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**LAWYERS FOR
HUMAN RIGHTS**

Executive Summary

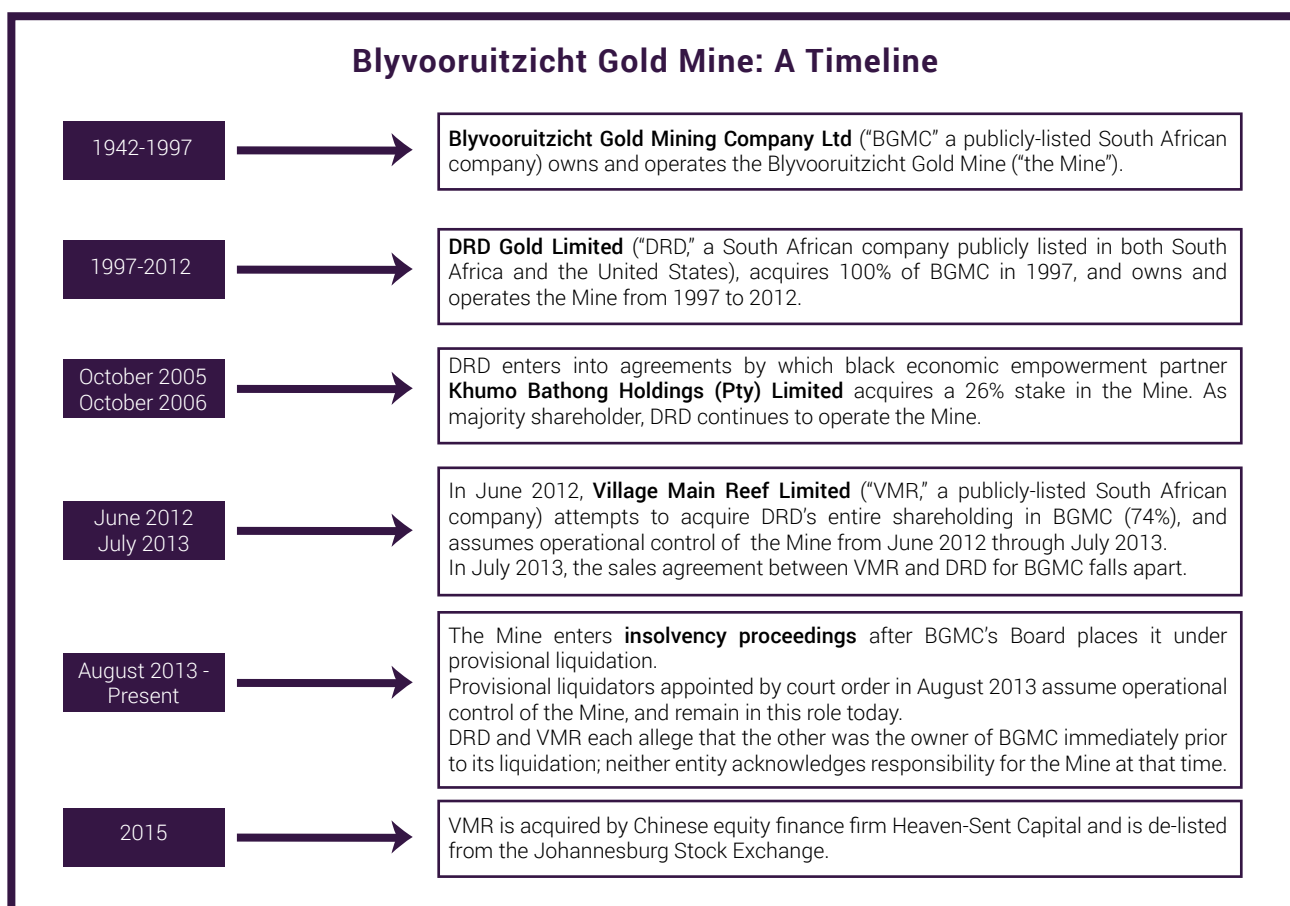
**Blyvooruitzicht Mine Village:
the human toll of state
and corporate abdication
of responsibility in South Africa**

Introduction

Almost four years have passed since South Africa's Blyvooruitzicht Gold Mine ("the Mine"), once one of the world's richest gold mining concerns, entered into provisional liquidation and abruptly halted operation in 2013, plunging thousands of employees and the surrounding community of more than 6 000 people into crisis. The Mine operated uninterrupted for more than seven decades including under management by various publicly listed companies. Today, residents battle environmental and health concerns associated with exposure to the unrehabilitated mine site, face both grinding poverty and continual uncertainty about their ability to remain in their homes, and fight for continued access to basic services, which were historically provided by the Mine. The Blyvooruitzicht Village ("the Village"), which now finds itself on the margin of survival, lies a mere 80 kilometres outside the metropolitan center of Johannesburg.

