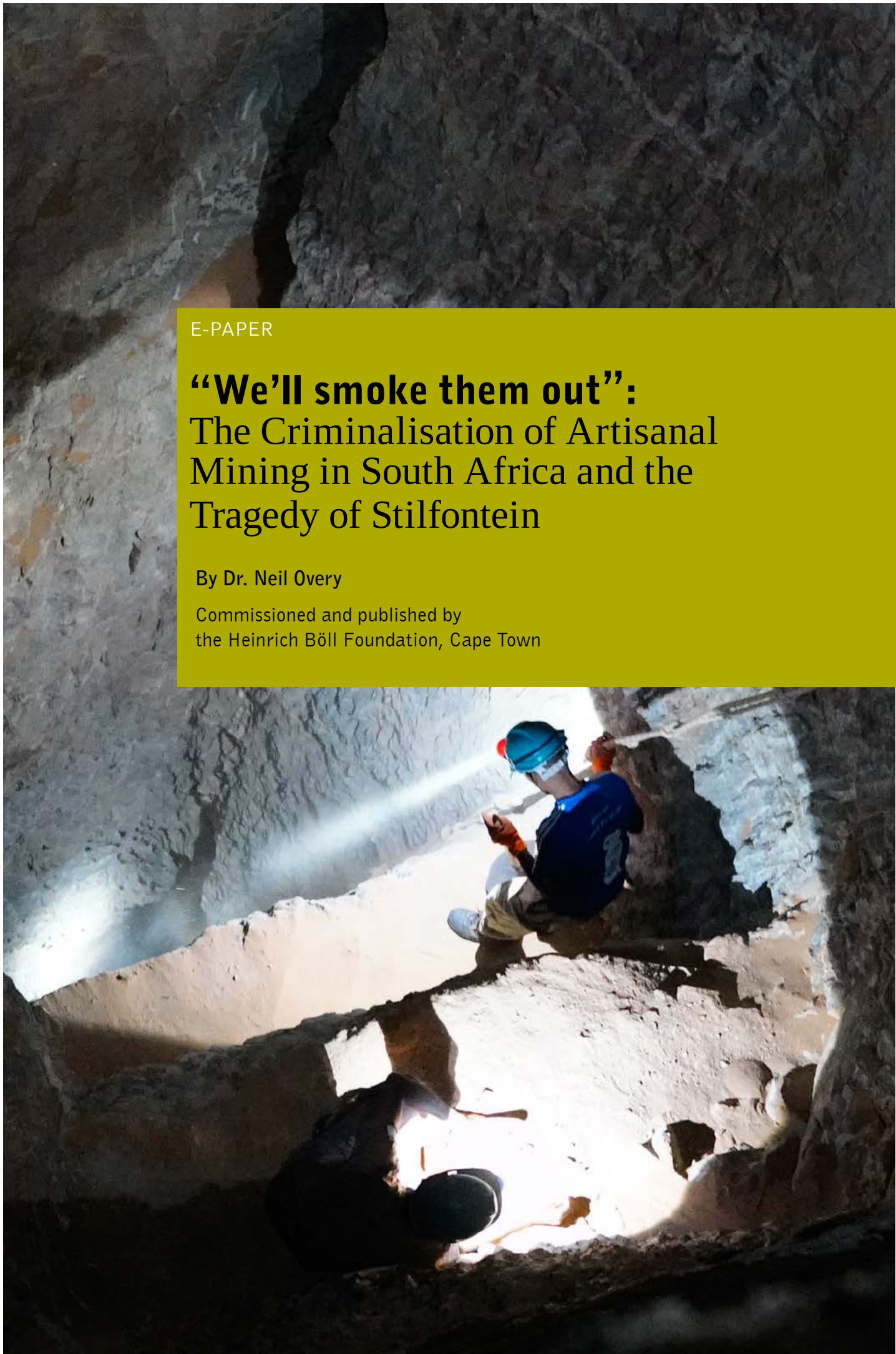


E-PAPER

“We’ll smoke them out”: The Criminalisation of Artisanal Mining in South Africa and the Tragedy of Stilfontein

By Dr. Neil Overy

Commissioned and published by
the Heinrich Böll Foundation, Cape Town



About the author:

Dr Overy is a freelance researcher, writer and photographer who specialises in environmental and social justice issues. He is also a Research Associate in Environmental Humanities South at the University of Cape Town.

Publisher: Heinrich Böll Foundation, Cape Town.
33 Church Street
Cape Town, 8005.

Design: Idea in a Forest (www.idealinaforest.org)
Cover photo: Will Dossett, Wikimedia Commons. Creative Commons Attribution-Share Alike 4.0

Publication Date: August 2025

The content of this document is meant for information purposes only. Though the accuracy and validity of information have been checked thoroughly, the authors cannot be held liable for the content of this document.

The publication is licensed under Creative Commons license "Attribution 4.0 International" (CC BY 4.0). For the license agreement, see <https://creativecommons.org/licenses/by/4.0/>. For Legal code and for a summary (not a substitute) see <https://creativecommons.org/licenses/by/4.0/deed.en>.

**“We’ll smoke
them out”¹:**

The Criminalisation
of Artisanal Mining
in South Africa
and the Tragedy of
Stilfontein

DR. NEIL OVERY

Commissioned and published by the Heinrich Böll Foundation,
Cape Town

TABLE OF CONTENTS

Introduction	1
1. A Brief History of Gold Mining in South Africa	3
2. Enter Artisanal Miners	5
2.1 Mining Regulation in South Africa	5
2.2 Wider Economic and Political Drivers	8
3. The Perfect Storm or History Repeating Itself?	10
4. Recommendations	13
5. Endnotes	16

INTRODUCTION

On the 16th of January 2025, the acting police commissioner of South Africa's North West province, Major General Patrick Asaneng, stated that the mission to rescue 'illegal' miners trapped at the Buffelsfontein gold mine near Stilfontein was over. According to Asaneng, 246 'illegal' miners were rescued during the operation, while 78 bodies were recovered.² Police have confirmed that since their operation began at the mine in late September 2024, 87 miners have died, while Lawyers for Human Rights, which has been representing the trapped miners and their families, estimates at least 109 deaths.³ To date, 1 437 miners have also been arrested by the police at the mine.⁴

The total numbers of trapped miners who died during the police's Operation 'Vala Mgodì' (Close the Holes) will probably never be known because of the extremely dangerous conditions at Buffelsfontein. However, while much remains uncertain in terms of the roles of the various stakeholders and authorities involved, it is nonetheless possible to analyse the context within which the events at Buffelsfontein unfolded. This context goes a long way in explaining how this horrendous and avoidable incident was able to occur in a constitutional democracy.

