and others within affected communities it has become the reality upon which decisions are made, and action is taken. Such perceptions will not be altered and lost trust will not be regained by producing documentation of past processes, or through refuting claims upon which this perception is based. The fundamental observation made by the SAHRC is the need for companies to move **beyond legal compliance** and push for the development of processes and institutional structures which actually identify and manage the multitude of risks associated with resettlement. The current impasse can only be breached and trust regained through meaningful,



open and multi stakeholder engagement. The SAHRC makes both general and specific multi stakeholder recommendations in this regard. These recommendations go beyond engagement and towards active participation by communities.

Resettlement projects necessitate the collaboration of a wide range of stakeholders to both manage the process, and to undertake technically specific tasks such as construction and town planning. While the technical capabilities of some contractors to undertake their specific task has been overtly demonstrated through the documentation, particularly those project managers, architects and environmental experts, the **technical capabilities** and capacity of other stakeholders to undertake their specific tasks has been far less obvious, in particular the capacity of s21 companies to undertake community consultation and the Mogalakwena Municipality to provide the services agreed to in the Service Level Agreements to the relocated communities.

These **stakeholders were designed into the relocation process** at the point at which the process was being planned. However, assessment does not appear to have been undertaken at this point to gauge the capacity of these stakeholders to fulfil their key functions. As a result **capacity shortfalls were not identified** until the process was underway and the dislocation identified above had already begun. Such capacity shortfalls amongst these stakeholders to fulfil various functions in the relocation therefore had and still has the potential to undermine the process and inhibit PPL from achieving the key principle of relocation - that having made attempts to avoid or minimise relocation, relocated communities should be left with the same if not with an improved quality of life and livelihood.

Project sponsors must invariably delegate out key processes of the relocation processes to contractors and community institutions. However, it seems that during the relocation process, PPL also successfully **delegated responsibility** for various processes as well. Although PPL retained the role of project management and thereby remained engaged with the relocation process, various relationships were developed by which legal responsibility for many issues relating to the community consent and consultation were delegated out through the creation of s21 companies. By delegating legal responsibility for these processes PPL also effectively delegated accountability as project managers for the success of aspects of a relocation process necessitated by their own mining activities.

The disintegration of trust amongst affected communities was initiated and exacerbated through a perception that grievances raised within the community were not being addressed. Without **an effective grievance mechanism** perceptions are created that community concerns are of little value thus effectively dislocating communities being resettled from the resettlement process. The community has a variety of mediums through which it is able to air grievances, including submissions to the Mapela Tribal Authority, through the s21 companies, and to PPL itself, although anecdotally on an *ad hoc* basis. As the project sponsors and therefore as the stakeholder with greatest responsibility, PPL should have ensured that it established a grievance mechanism which created a direct link between affected individuals and the project sponsor to ensure that interests were protected. After engagement with PPL the SAHRC is still unclear as to the existence of such an instrument. In the absence of information on the institutional source, the SAHRC was compelled to make an assessment based on its own observations. Community protests, episodes of direct action, the appointment of external legal representation, and ensuing legal action, submissions to local and national media and close liaison with civil society organisations has been described



as community “forum shopping”. However, it is perhaps the clearest indication that either the affected community were unable to access grievance redress through PPL or that there was no grievance mechanism instituted in the first place.

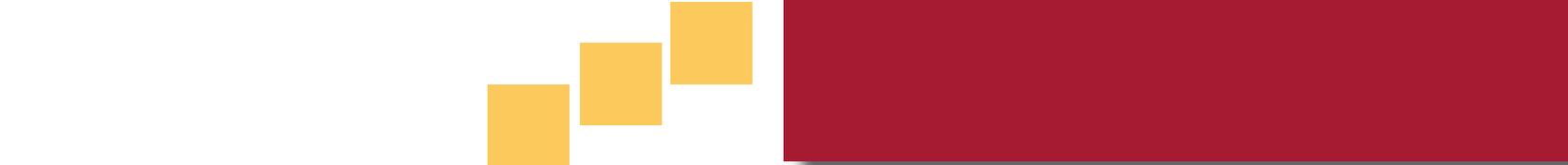
The perceived removal of agency amongst affected communities to determine the progress of their own resettlement appears to have translated into a mistrust of all stakeholders engaged with PPL on the relocation including the Mapela Tribal Authority. The SAHRC recognises the importance of **traditional leadership structures** and is therefore concerned about the divisions created by the relocation process between some affected communities and certain of their traditional leaders. The relocation has forced into the open a fragile interplay between traditional leadership structures, traditional customs of land allocation and individual rights, in particular land rights. The SAHRC is concerned that the fragile balance by which communities have existed in communion under the authority of the traditional authority has been damaged through the relocation process.

Various **civil society organisations** are currently working to mitigate the risks posed to affected communities by the relocation. The SAHRC is concerned about the lack of acknowledgement that Anglo Platinum has granted this important work and the lack of emphasis placed upon the importance of the active involvement of civil society in working together to empower communities. A related concern is the tangible tensions which exist between civil society organisations seen to be acting on behalf of communities resisting relocation or aspects thereof and Anglo Platinum.

The scope of this investigation extends beyond those communities included in the relocation process. **Broadening the scope** to enable a characterisation of the whole human rights context within the area of the PPL mine, surrounding communities not being relocated but nevertheless affected by the PPL mine activity have also been included. It has been observed that these communities also face dislocation from the multi stakeholder relationships being developed between PPL and the Mapela Tribal Authority, the Mogalakwena Municipality and the s21 companies. In many ways, standing outside the scope of the resettlement many of these communities are even more dislocated than those being subjected to the relocation process. The SAHRC acknowledges that PPL have undertaken a series of environmental impact assessments to gauge and mitigate the potential risks posed to local communities as a result of operational activity. However, the SAHRC is concerned that the negative impacts of the mine are not being adequately addressed in these communities. Subject to the same lack of grievance redress there is a greater risk that these communities could be hit hardest by the possible negative impacts of mining activities.

It is not within the **SAHRC’s capacity or mandate** to conduct an in depth technical audit of Anglo Platinum’s activities in general or relocation projects in particular. However, one of the primary constructive roles of the SAHRC can be to communicate and create a bridge between the lived experiences of individuals and communities, the vocabulary of human rights and accountability, while avoiding possible interpretations of minimalistic compliance by juristic persons such as Anglo Platinum.

Issues of **technical and minimalistic compliance** may be raised by various stakeholders, but the facts remain: there is significant tension amongst affected communities; there is significant tension between Anglo Platinum and elements of affected communities; there is significant tension between various civil society organisations and Anglo Platinum; there is significant tension



between elements of affected communities and certain traditional leadership structures, s21 companies, municipalities and the police. Most importantly, there are apparent vulnerabilities amongst affected communities which need to be addressed.