This study documents and analyses the impacts of the initiation of insolvency proceedings and sudden cessation of the Mine's operations on the human rights of the surrounding Village community, and in particular on the residents' right to development, to an environment not harmful to their health and well-being, and to adequate housing. This community-led human rights impact assessment is based on a combination of desk and field research, as well as expert opinion, and centers on data gathered through a process of interviews with some 300 households. Qualitative interviews were sought with other key corporate and state stakeholders

The unfolding disaster for the Village residents also provides a stark warning of the potential fate for many of South Africa's mining communities, where dozens of mature mines are approaching the end of their lives. Without acting on the lessons learned, there is a growing danger that many thousands more will face the same bleak future. More broadly, the story of the Blyvooruitzicht Gold Mine is an urgent warning to mining-based economies across the continent.



Findings

Right to Development

Residents reported a number of significant challenges resulting from the end of operations at the Mine and the failure of its previous owner/operators to meet their obligations to manage the associated negative environmental and socio-economic impacts. These include widespread unemployment and the inability of many to obtain new jobs, damaging residents' ability to meet basic needs. Approximately **sixty percent of interviewees reported not having enough to eat or the ability to support their children** today.

Continued access to basic services including water, sanitation, and electricity has also been threatened, as prior to provisional liquidation, the Mine provided access to all such services. In the aftermath, local government – constitutionally charged with the obligation to ensure such access – has contested its responsibility and faced capacity constraints with respect to fulfilling this mandate.

Initiating insolvency proceedings rather than pursuing proper mine closure has effectively eliminated the protections that should otherwise have been provided to the Village. Indeed stakeholders appear to believe that South Africa's insolvency laws entirely supplant the relevant mining laws that would otherwise provide such protection. Corporate actors have not fulfilled relevant obligations and government departments have failed to enforce the law, to facilitate the Village's continued access to basic services, and to collaborate across government spheres to help improve the Village's living conditions.

Right to a Healthy Environment

The wholesale lack of environmental measures undertaken at the Mine since provisional liquidation means that the residents live on the doorstep of an entirely unrehabilitated, non-operational gold mine. They suffer **exposure to radioactive dust, a complete breakdown of the sanitation infrastructure resulting in raw sewage coursing through the streets, possible water contamination, and an increasing risk of large sinkholes opening up** in the community at any time. Accurate, current information relating to these environmental risks appears nearly impossible for residents to obtain, in contravention of their right to information and participation.

The initiation of insolvency proceedings without properly providing for the environmental management, orderly cessation of operations, and/or the ultimate closure of the Mine during the provisional liquidation period could constitute violations of South Africa's environmental law and basic international human rights principles. Environmental mitigation measures should have likewise been undertaken throughout the provisional liquidation period to ensure the protection of residents as the insolvency processes evolved. Failure by regulatory authorities to ensure that these obligations were fulfilled has led directly to the violation of residents' rights to an environment not harmful to their health and well-being.



Dust blows off unrehabilitated Blyvooruitzicht Gold Mine Tailings Dam 6.
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Right to Adequate Housing

Although most interviewees reported living in the Village for a significant period of time, over half do not feel confident in their ability to remain in their homes despite having nowhere else to go. **Sixty percent reported eviction as a primary housing concern**, and an inability to obtain information from either state or corporate actors regarding the future of the Village fuels a collective sense of insecurity amongst residents. Crime associated with the unsecured mine site, high levels of need in the community, and a sense that policing efforts have been limited to date further compromises the well-being of the Village.

Competing imperatives between the obligation of the liquidators to sell the assets – including the Village homes – of the insolvent Mine to the highest bidder and the obligation of corporate actors to refrain from contributing to human rights violations, including eviction without alternative accommodation options in place, reflect the complexity of the housing issues in the Village. The state is charged with the responsibility for creating a deliberate policy of intervention to secure tenure over the Village homes or otherwise draft a plan for dealing with the residents' housing concerns. Public participation in the development of such a plan is essential.

Conclusion

The catastrophe at Blyvooruitzicht is the result of a toxic cocktail involving private sector abdication of responsibility, an inadequate legislative framework and state enforcement effort, and an underestimation on the part of all role players in anticipating the scope and severity of the impacts of a sudden liquidation of a major mining operation. There can be no question that the surrounding community has borne the brunt of this systemic failure.

Regardless of any potential new buyers for the insolvent Mine's assets, this cannot prevent the state from complying with its obligations to respect, fulfill and protect human rights, including protecting against violations by private actors. Corporate actors must similarly respect their responsibility to respect human rights even in the context of insolvency and a cessation of mining activities. The practice of casting off under-performing assets by invoking insolvency proceedings may safeguard shareholder profits, but the negative impact on South Africa's environment and communities is tremendous. Such practices must not be accepted in the hope that another corporate actor will always emerge to clean up after their unscrupulous counterparts.