A NOTE ON TERMINOLOGY

There is a general misunderstanding, especially in the media, concerning what words to use to describe miners who do not work formally for large-scale traditional mining houses. Various terms are regularly used to describe these miners as: 'artisanal', 'informal', 'community', 'illegal', or as 'zama zamas' (which roughly translates from isiZulu into 'those who try their luck'). These terms are often used in the media interchangeably, which is problematic as they do not necessarily refer to the same type of conditions or contexts within which miners work.

For the sake of clarity, it is thus necessary to provide some basic definitions. In general, artisanal, informal and community miners engage in similar mining practices which, are 'informal, traditional, or customary mining operations conducted by individuals, families, or community groups using low-technology or semi-mechanised methods, primarily for livelihood or subsistence purposes.'⁵

In contrast, 'zama-zamas' are miners who work for, or are forced to work for, large criminal syndicates. They do, however, use the same low-technology methods as artisanal, informal and community miners, which leads to the terms being uncritically used interchangeably. Because of the criminal connotations of 'zama zamas', artisanal, informal and community miners reject being referred to as 'zama zamas'.

The situation is further complicated by the term 'illegal' miners. Because there is currently no way for artisanal, informal and community miners to mine legally in South Africa, they are all technically mining illegally, even though the vast majority of them want to mine legally.⁶ This technical illegality has led the South African government to categorise artisanal, informal and community miners and 'zama zamas' working for criminal mining syndicates under the same umbrella as 'illegal miners'.

In this brief we use the term artisanal as a shorthand for artisanal, informal and community miners. The term 'zama zama', is only used to refer to those working within criminal syndicates. No adjustments have been made to quotes which use the term 'zama zama'.

It should also be noted that there is nothing new about artisanal mining in South Africa, as it has been part of the mining landscape in South Africa for hundreds of years.⁷ What has changed in recent years is the emergence of criminal syndicates in the sector. Lastly, artisanal mining should not be confused with small-scale mining, which refers to small-scale mining operations (when compared to large fully mechanised and capitalised mines) which can be mechanised or semi-mechanised and tend to have access to limited capital.

1. A BRIEF HISTORY OF GOLD MINING IN SOUTH AFRICA

South Africa's economy has been historically dominated by a 'minerals-energy complex'.⁸ Since the 'discovery' of diamonds in 1867 and gold in 1886, mining has been the driving force of the South African economy, absorbing vast amounts of capital and labour throughout the colonial and apartheid eras. Despite the significance of other resources such as diamonds and coal, mining in South Africa has been dominated by gold. Such was the scale of gold mining in South Africa throughout the twentieth century that it is estimated that approximately one-third of all gold that exists in the world comes from South Africa.⁹

Extracting this gold has been a monumental task because the vast majority of South Africa's gold is located kilometres below the surface in long downward spiralling reefs which contain very low-quality ore. The ore is of such poor quality that, on average over the last 140 years, only 8 grammes of gold have been extracted for every tonne of ore mined.¹⁰ During the colonial and apartheid eras the only way to profitably mine this gold was through the brutal exploitation of black African mine workers.

Since the earliest days of gold mining, black Africans have made up the vast majority of gold miners. Within 20 years of the 'discovery' of gold, some 175 000 black Africans worked in South African gold mines, reaching a peak of around 500 000 in the late 1980s.¹¹ A very high percentage of these workers were migrants drawn from neighbouring countries or rural parts of South Africa. For example, in 1911, 60% of gold miners were 'foreign', a figure which peaked in 1973 at 79% before falling to approximately 45% by the mid-1980s (largely due to the independence of Angola and Mozambique). Migrant labourers were preferred by mine owners because they did not have to pay for the social reproduction costs (housing, families, healthcare, etc.) of migrant labourers. This enabled mine companies to suppress wages, which stagnated for black miners (who were forbidden from unionising) throughout the twentieth century, while miners themselves lived in terrible conditions in mine compounds and were plagued by illnesses caused by mining.¹²

This appalling labour system was, of course, facilitated by segregation and apartheid laws which forced black Africans into the labour market by denying them access to land, and opportunities in other sectors of the economy.

The coming of democracy in South Africa in 1994 promised an end to this brutal system of labour exploitation. While a host of substantial reforms has occurred, resulting in improved wages, better mine safety, and more equity in mine ownership, many serious systemic problems from the apartheid era remain in the mining sector. Housing, living conditions and the overall health of miners remain serious problems and were at the heart of the miners' grievances at Marikana.¹³ Communities living near mines also continue to suffer from a host of illnesses caused by mining, while overall mine safety needs to be improved.¹⁴ In fact, some analysts have argued that despite post-1994 reforms, there has been 'remarkably little difference to working conditions' for most miners.¹⁵

The reforms introduced by the South African government after 1994 coincided with the gradual reduction in the importance of mining to the South African economy, led by significant falls in gold production. In 1993, 620 000kg of gold was mined in South Africa, compared to a record low of 89 000kg in 2022. Over this period South Africa went from being the world's largest gold producer to its sixth largest.¹⁶ Between 2008 and 2019, employment in the gold mining sector fell from 190 000 to just over 90 000.¹⁷

The reason for the gold industry's precipitous fall is not because there is a shortage of gold - it is estimated that only 50% of South Africa's gold deposits have been extracted - but rather because it is no longer economically viable to access most of these deposits.¹⁸ This means that there are hundreds of gold mines in South Africa which are not being formally worked, despite having significant gold deposits in them. In many instances, formally operating gold mines, that is mines where there is a legal licence to mine issued by the Department of Mineral and Petroleum Resources (DMPR) sit alongside gold mines, or sometimes even shafts on the same mine complex, which are no-longer formally operational. This is precisely the situation that pertains at Buffelsfontein, which has 12 gold mining shafts, six are being formally mined, three are empty, while the remaining three are being mined by 'zama zamas'.¹⁹

2. ENTER ARTISANAL MINERS

The first reports of artisanal/illegal miners working underground in gold mines appeared in 1999, and since then, many thousands of artisanal/illegal miners have entered hundreds of unrehabilitated gold mines.²⁰ It is estimated that there are currently 30 000 artisanal miners (including 'zama zamas') in South Africa, many of whom operate 'illegally' only because of the difficulties associated with permitting. Many of these miners are ruthlessly exploited by criminal gangs who control access to the mines, the provision of food and equipment to those working underground, and the sale of gold.