THE REPORT

Through its investigations the SAHRC has concentrated on initially identifying issues of **immediate harm** facing the affected communities. It has furthermore undertaken an analysis of the multi **stakeholder relationships** developed to undertake the relocation. Issues which have the potential to manifest into human rights violations have been used as indicators or symptoms to highlight potentially systemic institutional problems in the relocation process and as such can be linked as the source of alleged existing or potential human rights violations. It is the opinion of the SAHRC that these **institutional flaws** are symptomatic of a **compliance based rather than a risk mitigation** approach to the resettlement process sponsored by PPL, with specific reference to mitigation of the risk of **exacerbation of existing vulnerabilities** of affected communities and potential human rights violations.

Using this structure, the SAHRC hopes that this report will comprise a constructive analysis of the way flaws within institutional processes can manifest into potential human rights violations and thereby offer a meaningful insight into how such potential violations may be prevented in the future.

This report details and analyses each issue in turn as follows:

- » specific **observations** for each issue;
- » **explanations** for each issue;
- » the **regulatory framework** applicable to the specific issue ranging from the **human rights context, to domestic legislation and international best practice**;
- » the actions that have been taken to address the issue, or which are pending are outlined; and
- » for each issue the SAHRC has asserted multi stakeholder based **recommendations**.

SUMMARY OF RECOMMENDATIONS

Both general and specific recommendations are made by the SAHRC in the report. Firstly, the general recommendations are summarised below. Secondly, the specific recommendations are numerous, detailed and specific to sources, symptoms, communities and stakeholders. Although a summary of these specific recommendations is provided below out of necessity, it is advisable to read the SAHRC's detailed specific recommendations within their factual context in the report itself.

It is further imperative that the SAHRC's **specific observations** or concerns which are provided at the beginning of each section in the report be read, as these naturally inform the recommendations made.



GENERAL RECOMMENDATIONS

1. Assist communities in understanding their rights and how to access them

A lack of grievance redress is a major theme emerging from the findings in this report. Institutional mechanisms that communities can access within the company are dealt with in the body of the report.

However, it is also crucial that individuals and individual communities are able to gain a better understanding of their human rights and how they are able to access them. One of the resounding findings of this report is that communities did not voice their concerns early enough in the process. To this end it is important to bear in mind the SAHRC's mandate to address individual complaints from affected people who believe that their human rights have been violated.

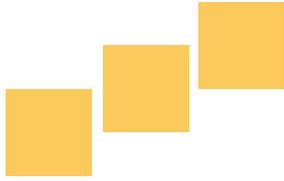
The SAHRC recommends that it would be of great benefit to affected communities if a **general education programme is conducted in all affected communities** in South Africa who have been subjected to relocation, but ideally amongst communities prior to any resettlement consultations. This education programme would have several objectives, including: human rights awareness; knowledge of all rights and obligations arising from any proposed or existing resettlement processes; knowledge of all processes including grievance redress mechanisms. It is suggested that **experienced specialist consultants** can be contracted to develop this programme, and that they take into account work undertaken by, and the experience of, existing role players such as the International Finance Corporation ("IFC") and the World Bank. This should further be undertaken in conjunction with the SAHRC. This initiative could be **funded by voluntary contributions from extractive industry companies** operating in South Africa who have, will, or may undertake such community relocations in pursuit of mineral wealth. The implementation of this education programme should be established as the norm. This programme should also be revisited and revised annually.

2. Assist companies in moving beyond a compliance based approach to resettlement

As is demonstrated in the report, an imperative has been created for companies to move beyond legalistic compliance when undertaking resettlement due to the risk of human rights violations and the exacerbation of existing vulnerabilities. Countless examples internationally have indicated that compliance with current domestic legislation is insufficient in mitigating the potential risks associated with resettlement. Companies need to move beyond compliance based approaches, particularly in the following areas:

- » Consultation;
- » Achievement of free, prior and informed consent; and
- » Grievance redress processes.

The SAHRC recommends that a general human rights audit becomes a recommended standard practice for all extractive industry and other companies undertaking the resettlement of affected



communities. Companies need to move beyond compliance based planning and activities in order to limit the exacerbation of existing vulnerabilities and potential human rights violations.

3. Assist companies in understanding the human rights implications of their behaviour and operation within their sphere of impact

This report has tried to demonstrate how social and environmental issues surrounding the operation of a mine may lead to human rights violations. Although not conferring broad obligations on the part of the company to promote, protect and respect the human rights of all individuals within its area of operations, the allegations directed at Anglo Platinum should demonstrate the reputational and financial risks of not engaging with potential human rights impacts. In many cases, mitigating human rights risk necessitates an additional layer of analysis as part of any normal risk assessment and mitigation process. However, the important issue is that in future Anglo Platinum should be able to use human rights rhetoric and additional contextual analysis to better understand how social impact issues can evolve into potential human rights violations.

In considering the human rights implications of the activities of a company, it is also necessary to cast the net wider and consider the cumulative impact of the actions of several companies upon one affected community. The SAHRC recommends that as a standard practice a general forum be established of which all mining companies in the relevant area, whether operating under mining right or prospecting, be members. Additional members should include a representative of the relevant municipality and the Premier’s Office, the Department of Minerals and Energy, the Department of Land Affairs, the Department of Environmental Affairs and Tourism, the Tribal Authority as well as members of affected communities as proposed in the report, as an addition to the Resettlement Committee.

Business engagement with human rights is an evolving field. The SAHRC has referred in the report to the role that Anglo Platinum’s parent company Anglo American is playing in this discourse.

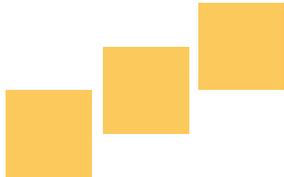
This report, however, demonstrates that one of the most crucial issues at play is the need for not single but multi stakeholder engagement to address alleged and potential future human rights violations at the hands of corporate actors. The United Nations Special Representative to the Secretary General, John Ruggie, iterates this in the model that he created to broker a way across the impasse maintaining that:

“there is no single silver bullet solution to the institutional misalignment in the business and human rights domain. Instead all social actors – States, businesses, and civil society – must learn to do things differently. But those things must cohere and become cumulative...”¹.

The SAHRC therefore recommends that PPL make efforts to engage in broader multi- stakeholder engagement, particularly with civil society organisations which they may misguidedly place themselves in opposition to, to manage their potential human rights impacts.



¹ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Protect, Respect and Remedy: A Framework for Business and Human Rights* (7 April 2008, A/HRC/8/5).