The structural issues highlighted in this report must therefore be immediately addressed through legislative amendment, improved enforcement, the capacitation of relevant government spheres and departments, and the incorporation of mining communities into the fabric of local municipalities and mainstream service provision so as to avoid recurrence of such situations on a much broader scale. This is particularly critical as the South African mining industry enters its twilight years and the risks detailed in this report become relevant to a far greater number of communities.

Recommendations

General recommendations

To the government of South Africa:

- Consider legislative amendment allowing for holding private actors accountable for the impacts associated with liquidation and improper mine closure, including a manner by which to access financial provisions set aside for rehabilitation by historical mining rights holders.
- Commit to improved oversight and enforcement of existing environmental and socio-economic obligations required of mining rights holders, including ensuring that the obligation to anticipate and prevent negative impacts on the environment and human rights is fulfilled by corporate actors, and where these cannot be altogether prevented, ensure that they are minimised and remedied.
- Establish a unit within the Department of Mineral Resources dedicated to overseeing mine closure procedures, including in the context of insolvency.
- Capacitate local government in mining districts to ensure they are financially and technically equipped to deal with mine closures, including with respect to continued access to basic services for former mining communities.
- Continue to improve access to justice for mining affected communities, including by adopting measures to eliminate financial and practical barriers faced by communities, and by educating judges, prosecutors and communities on protecting human rights in the context of mining activities, including the obligations of the state to protect, respect and fulfil, and the responsibility of corporate actors to respect.
- Consider establishing a non-judicial grievance mechanism specialised in the challenges faced by mining-affected communities, providing adequate safeguards so as to guarantee equality of parties, assurance that the use of the mechanism does not foreclose the possibility of other legal recourse, and that outcomes and remedies are in line with international human rights law.
- Consider ring-fencing a portion of companies' royalties to specifically benefit mining-affected communities.
- Sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- Continue to support the process of creating an international treaty regulating transnational corporations and other business enterprises.

To the previous owner/operators of the Blyvooruitzicht Gold Mine:

- Redress environmental and human rights abuses that resulted from the abrupt liquidation and improper closure of the Blyvooruitzicht Gold Mine.
- Conduct human rights due diligence throughout business operations, including in the context of mine closure and insolvency.

To the African Commission on Human and Peoples' Rights:

- Conduct an official visit to South Africa, with the participation of the Working Group on Extractive Industries, Environment, and Human Rights Violations, so as to issue recommendations on the issue of the impacts of mine closure on local communities, in particular in relation to economic, social, and cultural rights.

Specific recommendations

To the South African Departments of Mineral Resources, Environmental Affairs, and Labour:

- Ensure the corporate and state obligations included in the Mine's Social and Labour Plan are fulfilled throughout the life of the operation, including at downscaling and/or closure.
- Support an initiation by the Inter-Ministerial Committee on the Revitalisation of Distressed Mining Communities of a comprehensive plan to provide support to Merafong Municipality in addressing the Village's basic service needs, and initiate engagement between relevant state authorities to identify and implement poverty-alleviating schemes for the area.
- Facilitate environmental rehabilitation of the Mine, pursuing costs from historical owner/operators as necessary.
- Convene a series of meetings with Village residents and local government to provide information on the likely future of the Mine, health risks to residents associated with remaining in the polluted area, and the ways that residents can protect themselves from related health impacts and participate in relevant decision-making.

To Merafong City Local Municipality and local policing authorities:

- Formally proclaim the Village as a township to facilitate funding of housing development.
- Seek funding through specialised national housing programmes.
- Ensure access to information and adequate alternative housing for Village residents if township proclamation is not a possibility.
- Consider establishment of a satellite police station in the Village, and assist the community in addressing crime related to informal mining syndicates in the area.

To any company taking over the Mine in part or in full:

- Maintain sufficient financial provision for full rehabilitation of the operation.
- Provide real alternative livelihood training to employees and community members and ensure all downscaling and closure commitments are fulfilled.
- Support local government in incorporating the Village into its realm of service provision.

To the South African Human Rights Commission:

- Re-open a file on the Village with the purpose of monitoring and assessing the observance of human rights within the Village, expanding its role as necessary and in accordance with its Constitutional mandate.

Keep your eyes open

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Establishing the facts - Investigative and trial observation missions

Supporting civil society - Training and exchange

Mobilising the international community - Advocacy before intergovernmental bodies

Informing and reporting - Mobilising public opinion

For FIDH, transforming societies relies on the work of local actors.

The Worldwide movement for human rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

LHR

Lawyers for Human Rights is an independent human rights organisation with a 37-year track record of human rights activism and public interest litigation in South Africa. LHR uses the law as a positive instrument for change and to deepen the democratisation of South African society. To this end, it provides free legal services to vulnerable, marginalised and indigent individuals and communities, both non-national and South African, who are victims of unlawful infringements of their constitutional rights.

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FIDH is an international
human rights NGO federating
184 organizations
from 112 countries.

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ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 184 member organisations in 112 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

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