That these forms of mining are happening in South Africa is not unusual. Some 20% of the world's new gold is being mined by small-scale and artisanal miners who make up 80% of the global gold-mining workforce. Many of these workers 'work in the shadow of the law under extremely coercive circumstances', just as they do in South Africa.²¹

2.1 Mining Regulation in South Africa

Gold mines have become a particularly accessible opportunity for those criminal syndicates controlling 'zama zamas' because of several issues which range from the way mining is regulated in South Africa, to the parlous state of bordering Southern African economies.²²

The government's regulation of mining in South Africa has always been, and continues to be, extremely weak and ineffective.²³ This weakness stems from the economic and political power that the mining industry has historically exerted over the government. While that power has diminished in recent decades, the mining sector still exerts significant influence over the government via its industry grouping called the Minerals Council of South Africa, formally the South African Chamber of Mines.²⁴ This influence is also the result of many government officials, and their families and associates, having significant economic interests in the mining sector, a pattern which has not been broken by the advent of democracy in South Africa.²⁵

The influence that the sector has historically been able to exert over the state means that government has tended to take a very light touch in terms of regulation, including how mines are closed and rehabilitated. While this is partly due to a shortage of skills (the DMPR stated in 2018 that it had only 13 inspectors to 'police mines'²⁶), it is largely the result of a lack of political will to hold the mining industry in South Africa accountable for its actions.²⁷ How else do we explain the existence of 6100 derelict or ownerless mines in South Africa, of which 1040 exist in the North West Province alone?²⁸

Mining regulation was further weakened in 2014 with the introduction of the so-called 'One Environment System', which looked to streamline the environmental permitting processes for mines. It did so by allowing the DMPR to approve all mining environmental authorisations, with the Department of Forestry, Fisheries and the Environment being reduced to the appeal authority. This has proven to be deeply problematic, because not only does the DMPR lack the specialist skills needed to review and regulate environmental authorisations, but the change also introduced a direct conflict of interest as the DMPR is expected to both promote and regulate mining.

The failure to properly regulate mining has contributed significantly to the ongoing crisis in artisanal mining in South Africa in two areas in particular - mine closure and artisanal regulations and policies.

Mine Closures

In terms of relevant South African mining legislation, the Mineral and Petroleum Resources Development Act (MPRDA) and the National Environmental Management Act (NEMA), if a mine is no longer being worked it must be officially closed in an environmentally sustainable manner. To give effect to this policy, financial resources must be set aside by mine owners to confirm that this happens. This closure process is designed to ensure that any environmental damage caused by the mine, or any environmental damage likely to be caused by the mine in the future (e.g. acid mine drainage), remains the responsibility of the mine owner.²⁹

While this legislation exists to compel the 'polluter to pay', it is systematically ignored by many mining companies in South Africa who, rather choose to place mines and shafts into 'care and maintenance' (also known as 'warehousing').³⁰ A mine is said to be in 'care and maintenance' when 'it has stopped production for various technical, environmental, financial or labour related reasons, but the holder has not declared their intent to finally close the mine'.³¹ By placing mines into 'care and maintenance', mining companies can delay, sometimes indefinitely, the obligations placed on them to formally close and rehabilitate mines. This has resulted in a situation whereby numerous gold mines exist in a limbo state where they have been abandoned or have not been rehabilitated (properly closed) thus making them vulnerable to artisanal miners and criminal syndicates.³² Ten years ago, the South African Human Rights Commission warned that this practice 'creates an open situation where 'zama zamas' will be free to come and go as they please'.³³ In 2018, the Minister for Mineral Resources stated that his depart-

ment was going to institute a 'use it or lose it' policy to prevent such actions, but this was clearly an empty threat because the practice continues unabated.³⁴

Another means by which mine closure is avoided by mining companies, which has in fact become a strategy for doing so, is via the selling of largely exhausted mines to local subsidiaries or to smaller mining companies, which then legally assume the financial obligations to properly close mines. However, many of these companies lack the resources to do so and generally extract what remains of any profit from mines before declaring bankruptcy. By declaring bankruptcy, the financial burden for mine closure then falls on the state.³⁵

A report by the Auditor-General in 2022 found that there are 6100 derelict and ownerless mines in South Africa, of which 2322 are 'high-risk commodity mines', like the Buffelsfontein mine. Despite this, the report found that the DMPR is, on average, only closing approximately two mines per year.³⁶

One expert blames this ongoing and systemic failure to properly close mines on a 'lack of state responsiveness, political interference and weak state institutional capacity'.³⁷ As another notes, '[t]he legislation and law enforcers surrounding mine closure and rehabilitation have failed in the mission placed on them in section 24 of the Constitution: to protect the environment and ensure a safe environment'.³⁸ The Buffelsfontein mine does not have a closure certificate.

Failure to Formally Recognise Artisanal Mining

Attempts to formalise the industry by the government have, to date, been largely ineffective because the government has criminalised rather than formalised artisanal miners in the mining sector. Because artisanal mining is not recognised in the MRPDA, all artisanal miners are by definition 'mining illegally' because they cannot possibly meet the technical and financial requirements of getting a formal mining licence.³⁹ The government's position seems to be that rather than formalise artisanal mining, it should rather be criminalised, suggesting that it is more focussed on the interests of large mining companies. The Minister for Mineral Resources stated in January 2025 that some R60 billion had been lost to 'illegal mining' in 2024, declaring that artisanal miners were waging a 'war on the economy'.⁴⁰

Three years earlier, the very same Minister had published the Artisanal and Small-Scale Mining Policy, which set out to formally regulate artisanal mining in South Africa. While the policy is not without its critics, it promotes many of the actions that are desperately needed to legalise artisanal mining in South Africa. However, to date very little progress has been made in implementing this policy. As Shawn Lethoko, the chairperson of the National Association of Artisanal Miners, noted in November 2024, 'the policy has been collecting dust on his table because there is no political will to act'.⁴¹