SPECIFIC RECOMMENDATIONS

A. The symptoms

Urgent and short term matters:

1. Water

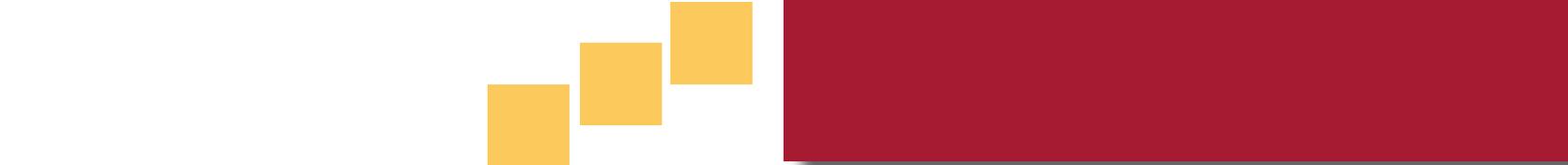
- » A bilateral engagement is developed between PPL and the Mogalakwena Municipality to ensure the continued access to water for all communities, both those that have relocated and those that are resisting relocation. Access to water must not depend on the community decision to relocate.
- » PPL engage with the Mogalakwena Municipality to better understand their ability to undertake the services provided for under the relevant Service Level Agreements.
- » The water deliveries be made regularly and reliably and be made known to communities so that their own individual water usage can be planned and self regulated. This is not only necessary but also empowering.
- » The recommended actions for the way forward referred to in the IGS Report be discussed with all stakeholders, most importantly with affected communities, and that Anglo Platinum, the Municipality and the affected communities discuss and agree as to whether and how such measures can be implemented.
- » The outstanding matters in the IGS Report be clarified and the complete investigation of all the water resources be undertaken as proposed in order to seek a more holistic solution within the area.

2. Sanitation

- » PPL continues to make the process as participatory as possible and keeps affected members of the community updated on all stages of the development process.
- » Affected community members continue to report sanitation problems to PPL and take steps to learn how to use sanitation systems to ensure that they function effectively.
- » The Mogalakwena Municipality be engaged by PPL where the choice of sanitary system impacts upon the services which are required to be delivered by the Municipality and in order to determine the compatibility of the chosen system with municipal systems as well as the capacity of the Municipality to carry out the services requested.

3. Environment (including mine blasting)

- » PPL demonstrate its ability to constantly monitor the impacts of mining activities on surrounding communities and illustrate how this monitoring is used in conjunction with the grievance redress mechanism to ensure that any potentially negative impacts of the mine both from PPL's and the community's perspective are addressed promptly.
- » PPL implement a process by which all community members are moved from the area during blasting to not only appease the potentially real risk posed to individuals from the blasting itself, but to address the perception of that risk felt in many communities in the area. Moving the community members at Ga-Chaba during the blasting would also ensure that those



community members no longer feel isolated from the protection, which PPL are demonstrably awarding members of surrounding communities.

- » PPL adhere to the Anglo Platinum commitment “to prevent or minimise adverse impacts arising from the Group’s operations.”²
- » PPL inform the communities as to their long term plans for mining in the area. It is an apparent commercial reality that mining is undertaken in phases which are determined at various points in time. However, the very real and disruptive impact of this phasing of activities on communities and the accompanying uncertainty with which these communities live must also be realised and addressed.

4. Electricity

- » Stakeholders need to obtain a clear understanding of the needs of communities in terms of electricity. Both PPL and Mogalakwena Municipality should engage in bilateral discussions to ensure that the needs of the most vulnerable are being met.

5. Grave removals

- » In addition to the list of all graves relocated from the Sekuruwe area already provided to the SAHRC, that the accompanying consent forms signed by the next-of-kin or mandated representatives of those next-of-kin also be provided.
- » The community members of Sekuruwe present to PPL and SAHRA a list of graves which it believes to have been moved without consent.
- » PPL engage with civil society organisations defending the interests of the community over this issue.
- » PPL audit the practices of its appointed undertaker.
- » PPL consult sufficiently with the broader Sekuruwe community to more accurately determine the ages of the graves.
- » Further information be provided by PPL concerning the precise nature of consultation between PPL and the affected communities relating to the removal of graves.
- » It be determined what processes are undertaken by Anglo Platinum or their subcontractors to ascertain the heritage status of graves.
- » It be determined whether communities were informed by Anglo Platinum or their subcontractors of any right to refuse consent to grave removal.
- » Grave sites be accurately mapped and removed graves accurately identified.
- » PPL continue to cooperate fully with SAHRA in any future enquires in this regard and communicate this openly to the community.
- » PPL engage with the community at Ga-Chaba to better explain by what processes graves were relocated.

6. Agricultural land and food security

- » The issue of access to agricultural land be recognised within the context of subsistence farming and food security as well as being part of the culture of the affected communities.



² Anglo Platinum, “Environmental Impacts”, <http://www.angloplatinum.com/> [accessed 29 July 2008].

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- » At the time of consultation with affected communities, that it be more clearly and properly explained that there will or may be the possibility of a time delay between PPL's appropriation of agricultural land for mining purposes and the provision to communities of replacement agricultural land. This includes not only the provision of compensation, but the determination of the impact on food security of the affected communities given the traditional and partial reliance on subsistence farming and limited access to commercial food sources.
 - » Taking into account the traditional and partial reliance on subsistence farming and the nature of traditional communal living, that Anglo Platinum more broadly consider adherence to IFC Performance Standard 5 which requires the compensation of economically displaced persons who do not have legally recognisable claims to land.
 - » Matters related to agricultural land should be included in a land rights clarification to be undertaken with the affected communities prior to any relocation process.

7. Compensation

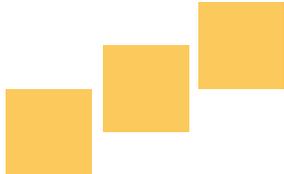
- » PPL further engage with affected communities to clarify and outline the non-financial benefits of relocation.
- » The SAHRC's recommendations above regarding agriculture and food security are of equal application to the specific question of compensation.
- » See further the SAHRC's general recommendations concerning community consultation.

8. Transportation of children to school

- » PPL meet with the Municipality to determine what transportation will be provided for all children of all ages in households yet to relocate and those resistant to relocation. This is not simply a municipal responsibility and Anglo Platinum must take responsibility for the long term consequences of relocation, including the effects upon communities refusing to relocate. The Municipality may not be in a position financially, or as regards capacity, to provide for such transportation. The relocation would then have the effect of inhibiting those children's access to education if municipal resources are diverted to the new villages. Anglo Platinum should not divorce itself from these consequences or from the responsibility of determining and implementing sustainable solutions.
- » Ultimately, there should be a realisation that there is a danger that the vulnerable are being negatively impacted upon by the relocation negotiation process. Removing transport links for children will negatively impact key stakeholder groups that in fact have no real agency in the relocation decision making process. This therefore has the potential to exacerbate vulnerabilities both in the short and long term.