A bill to amend the Mineral and Petroleum Resources Development Act, which is currently before parliament, begins the process of formalising the right of artisanal miners to mine in South Africa. It enables the Minister for Mineral and Petroleum Resources to 'designate appropriate areas' where artisanal and small-scale mining can occur.⁴² While this is a welcome development, it falls far short of the assistance that artisanal miners need. There is no obligation on the Minister to designate areas; there is no criteria for how areas will be selected; there is no financial or legal support offered to help artisanal miners with environmental permitting and wider licensing requirements, nor is any planned technical or safety training for artisanal miners. As Mining Affected Communities United in Action observe, the Bill ensures that access to legal mining for most artisanal miners will remain 'inaccessible' due to 'restrictive' conditions which act to prevent the wider formalisation and growth of artisanal mining in South Africa.⁴³

2.2 Wider Economic and Political Drivers

Unemployment and Poverty in South Africa

The gradual collapse of the gold mining industry in South Africa has resulted in mass layoffs of miners who are compelled to enter an incredibly difficult labour market. The official unemployment rate in South Africa is 32%, while the expanded definition is 42%.⁴⁴ This catastrophic unemployment rate explains the extremely high rates of poverty in South Africa. In 2024, 13.2 million South Africans were considered to be in 'extreme poverty', existing on €2 a day.⁴⁵ This situation is unlikely to improve given the parlous performance of the South African economy which has averaged only 0.8% GDP growth since 2012, which the National Treasury acknowledges is 'insufficient to address high levels of unemployment and poverty'.⁴⁶ Given the difficulty of this labour market, it is hardly surprising that ex-miners look to take advantage of their skills in the artisanal mining sector. As one expert notes, '[t]he broader context in which 'zama zama' mining is occurring is one of rife unemployment and poverty'.⁴⁷

Unemployment and Poverty in Neighbouring Countries

Unemployment and poverty in neighbouring countries have also contributed to the growth of artisanal mining in South Africa.⁴⁸ Many of these miners are driven by a lack of opportunities in their home countries, where opportunities are scarce due to unemployment, corruption, political crisis, and the damaging impacts of climate change.⁴⁹ Many are driven from politically corrupt regimes like those in Zimbabwe and Mozambique which have been consistently supported in recent years by the South African government. In fact, while miners were finally being rescued from the Buffelsfontein mine, the President of South Africa was attending the inauguration of new Mozambican President, despite the election result being in serious dispute among Mozambicans and observers.⁵⁰

Research indicates that criminal gangs recruit would-be 'zama zamas' in countries like Mozambique and Zimbabwe with promises of jobs in South Africa, only to then force them into a form of bonded labour, with recruits sometimes being forced to stay underground against their will. They, as well as migrant artisanal miners without visas, are made even more vulnerable because they lack any legal status in South Africa. In effect, many 'zama zamas' in South Africa are the victims of human trafficking and exploitation.⁵¹

It should be noted that weak border management on both sides of the borders, often due to corruption, has facilitated the entry of many thousands of would-be miners into South Africa over the last decade.

3. THE PERFECT STORM OR HISTORY REPEATING ITSELF?

The relative collapse of the gold mining sector, the concomitant abandonment of gold mines, the failure to enforce regulations, together with grotesque levels of unemployment, have created the perfect storm for the rapid growth of artisanal gold mining in South Africa. Instead of recognising this storm for what it is – a perhaps inevitable product of poverty- the South African government has chosen to criminalise artisanal miners, whom it continues to this day to refer to as 'illegal miners', often using the most derogatory language to describe them. For example, the President stated in late November that, '[w]e need to be clear that the activities of these miners are illegal. They pose a risk to our economy, communities and personal safety'.⁵² In December 2024, the Minister for Mineral Resources told Parliament that 'Illegal mining is a criminal activity, and the department is collaborating with the law enforcement agencies at various levels to eradicate the scourge'.⁵³

There is no doubt that the government's reluctance to formalise artisanal mining comes, in part, from pressure exerted on it not to do so from the established mining sector, although this position does seem to be softening as the inevitability of the existence of informal mining in South Africa is accepted by the Minerals Council.⁵⁴

There is, however, another reason for this ongoing criminalisation, and that is the xenophobia exhibited by powerful individuals within the present African National Congress government towards these foreign workers. This xenophobia is not hard to find. In November 2024, the Minister in the Presidency stated that '[y]ou want us to send help to criminals ... they didn't go down there with good intentions for the republic, so we can't help them'.⁵⁵ On the 15th of January 2025, the Minister for Mineral and Petroleum Resources responding to media questions about Buffelsfontein, stated that, 'illegal miners' ... 'are in it for their own selfish gains and have no regard for the country'.⁵⁶

Family members of miners trapped at Buffelsfontein also reported that the national Minister of Police made xenophobic comments during his visit to the site in late November.⁵⁷

This demonisation of 'zama zamas' as foreign criminals has been endorsed by the Minerals Council, which states that 'they are often heavily armed, have explosives and, when trespassing on operating mines, set ambushes and booby traps for employees, security personnel'.⁵⁸ What the Minerals Council are describing here are the leaders of the criminal gangs (or their foot soldiers), which have taken over artisanal mining because of the policy vacuum left by the South African government. If the South African government had been proactive about formalising the artisanal mining sector when it began to emerge in the late 1990s, these criminal gangs would have been prevented from flourishing.

The vast majority of 'zama zamas' in South Africa are not criminals, but victims. As one expert notes, '[p]opular mythology in South Africa attributes much violent crime to the zama zamas ... but there is no evidence of this'. Rather, 'zama zamas' are victims of criminal gangs who 'coerce zama zamas in their underground labours, extracting from them the gold they manage to take from underground, charging security fees to enter shafts and to exit them'. This is because 'zama zamas' are 'very poor' and, because they lack any formal protections from the state, are 'easily preyed upon'.⁵⁹ As another expert notes, 'zama zamas are at the very bottom rungs of a thriving illicit economy centred on Johannesburg that primarily benefits South African scrap metal and gold dealers, jewelers, gold refineries and exporters'.⁶⁰