9. Concrete batch plant

- » PPL provide information to all key stakeholders indicating that remediation of the land is complete and its future intended use.
- » Such plants in future be dismantled and removed directly after their being decommissioned, including the removal of cement dust and aggregate stockpiles, and that there should be a rehabilitation of the land.



Medium to long term issues:

- » The recommendations made by the SAHRC in this report concerning the obtaining of free prior informed consent of affected communities apply equally to State undertakings. This recommendation remains despite the legislative standard being one of “consultation” by the mining company, and is again an attempt to move beyond compliance.
- » The Department of Minerals and Energy (“DME”) should clearly state what its criteria are for meeting the required standard of “consultation” by the applicant mining company with the affected community. This will further empower the affected community to assert their rights during the process as opposed to objecting to a process after the fact.
- » The Department of Land affairs (“DLA”) should engage affected communities on the nature of land rights at the outset of any resettlement negotiation process so as to avoid confusion and uncertainties. This lands rights clarification will provide certainty for communities concerning their informal rights to land.
- » The SAHRC engage further with the DME, DLA and the Department of Environmental Affairs and Tourism.

Relationships:

1. Delegation of decision making, consultation and process management to s21 companies

- » Reference is made to the observations in the report and the recommendations concerning consultation in paragraph B.4 below.

2. The role and responsibilities of the Mogalakwena Municipality

- » The s21 companies, PPL and Mogalakwena Municipality revisit the Service Level Agreements (“SLAs”) signed in 2004 and assess whether the Mogalakwena Municipality has the capacity to undertake the level of service provision outlined in the agreements.
- » PPL continue to share responsibility for service provision until these agreements have been revisited and continue to share this responsibility if it transpires that the Mogalakwena Municipality is unable to fulfil these agreements.
- » The Municipality be included as a stakeholder in all relevant engagements from the outset of any discussions concerning resettlement. The Municipality should therefore be recognised as a critical stakeholder with whom ongoing engagement is essential.
- » The ability of the Municipality to deliver upon the SLAs should be periodically reviewed through ongoing and open engagement between the Municipality and PPL.

3. Sensitive community relationships: the Mapela Tribal Authority

- » The MTA submit its response to allegations presented in the ActionAid report within an agreed time frame.
- » The MTA call an extraordinary meeting of traditional leadership structures to discuss and clarify all aspects relevant to the resettlement processes.
- » There be a recognition of the possibility of tension between individual and community interest and that a clear and transparent grievance procedure be put in place to deal with this.

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- » One of the items on the agenda be the transparent interaction between the MTA, PPL and the s21 companies, and how to put this into practice to the satisfaction of affected communities.
 - » The Mogalakwena Municipality be kept informed of relevant developments and interactions.
 - » There be explicit recognition of all Indunas, including those who are opposed to the relocation, aspects thereof or specific processes. In other words, there should be room for disagreement and the necessary mechanisms in place to deal with dissent and resolve disputes.

4. Sensitive community relationships: the South African Police Service

- » The SAPS proactively engage with affected communities to develop their trust relationship.
- » The SAPS investigate all complaints of misconduct by members of the SAPS and provide its findings to the SAHRC.
- » PPL initiate community dialogues with the SAPS.
- » The SAHRC's Polokwane office in Limpopo initiates a programme of education to better enable individuals to seek redress for alleged dissatisfaction with SAPS services and alleged police abuse, to empower community members and avoid community members taking the law into their own hands.

B. The sources: institutional processes

1. Process documentation (including reporting)

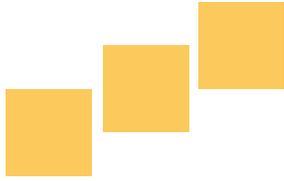
- » The progression from a compliance based approach to resettlement to embracing a proactive risk mitigation approach through pre-emptive planning and documentation in line with the latest World Bank and IFC guidelines and standards. This incorporates a substantive, comprehensive stand alone Resettlement Action Plan ("RAP"). This further requires that planning and consultation with communities take place in order not to undermine community perceptions as to their own agency in the process. Communities should ultimately be empowered to actively participate in processes that affect them, have certainty as to possible outcomes, processes and grievance redress mechanisms.

2. Monitoring

- » PPL provides the SAHRC with all documentary evidence in relation to the monitoring process.
- » PPL adheres to international best practice as in the report in monitoring the progress of the relocation process.
- » PPL link monitoring and grievance redress mechanisms to create a better understanding of how the relocation process is progressing and better allow PPL to make timely interventions to address issues emerging throughout the relocation process.

3. Grievance redress

- » A grievance redress process is a fundamental vehicle for individual community members to voice concerns over the relocation and thereby endowing them with agency within the process. Through an understanding of traditional and customary practice, and in the knowledge that community members have sought grievance redress elsewhere, the SAHRC recommends that PPL provide clarity for the community on the mechanism created for community members to access grievance redress.



- » A grievance mechanism is a key mechanism by which project sponsors are able to monitor the progress of the relocation process. The SAHRC therefore recommends that grievance mechanisms are meaningfully employed to ensure PPL is aware of developing issues which have the potential to disrupt the relocation process and thereby significantly impact upon the human rights of affected communities.
- » As project sponsors, the SAHRC recommends that PPL needs to recognise its unique position in the web of relationships between stakeholders to address specific concerns on the relocation process. It therefore should seek to clarify its responsibility for grievance redress as distinct from that of other institutions such as the MTA and the Mogalakwena Municipality.
- » The SAHRC recommends formal and transparent lines of communication are installed between the MTA and Mogalakwena Municipality and PPL to ensure that all relocation and mining related community grievances are delivered to the project sponsor.
- » In developing and evaluating non-judicial grievance mechanisms the SAHRC recommends regard be had to the concept of “rights compatibility” of grievance mechanisms in process and substance. Developing such a set of principles and guiding points was the focus of a project of the Kennedy School of Government’s Corporate Social Responsibility Initiative, Harvard University.³ The core principles of rights compatibility in process “require that processes affecting the lives, well-being and dignity of individuals and groups should be based on inclusion, participation, empowerment, transparency and attention to vulnerable people. They also demand that any grievance process be fundamentally fair.”⁴ Furthermore, the grievance mechanism must be rights compatible in substance. This requires that “complaints are addressed in a manner that reflects and respects human rights, including, crucially, the right to an effective remedy”.⁵

4. Consultation

- » A representative community consultation committee should have been formulated at the start of the process which allowed for representation from all major stakeholders. This type of representation was only developed late in the process during the latter half of 2007 when community protest against the relocation process and developing conflict between the MDC and the s21 companies prompted the creation of the Task Team.

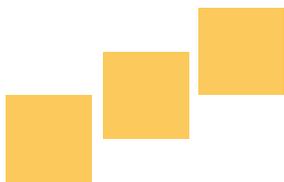
This view has been validated by the s21 companies and the MDC.