'Zama zamas' are also easily preyed upon by criminal gangs partly because of corrupt officers within the South African police force who 'profit handsomely for not intervening'.⁶¹ It was reported in 2022 that entire police stations in the North West province, where Buffelsfontein is located, have been corrupted by crime syndicates involved in gold mining.⁶² How else do we explain the mysterious disappearance of the alleged criminal gang 'kingpin' who was arrested at the Buffelsfontein mine in mid-January 2025?⁶³ Experts have also drawn attention to how 'zama zamas' are exploited financially by local government officials. Evidence suggests that this harassment of 'zama zamas' by the police and government officials falls most heavily on women 'zama zamas' who are often forced to offer sexual favours to avoid arrest.⁶⁴

It is this toxic environment and associated discourses about 'zama zamas' that effectively blurs the distinctions between them, criminal gang leaders, and artisanal miners, painting them all as 'criminal foreigners'. It is perhaps this systematic dehumanisation that is the overriding explanation for what happened at Buffelsfontein. As Abahlali baseMjondolo, a grassroots social movement of poor people with 150 000 members, stated after the last miners' bodies were recovered, 'killing us or leaving us to die is justified by calling us "criminals" and "foreigners" ... all attempts at dehumanisation must be opposed'.⁶⁵ Simultaneously, the seeming failure to pursue and prosecute the syndicates responsible for violence and smuggling allows criminal practices to continue.

It should not be forgotten that evidence leaders for the murdered miners at The Farlam Commission, which was appointed after the Marikana massacre, claimed that one of the factors that led to the massacre was the painting of miners as criminals, rather than striking workers.⁶⁶

This dehumanisation and exploitation of 'zama zamas' mirrors exactly how the colonial and apartheid states viewed black miners – as expendable commodities. That miners are still being treated in this way 30 years after the end of apartheid is an indictment on us all because the reality is, of course, that the vast majority of miners, be they artisanal or 'zama zamas', are simply workers trying to support themselves, their families, and their respective communities. It is estimated that 250 000 people in South Africa survive on the proceeds of artisanal mining.⁶⁷ Therefore, artisanal mining is, in fact, a form of subsistence and should be formally recognised as such, with elements of criminal syndicates being removed to allow for artisanal miners to practice under humane and safe working conditions.

It is quite clear that a fundamental shift needs to take place in the government and the mining industries' attitude towards artisanal mining in South Africa so that tragedies like Buffelsfontein are not repeated. As one union leader states, 'this crisis is a chance for a reset. It needs to be exploited'.⁶⁸

RECOMMENDATIONS

1. The South African government needs to urgently establish a Judicial Commission of Inquiry into the events at Buffelsfontein. This inquiry should be properly capacitated to provide an account of exactly what happened at Buffelsfontein and why. This inquiry should explain why it took a court order to compel the government to rescue the trapped miners to realise their Constitutional right to life. This inquiry should lead to criminal prosecutions if evidence is uncovered that crimes were committed by state representatives (including the police), criminal gang leaders, or by 'zama zamas'.⁶⁹
2. This inquiry should also look beyond the immediate causes of the Buffelsfontein disaster to include a systematic review of the entire artisanal mining sector in South Africa. In addition, this inquiry should review the entire regulatory environment relating to closing mines or placing mines in 'care and maintenance'.
3. The government needs to undertake a systemic review of the police's 'Operation Vala Mgodi'. As an immediate step, the South African government needs to instruct the Minister of Police to immediately cease the kind of 'takedown' operation that was conducted at Buffelsfontein gold mine.
4. The South African government and media need to stop generalising about the alleged criminality of 'zama zamas' and focus its energies on finding and prosecuting the criminal gang leaders who dominate the sector at present and are responsible for the majority of violence in the sector.⁷⁰
5. As evidence from South Africa and elsewhere in the world demonstrates, focussing on enforcement via the police will not resolve the problems arising from artisanal mining.⁷¹ Therefore, the South African government should expedite with urgency the wholesale implementation of the Artisanal and Small-Scale Mining Policy to formalise the sector as quickly as possible. It is quite clear that the artisanal mining sector can create jobs, alleviate poverty and deliver revenues to the government, all of which should be welcomed by government. Government should accordingly view the sector as a legitimate source of livelihoods.⁷² Formalising the sector in an inclusive and sustainable manner should therefore be a key aim of the MPRDA Bill which needs to be comprehensively amended (in consultation with artisanal miners and other stakeholders) to meet this objective.

6. The South African government should provide legitimate and meaningful forums whereby artisanal miners and wider community members can voice their opinions on the formalisation of the sector and sustainable development. The creation of such forums should be included in the MPRDA Amendment Bill.
7. To properly and successfully formalise the sector, both the government and the Minerals Council of South Africa need to assist artisanal miners with developmental funding and training via multi-stakeholder partnerships which 'should include mining company representatives, government officials, civil society members, artisanal miners and international development agencies'.⁷³ In addition, viable and sustainable markets for the produce from artisanal miners need to be created outside of criminal syndicates. As a starting point, mining companies should provide financial support to artisanal miners to enable them to gain environmental authorisations and to improve the working conditions of artisanal miners.
8. Both government and mining companies should recognise and support, the important role that artisanal miners could play in the rehabilitation of mining sites, especially as they relate to mine tailings. Accordingly, financial and technical support should be given to artisanal miners to enable them to assist with mine rehabilitation and closure.
9. Special efforts should be made to protect women artisanal miners from sexual predators, be they from the police, criminal gangs, or government officials. Special considerations should also be made of the subordinated position that women artisanal miners occupy, and efforts should be focussed on reversing this subordination.
10. Over ten years ago, the South African Human Rights Commission, in a report exploring the issue of artisanal mining in South Africa stated that there was a 'need for a stronger government stance' when it came to enforcing mining regulations.⁷⁴ Little appears to have changed over the last decade. The DMPP must, therefore, ensure that regulations governing the closure of mines and mine shafts are properly adhered to and loopholes, such as putting mines into 'care and maintenance' or selling to small mining houses which declare bankruptcy, are closed.
11. Mining companies need to take their responsibilities in terms of mine closures much more seriously. To this end, the Minerals Council of South Africa should exert as much pressure as it can on its members mines to strictly adhere to all relevant legislation.

12. Social and Labour Plans should be properly implemented so that the issue of managing downscaling and retrenchments at mine closure is taken seriously to ensure that the impacts of mine closures on miners and mine communities are mitigated.⁷⁵
13. The South African government clearly needs to effectively root out corruption in the police service.
14. The African National Congress needs to make sure that all its members, including those in government, adhere to the government's own National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance. Those who do not should be appropriately censured.

ENDNOTES

- 1 Minister in the Presidency, Khumbudzo Ntshavheni, referring to the trapped miners during the unfolding crisis at Stilfontein stated “‘We’ll smoke them out. We are not sending help to criminals. We are going to smoke them out. They will come out. Criminals are not to be helped; criminals are to be prosecuted’”. See, ‘Smoke them out’: South Africa denies help to illegal miners’, DW.COM, 14 Nov. 2024, <https://www.dw.com/en/smoke-them-out-south-africa-denies-help-to-illegal-miners/a-70776958>. Accessed 31 July 2025.
- 2 L. Mutsila, ‘Stilfontein mine rescue ends with 78 dead, 246 rescued and ringleaders in custody’, *Daily Maverick*, 16 Jan. 2025, <https://www.dailymaverick.co.za/article/2025-01-16-stilfontein-mine-rescue-ends-with-78-dead-246-rescued-and-ringleaders-in-custody/>. Accessed 28 Jan. 2025.
- 3 N. Seleka, ‘Gauteng High Court orders govt to urgently begin rescuing trapped zama zamas in Stilfontein accreditation’, *News24*, 11 Jan. 2025, <https://www.news24.com/news24/southafrica/news/gauteng-high-court-orders-govt-to-urgently-begin-rescuing-trapped-zama-zamas-in-stilfontein-20250111>. Accessed 28 Jan. 2025.
- 4 H. Mutlokwa, ‘Stilfontein crisis underlines the need to regulate artisanal mining’, *Mail and Guardian*, 27 Jan. 2025, <https://mg.co.za/thought-leader/opinion/2025-01-27-stilfontein-crisis-underlines-the-need-to-regulate-artisanal-mining/>. Accessed 31 Jan. 2025.
- 5 ‘MRPRDA 2025 Amendments: The Betrayal of Transformation A Policy Discussion Document’, *Mining Affected Communities United in Action*, 30 May 2025, p. 12.
- 6 T. Field, ‘Illegal mining clampdown in South Africa: treating desperate people like criminals is an injustice – legal scholar’, *The Conversation*, 21 Nov. 2024, <https://theconversation.com/illegal-mining-clampdown-in-south-africa-treating-desperate-people-like-criminals-is-an-injustice-legal-scholar-244062> . Accessed 21 July 2025.
- 7 P. Mhangara (et al), ‘Monitoring the development of artisanal mines in South Africa’, *The Southern African Institute of Mining and Metallurgy*, April 2020.
- 8 B. Fine & Z. Rustonjee, *South Africa’s Political Economy: From Minerals-Energy Complex to Industrialisation*, (Wits University Press: Johannesburg), 1997.
- 9 D. Money, ‘Losing the lustre: the end of gold in South Africa’, *Stellenbosch Institute for Advanced Study*, University of Stellenbosch, 16 Aug. 2024.
- 10 Money (2024).
- 11 M. Lipton, *Capitalism and Apartheid: South Africa, 1910 – 1986*, (David Philip: Johannesburg), 1986, p. 407.
- 12 H. Wolpe, ‘Capitalism and cheap labour-power in South Africa: From segregation to apartheid’, *Economy and Society*, 1(4), 1972.
- 13 On 16 August 2012, South African Police Service (SAPS) opened fire on striking mineworkers at Marikana, in South Africa’s North West Province, resulting in 34 deaths and 78 serious injuries among the mineworkers. See, ‘Marikana Massacre - 16 August 2012’, *South African History Online*, <https://sahistory.org.za/article/marikana-massacre-16-august-2012> . Accessed 24 July 2025.

- 14 Z. Postman & A. Hendricks, 'Marikana workers live in dire conditions three years after Farlam Report: Only about one in five Lonmin employees stay in decent housing', *GroundUp*, 20 March 2018, <https://groundup.org.za/article/marikana/> & N. Overy, 'South Africa: Mining Communities Bear the Burden of Disease', *All Africa*, 9 July 2020, <https://allafrica.com/stories/202007090763.html> & S. Bega, 'Landmark 'Deadly Air' case heads to supreme court of appeal', *Mail and Guardian*, 27 Aug. 2024, <https://mg.co.za/news/2024-08-27-landmark-deadly-air-case-heads-to-supreme-court-of-appeal/>. Accessed 30 Jan. 2025 & Z. Pikoli, 'Health and safety have improved in SA mining industry, but problems remain', *Daily Maverick*, 7 Feb. 2024, <https://www.dailymaverick.co.za/article/2024-02-07-health-and-safety-have-improved-in-sa-mining-industry-but-problems-remain/>. Accessed 29 Jan. 2025.
- 15 H. Macmillan, 'Plus ça change? Mining in South Africa in the last 30 years – an overview', *Review of African Political Economy*, 44 (152), 2017.
- 16 'South Africa Gold Production', *CEIC*, no date, <https://www.ceicdata.com/en/indicator/south-africa/gold-production>. Accessed 29 Jan. 2025.
- 17 Rademeyer (2022).
- 18 Money (2024).
- 19 H. Joffe, 'Illegal mining exposes a socioeconomic, political and security crisis', *Business Day*, 27 Jan. 2025, <https://www.businesslive.co.za/bd/national/2025-01-27-can-stilfontein-mine-owner-or-state-be-held-liaible-for-88-deaths/>. Accessed 31 Jan. 2025.
- 20 J. Rademeyer, 'Zama zamas just one part of a multibillion-rand organised crime economy that threatens SA', *Daily Maverick*, 7 Aug. 2022, <https://www.dailymaverick.co.za/article/2022-08-07-zama-zamas-just-one-part-of-a-multibillion-rand-organised-crime-economy-that-threatens-sa/>. Accessed 30 Jan. 2025.
- 21 R. Morris, 'Informal mining in SA is here to stay, and police brutality won't end it — here's what will', *Daily Maverick*, 28 Jan. 2025, <https://www.dailymaverick.co.za/article/2025-01-28-informal-mining-in-sa-police-brutality-wont-end-it-heres-what-will/>. Accessed 29 Jan. 2025.
- 22 N. Maseko, 'Inside South Africa's 'ruthless' gang-controlled gold mines', *BBC News*, 21 November 2024, <https://www.bbc.com/news/articles/c5yx9gwweeeo>. Accessed 29 Jan. 2025.
- 23 'National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa', *South African Human Rights Commission*, 2016, p. 95.
- 24 See, <https://www.mineralscouncil.org.za/>. Accessed 30 Jan. 2025.
- 25 For example, before becoming President, Ramaphosa was a director of Lonmin and owned several mines within his Shanduka company. Patrice Motsepe, South Africa's first black billionaire, owns African Rainbow Minerals and is Ramaphosa's brother-in-law.
- 26 G. Hosken, 'Great mine heist: SA gold looted on industrial scale', *Sunday Times*, 30 Dec. 2018, <https://www.timeslive.co.za/sunday-times/news/2018-12-30-great-mine-heist-sa-gold-looted-on-industrial-scale/>. Accessed 31 Jan. 2025.
- 27 C. Rutledge et al., 'Why won't parliament and Gwede Mantashe listen to mining communities?', *Mail and Guardian*, 6 May 2022, <https://mg.co.za/thought-leader/opinion/2022-05-06-opinion-why-wont-parliament-and-gwede-mantashe-listen-to-mining-communities/> & J. Webster, 'Why Gwede Mantashe thinks SA mining is a sunrise industry', *Business Day*, 11 Nov. 2024, <https://www.businesslive.co.za/bd/national/2024-11-11-why-gwede-mantashe-thinks-sa-mining-is-a-sunrise-industry/>. Accessed 29 Jan. 2025 & M. Nyathi, 'Mantashe: Coal must be a critical mineral', *Mail and Guardian*, 29 Aug. 2023, <https://mg.co.za/the-green-guardian/2023-08-29-mantashe-coal-must-be-a-critical-mineral/>. Accessed 29 Jan. 2025. Also see, 'National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa', *South African Human Rights Commission*, 2016 & 'Zero Hour: Poor Governance of Mining and the Violation of Environmental Rights in Mpumalanga', *Centre for Environmental Rights*, 2016.