The Task Team has since disbanded and the SAHRC recommends that all stakeholders engage in developing a new relocation committee, which includes representation from all affected stakeholders to ensure meaningful and thorough representation in the process.

- » The SAHRC recommends reference to international guidance through the following IFC publications:⁶



³ Corporate Social Responsibility Initiative, Kennedy School of Government, Harvard University, *Rights Compatible Mechanisms: A Guidance Tool for Companies and their Stakeholders* (January 2008).
⁴ *Ibid*, p7.
⁵ *Idem*, p8.
⁶ Available at http://www.ifc.org/ifcext/sustainability.nsf/Content/Publications_GoodPractice_StakeholderEngagement [accessed on 29 July 2008].



- 
- "Stakeholder engagement: A good practice guidance for companies doing business in emerging markets"; and
 - "Doing better business through effective public consultation: A good practice manual".

5. Achievement of consent (beyond a fixed point in time)

- » The SAHRC recommends that community members vocalise dissent earlier in the process to ensure that complaints are heard in time for effective action to be taken.
- » The SAHRC recommends that PPL acknowledges the flaws identified in the achievement of the consent process and engages with all stakeholders including resistant community members in working through any stalemate.
- » The SAHRC recommends that Anglo Platinum move beyond a compliance based approach in undertaking community consultation and achieving community consent and in future seek to achieve free, prior and informed consent as a key risk mitigation strategy.



Abbreviations

CLOs	Community Liaison Officers
Constitution	Constitution of the Republic of South Africa Act, 108 of 1996
DEAT	Department of Environmental Affairs and Tourism
DLA	Department of Land Affairs
DME	Department of Minerals and Energy
DWAf	Department of Water Affairs
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EMPR	Environmental Management Programme Report
IFC	International Finance Corporation
IGS	Summary Report: A groundwater review at Anglo Platinum's RPM-Mogalkwena Section to determine if the mining activities are the cause of the elevated nitrates in the Ga-Molekana and Old Ga-Pila communities
KHL Attorneys	Knowles Husain Lindsay Inc Attorneys
MDC	Motlhotlo Development Committee
MPRDA	Mineral and Petroleum Resources Development Act, 28 of 2002
MRRC	Motlhotlo Relocation Resistance Committee
MTA	Mapela Tribal Authority
Municipality	Mogalakwena Municipality
PAP	Project Affected Person
PPL	Potgietersrust Platinums Limited
PPRust	Potgietersrust Platinums Rustenburg
PS	Performance Standard
RAP	Resettlement Action Plan
RDP	Reconstruction and Development Programme
SAHRA	South African Heritage Resources Agency
SAHRC	South African Human Rights Commission
s21 company	Section 21 Company
SLAs	Service Level Agreements
TLB	tractor-loader-backhoe
WBG	World Bank Group
World Bank BP	World Bank Procedure
World Bank OP	World Bank Operating Procedure



Important Notes

Where photographs were taken of individuals, permission was sought prior to taking the photographs.

The specific documentary sources cited vary and include public documents; documents provided freely and openly to the SAHRC; documents cited for confirmatory purposes; and specific factual quotations or excerpts from communications to the SAHRC. The SAHRC was provided with and in certain instances had sight of records to which formal legal protections governing disclosure exist. These protections have been respected in the compilation of this report. No privileged or confidential content has been divulged. Legal protections which apply to specific records therefore continue to apply to them specifically. Such records cannot be accessed from the SAHRC.

This investigation is ongoing. Therefore it should be noted that if information was submitted to the SAHRC or otherwise made available to the SAHRC after the date of submission of the final draft of this report for printing, such information will not be reflected in the report.

The SAHRC specifically requests that submissions made in response to this investigation are guided not by defending specific actions or positions but by the spirit in which this investigation was undertaken, to address vulnerability, to protect and promote the human rights of affected communities and move towards breaching the current impasse within the relocation process.

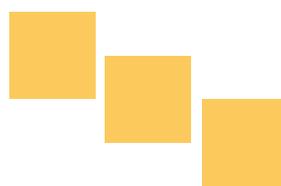
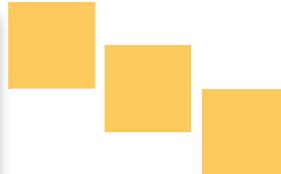
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CHAPTER 1

.....

*HUMAN RIGHTS
IN CONTEXT*



1.1 Mandate of the SAHRC: protect, respect and promote human rights

Established under Chapter 9 of the Constitution of the Republic of South Africa Act, 108 of 1996, (“the Constitution”) the South African Human Rights Commission is a national institution established to entrench constitutional democracy through the promotion and protection of human rights. As such the SAHRC is mandated to:

- » Promote respect for human rights and a culture of human rights;
- » Promote the protection, development and attainment of human rights; and
- » Monitor and assess the observance of human rights in South Africa.

The Constitution also sets out the powers attributed to the SAHRC necessary for it to undertake its function including the powers to:

- » Investigate and to report on the observance of human rights;
- » Take steps to secure appropriate redress where human rights have been violated;
- » Carry out research; and
- » Educate.

The South African Human Rights Commission Act, 54 of 1994, confers further powers, duties and functions on the SAHRC. These include the power to conduct an investigation into any alleged violation of human rights, to call any person to appear before it and produce to it all articles and documents required in terms of the investigation.

Chapter 2 of the Constitution contains the Bill of Rights which “enshrines the rights of all people in our country and affirms the

democratic values of human dignity, equality and freedom.”⁷ Unique to South Africa, the Bill of Rights also applies horizontally between private actors. Section 8(4) provides that juristic persons (i.e. companies) can be the holders of rights to the extent that the nature of the right permits. However, section 8(2) provides that juristic persons are also the bearers of obligations and are bound by the provisions of the Bill of Rights “if, and to the extent that, it is applicable, taking into account the nature of any duty imposed by the right.” In the case of the project sponsor to a relocation process, there are a variety of obligations, detailed below, which the company could have a duty to bear. Generally, the SAHRC does not consider the human rights obligations of juristic persons as entrenched in the Bill of Rights to exist to the same extent as the obligations of the State. However, the horizontal operation of the Bill of Rights is clear.

1.2 The investigation

In March 2008, international NGO ActionAid released a report entitled “Precious Metal: The impact of Anglo Platinum on poor communities in Limpopo, South Africa.” Launched at Human Rights House, ActionAid called for the SAHRC to undertake a full investigation into a series of allegations of human rights violations made against the relocation process undertaken by Anglo Platinum at its PPL mine near Mokopane in the Limpopo Province. The SAHRC asserted that the matter was a key priority and committed to undertake a full investigation not only into the allegations presented by the ActionAid report but into the full human rights context surrounding the whole relocation process in accordance with the mandate of the SAHRC. Broadening the scope of the investigation is in line with the role of the SAHRC as not only a reactive but also a proactive institution mandated



⁷ Section 7(1).

with the authority to initiate independent investigations.⁸

This investigation was undertaken through collaboration between delegations from the national office in Johannesburg and the provincial office in Polokwane, Limpopo. The SAHRC has established offices in all provinces to ensure that its services are widely accessible, and to enable the SAHRC to gain local knowledge and understanding to better address localised concerns and specific lived experiences.