- 28 T. Carnie, '6,000 health and environmental 'time bombs' still to be defused – Govt decades behind schedule', *Daily Maverick*, 8 June 2022, <https://www.dailymaverick.co.za/article/2022-06-08-6000-health-and-environmental-time-bombs-still-to-be-defused-govt-decades-behind-schedule/>. Accessed 29 Jan. 2025 & R. Masenya, 'DRME Presentation on Derelict and Ownerless Mines', *Department of Mineral Resources and Energy*, 19 Sept. 2019, p. 4.
- 29 See, Section 43 of the MRPDA and the Financial Provisioning Regulations of 2015 in terms of NEMA (and amendments).
- 30 'Mine closure, rehabilitation and retention of financial provision (s43)', *Centre for Environmental Rights* (et al.), no date, p. 12 & 'Mine closure and rehabilitation: The hangover that follows the mining party', *Centre for Environmental Rights*, 9 May 2016.
- 31 E. Swart, 'The South African Legislative Framework for Mine Closure', *Department of Mineral Resources*, no date, p. 2.
- 32 The gradual demise of the gold mining industry in South Africa has been accompanied by the withdrawal of major international mining houses which have sold their remaining gold mining assets to what are known as Junior or Emerging Miners. These Emerging Miners are generally new mining companies which are often heavily indebted. There has been a trend among these Emerging Miners of stripping what remaining assets there are at gold mines before declaring bankruptcy thus avoiding any responsibilities they have to officially close mines. This is another factor that has resulted in numerous gold mines being abandoned in South Africa and thus open to exploitation by informal miners.
- 33 'Report of the South African Human Rights Commission Hearing: Issues and Challenges in relation to Unregulated Artisanal Underground and Surface Mining Activities in South Africa', *South African Human Rights Commission*, 2015, p. 66.
- 34 N. James, 'Mantashe considers invoking 'use it or lose it' principle for mines under care and maintenance', *Engineering News*, 23 May 2018, <https://www.engineeringnews.co.za/article/mantashe-considers-invoking-use-it-or-lose-it-principle-for-mines-under-care-and-maintenance-2018-05-23>. Accessed 31 Jan. 2025.
- 35 See, for example, M. Olalde, 'Mintails collapse: case study in how not to close mines', *Oxpeckers*, Aug. 2018, <https://oxpeckers.org/2018/08/mintails-collapse/> & Z. Almano, 'The Rehabilitation and Closure of Mines: A Failure in the Protection of Human Rights', *Faculty of Law: University of Cape Town*, 10 Nov. 2022, <https://law.uct.ac.za/mineral-law/articles/2022-11-10-rehabilitation-and-closure-mines-failure-protection-human-rights> & M. Olalde, 'Unfinished Business: Coal Miners Across South Africa Walk Away from Clean Up', *Pulitzer Center*, 29 March 2017, Accessed 18 July 2025.
- 36 'Auditor-General calls for stricter management in rehabilitating abandoned mines and mine openings', *Auditor-General of South Africa*, 31 March 2022.
- 37 T. Humby, 'Facilitating dereliction? How the South African legal regulatory framework enables mining companies to circumvent closure duties', *ACG Proceedings*, 2014, p. 2.
- 38 Almano (2022).
- 39 L. Wilson, 'A call to unshackle artisanal miners in South Africa', *Faculty of Law - University of Cape Town*, 6 March 2018, <https://law.uct.ac.za/mineral-law/articles/2018-03-06-call-unshackle-artisanal-miners-south-africa>. Accessed 30 Jan. 2025.
- 40 'R60 billion lost to illegal mining in 2024', says Minister, *South African News Agency*, 23 Jan. 2025, <https://www.sanews.gov.za/south-africa/r60-billion-lost-illegal-mining-2024-says-minister>. Accessed 29 Jan. 2025.

- 41 S. Bega, 'Failure to implement policy contributing to illegal mining crisis', *Mail and Guardian*, 21 Nov. 2024, <https://mg.co.za/the-green-guardian/2024-11-21-failure-to-implement-policy-contributing-to-illegal-mining-crisis/>. Accessed 30 Jan. 2025. In November 2024, the Parliamentary Committee for Mineral and Petroleum Resources commended the Department for establishing an ASM Fund and for distributing, in partnership with the Industrial Development Corporation, funds to 20 artisanal mining projects. While this is clearly a welcome development, given the scale of the ongoing crisis this initiative needs to be drastically expanded to have any meaningful impact. See, 'Mineral and Petroleum Resources Committee Applauds Department's Support for Artisanal and Small-Scale Mining', *Parliament of South Africa: News Details*, 22 Nov. 2024, <https://parliament.gov.za/news/mineral-and-petroleum-resources-committee-applauds-departments-support-artisanal-and-small-scale-mining>. Accessed 31 Jan. 2025.
- 42 Section 7a Mineral and Petroleum Resources Development Act Bill, Government Gazette No. 52704, 20 May 2025.
- 43 'MRPRDA 2025 Amendments: The Betrayal of Transformation A Policy Discussion Document', Mining Affected Communities United in Action, 30 May 2025, pp. 11 – 21.
- 44 'Statistics South Africa on official unemployment rate in third quarter of 2024', South African Government, 12 Nov. 2024, <https://www.gov.za/news/media-statements/statistics-south-africa-official-unemployment-rate-third-quarter-2024-12-nov> . Accessed 29 Jan. 2025.
- 45 'Number of people living in extreme poverty in South Africa from 2016 to 2030', *Statista*, 23 Oct. 2024, <https://www.statista.com/statistics/1263290/number-of-people-living-in-extreme-poverty-in-south-africa/>. Accessed 29 Jan. 2025.
- 46 '2024 Budget Review: Economic Outlook', *National Treasury*, 2023, p. 11.
- 47 V. Bester & T. Uys, 'Artisanal mining and its drivers in the South African context', *The Extractive Industries and Society*, 15, Sept. 2023, p.6.
- 48 Bester & Uys (2023), p.4.
- 49 Morris (2025).
- 50 M. Mucari & N. Peyton, 'Frelimo's Daniel Chapo wins contested Mozambique election', *Business Day*, 24 Oct. 2024, <https://www.businesslive.co.za/bd/world/africa/2024-10-24-frelimos-daniel-chapo-wins-contested-mozambique-election/>. Accessed 30 Jan. 2025.
- 51 Bega, 'Failure...' (2024).
- 52 'From the Desk of the President', *The Presidency*, 18 Nov. 2024, <https://www.thepresidency.gov.za/node/8590>. Accessed 30 Jan. 2025.
- 53 'Question NW2191 to the Minister of Mineral and Petroleum Resources', *Parliament of South Africa*, 13 Dec. 2024.
- 54 'Artisanal and Small-Scale Mining: Position paper', *Minerals Council of South Africa*, no date, p. 4.
- 55 J. Wicks, Minister Ntshavheni, we see the hypocrisy below the surface in your Stilfontein vitriol', *News24*, 19 Nov. 2024, <https://www.news24.com/opinions/columnists/guestcolumn/jeff-wicks-minister-ntshavheni-we-see-the-hypocrisy-below-the-surface-in-your-stilfontein-vitriol-20241119>. This is the same Minister who stated, after a fire in Johannesburg in 2023 which claimed 77 lives, that 'it's not the government's task to provide homes for undocumented immigrants', R. Suttner, 'Xenophobic attacks repudiate freedom and are shameful — they must be stopped', *Daily Maverick*, 27 Nov. 2023. Accessed 29 Jan. 2025.
- 56 'R60 billion lost to illegal mining in 2024, says Minister', *South African News Agency*, 23 Jan. 2025, <https://www.sanews.gov.za/south-africa/r60-billion-lost-illegal-mining-2024-says-minister>. Accessed 29 Jan. 2025.
- 57 M. Koka, 'Stilfontein residents accuse police minister of xenophobia', *Sunday World*, 29 Nov. 2024, <https://sunday-world.co.za/news/stilfontein-residents-accuse-police-minister-ox-xenophobia/>. Accessed 30 Jan. 2025.

- 58 'Artisanal and Small-Scale Mining: Position paper', *Minerals Council of South Africa*, no date, p. 4.
- 59 Morris (2025).
- 60 Rademeyer (2022).
- 61 Morris (2025).
- 62 Rademeyer (2025).
- 63 N. Seleka, 'Police officers investigated for allegedly aiding escape of notorious zama zama kingpin 'Tiger'', *News24.com*, 23 Jan. 2025, <https://www.news24.com/southafrica/news/police-officers-investigated-for-allegedly-aiding-escape-of-notorious-zama-zama-kingpin-tiger-20250123>. Accessed 31 Jan. 2025.
- 64 V. Bester, 'Towards a sustainable artisanal gold mining sector in South Africa: Proposed developmental initiatives', *Journal of Rural Studies*, 97, 2023, p. 377.
- 65 'From Marikana to Stilfontein Our Lives Count for Nothing', Abahlali baseMjondolo, 28 Jan. 2025.
- 66 Marikana Commission of Inquiry: Report on Matters of National and International Concern Arising out of the Tragic Incidents at the Lonmin Mine in Marikana, in the North West Province (Farlam Commission), 2015, pp. 208 & 413. See also, M. Tinsley, 'Constructing and Contesting the Post-Apartheid State: Political Discourse on the Marikana Strike', *Language and Society*, Aug. 2020.
- 67 Bester (2023).
- 68 M. Dube. 'Transforming old mines can tackle illegal mining crisis', *The Citizen*, 18 Jan. 2025, <https://www.citizen.co.za/news/transforming-old-mines-can-tackle-illegal-mining-crisis/>. Accessed 31 Jan. 2025.
- 69 One legal expert asserts that police officials could be guilty of murder or at the very least culpable homicide. See, P. de Vos, 'Buffelsfontein Mine tragedy a case study in state negligence and the erasure of humanity', *Daily Maverick*, 21 Jan. 2025, <https://www.dailymaverick.co.za/opinionista/2025-01-21-buffelsfontein-mine-tragedy-a-case-study-in-state-negligence-and-the-erasure-of-humanity/>. Accessed 31 Jan. 2025.
- 70 Morris (2025).
- 71 Bester & Uys (2023), p. 3.
- 72 Bester (2023), p. 379.
- 73 Bester (2023), p. 378.
- 74 South African Human Rights Commission (2015), p. 65.
- 75 Every mine is legally required to produce a Social and Labour Plan which sets out, among other things, mitigation measures that mine owners must undertake to lessen the impacts of mine closures on workers and communities. These typically involve the establishment of alternative livelihoods and training opportunities. However, the implementation of Social and Labour Plans by mines is generally very poor. See, for example, 'The Social and Labour Plan Series - Phase 2: Implementation Operation Analysis Report', *Centre for Applied Legal Studies*, University of the Witwatersrand, 2017.