Companies such as Anglo Platinum are well versed in undertaking both environmental and social impact assessments. However, the international community is beginning to assess the actions of companies against a human rights framework. This report therefore seeks to assist companies, including Anglo Platinum, to better understand how environmental and social issues can impact on the ability of local communities to assert their human rights and can exacerbate existing vulnerabilities.

The SAHRC has sought to constructively engage with all stakeholders when undertaking its investigations in an attempt to build sustainable solutions rather than assert isolated judgements. In this way the SAHRC deals with issues which it is investigating in the context of the specific allegation to create practical and sustainable solutions.

The need to address allegations and look at the wider human rights context in a timely manner has meant that the overriding focus of the investigation has been on the interplay between business and local communities. In this respect the SAHRC acknowledges that greater focus is needed on the role of and

the relationships with the Mogalakwena Municipality and Mapela Tribal Authority. The SAHRC also recognises the need for further analysis of the nature and content of communal land tenure itself. However, it is not the role of the SAHRC to attempt to untangle issues surrounding the division of responsibility for the provision of services between the mine and the local municipality, or to mediate in helping each stakeholder better understand the limits of these responsibilities. What is more specific to the SAHRC's mandate is why there was such a tangle in the first place and how this impacts upon the human rights of local communities.

Observations and findings derived from its investigations seek to look beyond a legalistic conception of human rights violations in trying to understand the source of these violations. The SAHRC hopes that through its approach of linking potential symptoms of human rights violations to institutional source problems that it will engender a deeper and more constructive understanding of the failures and successes in the project and create learning to prevent such potential violations occurring in the future.

In seeking practical and durable multi stakeholder oriented solutions the SAHRC asserts specific and practical recommendations developed out of its observations and findings. The SAHRC seeks to outline the role of each stakeholder in undertaking these recommendations and where applicable expands upon the potential role of the SAHRC itself.

This report is essentially an investigation into the interplay between key stakeholders, the relationships that were developed between these stakeholders and the institutions created to support those relationships. Investigating



⁸ Complaints of alleged human rights violations in the Burgersfort area have been lodged with the Limpopo office of the SAHRC based in Polokwane. Although this report does not specifically deal with these complaints, there are generic issues which are common concerns to many communities in areas where mining is undertaken, but specific factual contexts may differ.

alleged human rights violations necessitates an analysis of the lives of those communities whose rights have been affected. In undertaking this investigation the SAHRC is clearly aware that although more than a snap shot, a time limited investigation will at best only be able to capture a reflection of a few months in a constantly evolving situation. Having acknowledged this shortcoming and the role of the SAHRC to monitor human rights and receive specific complaints, as well as following up on the specific recommendations made in the report, the SAHRC's engagement with the issues raised in this report will not end with its publication. The SAHRC acknowledges that the need to

submit its initial findings in a timely manner has meant that a full understanding of the complexities of all the issues surrounding this investigation may not have been achieved. The SAHRC welcomes submissions to clarify any of the observations and recommendations made in this report. However, the SAHRC specifically requests that submissions made in response to this investigation are guided not by defending specific actions or positions but by the spirit in which this investigation was undertaken, to address vulnerability, to protect and promote the human rights of affected communities and move towards breaching the current impasse within the relocation process.

CHAPTER 2

.....

INTRODUCTION AND BACKGROUND



2.1 Initiation of the investigation

2.1.1 Background information on the mining industry in Limpopo

Limpopo is South Africa's most Northern province bordering both Mozambique to the east and Zimbabwe to the north. The principal ethnic groups in the province are the Northern Sotho followed by the Tsonga and the Venda people, and it has the fourth largest provincial population in South Africa. Polokwane is the capital of the province.

Unemployment in Limpopo at 36.1% is the highest in South Africa. Furthermore the number of households under the poverty line established at R800 per month is 36.4%, lower than the national average.⁹

Limpopo is rich in mineral deposits including platinum, iron ore, chromium high and middle grade coking coal, diamonds and copper. Mining contributes to over one fifth of the provincial economy.¹⁰ Figures released by the Minerals Bureau in 2002 assert that the mining sector employs around 49 000 people in Limpopo.¹¹ However, the steady expansion of the platinum market suggests that this number will have increased within the last 8 years.

South Africa houses approximately 90% of the world's platinum resources; a commodity purported to be integral to the production of about 20% of all consumer goods globally. Furthermore over one third of all platinum supplied to the international markets each year is used in the production of emission controlling

catalytic convertors.¹² The significance of the industry for the global economy can therefore not be underestimated not least in terms of its environmental potential. The significance of the platinum and therefore the mining sector in South Africa must equally not be underestimated as it supplies over 80% of the world's platinum. Domestically the mining industry is South Africa's largest employer with approximately 460 000 direct employees and a further 400 000 employed within the mining supply chain.¹³

The fixed geological nature of mining allied to the significance of the industry within the South African domestic context means that resettling communities situated over or in proximity to mineral resources is often inevitable. Most global domestic legal systems allow provisions of eminent domain whereby a state has the authority to forcibly appropriate private land for a public use having paid market value compensation for all assets seized. The alternative to this process is the development of negotiated settlements with affected peoples. It must be iterated that Anglo Platinum has made it clear that "(it) does not...start from a position of relying upon the use of powers (of appropriation/ eminent domain) but rather seeks to negotiate with communities to obtain their agreement on fair collective and individual compensation."¹⁴ There are countless examples of relocation both in South Africa and globally. Such processes are regulated by both domestic legal systems and international best practice. The International Finance Corporation ("IFC") (the private sector arm of the World Bank) provides recommended guidance for relocation within

⁹ <http://www.sehd.org.za/limpopo.html> [accessed on 26 July 2008].

¹⁰ <http://www.southafrica.info/about/geography/limpopo.htm> [accessed on 26 July 2008].

¹¹ <http://www.southafrica-newyork.net/consulate/provinces/limpopo.htm> [accessed on 26 July 2008].

¹² <http://www.louisianagold.com/platfact.htm> [accessed on 26 July 2008].

¹³ <http://www.southafrica.info/business/economy/sectors/mining.htm> [accessed on 26 July 2008].

¹⁴ Anglo Platinum's response to the ActionAid allegations, *The Facts*, p4 (first edition March 2008). (hereinafter referred to as "*The Facts*"). See the second edition (April 2008) at http://www.angloplatinum.com/investor_media /im_ latest_news/Anglo_ActionAid.pdf.

its Performance Standards and most specifically Performance Standard 5 on Land Acquisition and Involuntary Relocation. The Standard recommends that where possible involuntary relocation should be avoided or minimised. Where this is impossible it recommends that appropriate measures are planned and implemented to mitigate the adverse impacts on displaced persons and host communities.¹⁵

The issue of relocation often highlights the difficult interplay between community welfare and national economic growth. In its rebuttal to the allegations made by ActionAid, Anglo Platinum states that “natural resources... generate significant economic benefits for the nation as well as new economic and social opportunities for local people.”¹⁶

The SAHRC acknowledges the significance of the mining industry and more specifically the platinum industry as a chief employer and one of the drivers of the South African economy. It also acknowledges the global and domestic experience of relocation within the mining industry. It is important to state that although the SAHRC has, with regard to this report focused its investigation primarily on one company and a handful of communities affected by relocation, it acknowledges this wider context in assessing the broader significance and learning from this individual case.

2.1.2 ActionAid report launch and BBC coverage

ActionAid launched a report entitled *Precious Metal: The impact of Anglo Platinum on poor communities in Limpopo, South Africa*

¹⁵ International Finance Corporation, Performance Standard 5, “Land Acquisition and Involuntary Resettlement”.
¹⁶ *The Facts*, p4.

at Human Rights House, the SAHRC National Office, in March 2008. This report contained a number of allegations of human rights violations committed during the relocation of the communities at Motlhotlo, undertaken to allow for the Potgietersrust Platinums Rustenburg (“PPRust”) North Expansion Project of the Anglo Platinum Potgietersrust Platinums Limited (“PPL”) in Limpopo. As part of the recommendations made within the report ActionAid requested that the SAHRC “conduct an investigation into the alleged violations of economic, social and cultural rights highlighted in the report – in particular the rights to food and water”.¹⁷

In close anticipation of the publication of this report, BBC Radio 4’s “File on 4” broadcast a programme entitled “Who pays the price of platinum” on 25 March 2008. The report echoed allegations made within the ActionAid report and allowed for a response to be made by representatives from Anglo Platinum.¹⁸

2.1.3 Anglo Platinum response

Anglo Platinum submitted a response to the ActionAid report in March 2008 welcoming the opportunity for the SAHRC to undertake a full investigation into the presented allegations. Anglo Platinum maintained that it took the allegations made by ActionAid seriously and pledged to attempt to correct all factual inaccuracies with all stakeholders.¹⁹

2.2 Process of the investigation

As highlighted above the SAHRC is mandated to not only investigate received complaints, but



¹⁷ *Precious Metal: The impact of Anglo Platinum on poor communities in Limpopo, South Africa* (March 2008), p50.
¹⁸ BBC Radio, File on 4, “Who pays the price of platinum”, http://news.bbc.co.uk/2/hi/programmes/file_on_4/7305335.stm [accessed on 29 March 2008].
¹⁹ Anglo Platinum Media Release, http://www.angloplatinum.com/def_main.asp?ld=press/display.asp&ld2=184&Related=true [accessed on 29 July 2008].

also initiate its own investigations. Receiving the allegations made within ActionAid report the SAHRC commissioned an investigation not only into these specific allegations but the wider issues surrounding the relocation process undertaken by Anglo Platinum at its PPL mine in Limpopo.

2.2.1 Engagement of stakeholders

In its investigation the key activity first undertaken by the SAHRC was the identification and then the engagement of all key stakeholders.

The SAHRC mapped all key stakeholders through an initial documentation analysis using the sources of information outlined below and through the initial fact finding mission to the sites undertaken on 3 – 4 of April 2008. See annexure 1 for a full list of identified stakeholders.

The SAHRC maintained constant contact with Anglo Platinum through email, telephonically, in meetings and correspondence. Initially correspondence was directed to the project manager. The SAHRC then met with Anglo Platinum company representatives and their legal representative Knowles Husain Lindsay Inc Attorneys (“KHL Attorneys”) on 21 April 2008. On 13 May 2008 the SAHRC requested key information and a list of documentation from Anglo Platinum through KHL Attorneys. This information was provided to the SAHRC by Anglo Platinum under cover dated 6 June 2008. Thereafter the SAHRC compiled a gap analysis against its original request and submitted a request for further information and documentation to address gaps, clarify specific points and obtain information on new and developing issues. This request was directed to KHL Attorneys on 25 July 2008 and the response from KHL Attorneys was dated 8 August 2008.

The SAHRC maintained contact with affected communities during site visits, telephonically and through civil society organisations.

The SAHRC initiated and maintained contact with other key stakeholders through site visits, telephonically and via email correspondence, including the MTA, the Mogalakwena Municipality (“the Municipality”), s21 companies and their legal representative Bhadrish Daya Attorneys.

Details of these engagements are included in the following section.

2.2.2 Sources of information

In undertaking its investigation the SAHRC used a wide but inexhaustible list of information sources, ranging from local level community meetings to broader engagement at national level conferences. The detail of specific sources is outlined here:

Site visits and community meetings

The SAHRC undertook two separate site visits to the PPL mine and surrounding communities in the Mokopane area during which time it gathered information and sought specific community perspectives and input through:

- » Meetings with individuals and specific communities including communities, and some consolidated groups of communities, at Old Ga-Pila, Sterkwater, Armoede, Sekuruwe, Ga-Chaba and Ga-Puka;
- » Meetings with various community structures including the Motlhotlo Relocation Resistance Committee (“MRRC”), the Motlhotlo Development Committee (“MDC”) and various Section 21 (“s21”) companies;
- » Meetings with PPL project management;
- » Meetings with the Mapela Tribal Authority (“MTA”);

- » Gathering of significant community documentation such as memorandums and key correspondence;
- » Inspection of resettlement sites and residual communities; and
- » Taking of photographs.

Information and documentation

The SAHRC received relevant documentation from key stakeholders on request and in some cases pre-emptively. This documentation has informed much of the factual content of the report, and also the ongoing engagement with key stakeholders by raising further questions and further points for clarification. The SAHRC has addressed specific information requests to various stakeholders with further requests for clarification and additional information where necessary. These stakeholders include:

- » Anglo Platinum: the SAHRC addressed several requests for information, clarifications and additional information and compiled a list of documentation requests for Anglo Platinum which was responded to via Anglo platinum's legal representative KHL Attorneys. The specific dates are set out in paragraph 2.2.1 above;
- » s21 companies and Bhadrish Daya Attorneys: the SAHRC addressed a request for information concerning the s21 companies which it directed through the s21 companies' legal representative, Bhadrish Daya Attorneys. This specifically refers to the Ga-Pila, Ga-Puka, Ga-Sekhoalelo s21 companies and the Minerals Committee. This supplemented the documentation pre-emptively provided by Bhadrish Daya Attorneys at the time of initiation of the investigation, in April 2008, to provide background information and inform of *sub judice* matters pertaining to the relocation. The later request for additional information and clarification was dated 25 July and the response received was dated 31 July 2008;

- » MTA: the SAHRC twice requested, in person, the official response of the Mapela Tribal Authority to the allegations made in the ActionAid report. These requests were made on 3 April and 10 July 2008. On 23 September 2008 the Kgoshigadi Langa wrote a letter to the SAHRC indicating that the Traditional Council had not as yet completed its promised report in response to the alleged human rights violations in the ActionAid report Precious Metals and requested further time to prepare their report. No response substantive response had been received by the SAHRC at the time of drafting of the report; and
- » The Municipality: the SAHRC addressed a request for information to the Municipality on 25 July 2008. No written response has been received to date, but information was obtained telephonically on 14 August 2008 from the Municipal Manager Mr Makobe.

Correspondence

The SAHRC has had ongoing email and telephone contact with the following stakeholders through which it has been able to gather information on the key issues highlighted below:

- » Representatives of PPL and Anglo Platinum;
- » Representatives of affected communities;
- » Legal representation for specific parties such as the s21 companies, Anglo Platinum and the representatives of affected communities; and
- » Telephonic and e-mail correspondence with NGOs active in the area on this investigation and related mining concerns, including ActionAid, Jubilee South Africa and the Bench Marks Foundation. The Bench Marks Foundation has been involved in research on mining related concerns in Africa and has also published various reports, one of

which includes perspectives on platinum mining in Limpopo.²⁰

Meetings

In addition to constant telephonic and email communication the SAHRC formally engaged Anglo Platinum during a meeting at Human Rights House on 21 April 2008 at which time the parameters of the investigation were discussed, contact initiated, the role of the SAHRC clarified and methods of communication formalised. Pursuant to this meeting Anglo Platinum requested that all correspondence and information requests be directed through its legal representatives KHL Attorneys.

National conferences

Members of the SAHRC delegation elicited information on the broader context of mining in South Africa through attendance and interaction at the:

- » SAHRC Conference on Human Rights and Business: Business, Development and Poverty, March 2008;
- » Jubilee South Africa/ ActionAid Conference entitled "The Extractives Industry in South Africa, A Force for Development?", April 2008; and
- » The Bench Marks Foundation International Conference, June 2008.

Media

The SAHRC has also been aware of the need to keep up to date with all media coverage of the investigation. Acknowledging the powerful perceptions promulgated by the media, the SAHRC has monitored the type of information in the public domain to better understand the likely perceptions of the process by all stakeholders and where necessary take steps to address these perceptions.

2.2.3 Overview of site visits

The SAHRC undertook two separate site visits to the PPL mine and surrounding communities after the initiation of the investigation. The first visit took place on 3 – 4 April 2008 and the second from 10 – 11 July both lead by a delegation made up of representatives from the national and Limpopo provincial offices of the SAHRC.

The initial visit was a fact finding exercise to establish issues of immediate concern and address these to Anglo Platinum, identify key stakeholders, meet affected communities and developing a methodology and plan of action for taking the investigation forward.

The purpose of the second site visit was to visit previously unvisited communities and sites, follow up on issues identified from a desk based document analysis and the previous site visit and meet key stakeholder groups.

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²⁰ The Bench Marks Foundation, *The Policy Gap (2): Review of the Corporate Social Responsibility Programmes of the Platinum (Limpopo), Gold and uranium Mining (North West, Gauteng), and Coal (Mpumalanga) Sectors in South Africa* (June 2008).

CHAPTER 3

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*FACTUAL REPORT OF ENGAGEMENT
AND SITE VISITS*



3.1 Site Visit 1: 3 – 4 April 2008 – Initial fact finding

It was decided by the SAHRC that the first intervention would be an initial fact finding mission and site visit to take place on 3 to 4 April 2008. The purpose of this visit was to visit:

- » PPL mining sites of Anglo Platinum;
- » Surrounding communities;
- » Residual communities; and
- » Relocated communities.

The focus of the initial trip was to:

- » Make initial contact with various stakeholders and identify further stakeholders;
- » Assess the scope of the operation for drafting the project plan in going forward with the investigation;
- » Determine urgent alleged human rights violations;
- » Identify and raise urgent matters with Anglo Platinum immediately; and
- » Identify other matters to be addressed in due course.

During the two day visit the SAHRC delegation visited the following sites:

- » PPL mine;
- » Rooibokfontein;
- » Armoede;
- » Sterkwater;
- » Motlhotlo (Ga-Puka and Ga-Sekhaolelo residual communities);
- » Old Ga-Pila; and
- » Ga-Chaba.

The SAHRC delegation had intended to visit other sites in Motlhotlo and Ga-Molekane but had insufficient time due to unforeseen circumstances, namely the blockading of roads, allegedly by community members.

The specific stakeholders consulted, some in depth, others addressed as a group with a view to returning, and some spontaneous community encounters include:

- » Community members (Old Ga-Pila, Sterkwater, Motlhotlo, Ga-Chaba and certain Indunas);
- » Motlhotlo Relocation Resistance Committee (“MRRC”);
- » s21 company members (various company representatives were present at the Anglo Platinum project office in Armoede);
- » Motlhotlo Development Committee (“MDC”);
- » Jubilee South Africa community workers;
- » The Minerals Committee (a committee comprising community members who work together with Anglo Platinum and focus on issues such as fixing cracks in houses and other structural matters);
- » The Mapela Tribal Authority (Goshigadi Langa); and
- » PPL Relocation Project Manager Greg Morris and other PPL employees.

3.2 Site Visit 2: 10 – 11 July 2008 – Follow up visit

The initial site visit and ensuing interaction with all stakeholders, the collection of documentation and follow up on key issues created greater clarity on the key priorities and routes of inquiry for the SAHRC investigation.

It was agreed that a follow up visit to the site would facilitate the process. The purpose of this follow up visit was to:

- » Visit previously unvisited sites;
- » Follow up and find clarification on key issues of concern; and
- » Consult with key stakeholder groups.

During the two day visit the SAHRC delegation visited the following sites:

- » Ga-Chaba and Skimming (a mine employee camp close to Ga-Chaba);
- » Mošate/ Mapela Tribal Authority;
- » Old Ga-Pila;

- » Ga-Molekane;
- » Motlhotlo;
- » Sekuruwe; and
- » PPL project offices at Armoede.

The specific stakeholders consulted include:

- » Ga-Chaba Land Committee and community;
- » Mapela Tribal Authority;
- » Residual community at Old Ga-Pila;
- » Some members of the MRRC at Motlhotlo;
- » Sekuruwe community;
- » Motlhotlo s21 companies; and
- » MDC.