DSPACE

https://dspace.org/

Mining company governance and the spectre of environmental prosecutions: Is there any deterrent effect?

Monoke, Kwena Martha

2024-10
University of the Witwatersrand, Johannesburg
https://hdl.handle.net/10539/46801
Monoke, Kwena Martha. (2024). Mining company governance and the spectre of environmental prosecutions: Is there any deterrent effect? [Master's dissertation, University of the Witwatersrand, Johannesburg]. WIReDSpace. https://hdl.handle.net/10539/46801

Downloaded from a DSpace repository. https://dspace.org/

SCHOOL OF ANIMAL, PLANT AND ENVIRONMENTAL SCIENCES

MSC INTERDISCIPLINARY IN GLOBAL CHANGE STUDIES

APES7021A



UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

Mining company governance and the spectre of environmental prosecutions: Is there any deterrent effect?

Kwena Monoke

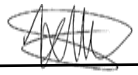
552364

Supervisor: Professor Tracy-Lynn Field

November 2024

Declaration

I, the undersigned, hereby declare that the work contained in this dissertation is my own original work and that I have not previously in its entirety or in part submitted it at any University for a degree.

Signature: 

Date: November 2024

Acknowledgments

I thank my supervisor, my husband, my children, and my family for their unwavering support, patience, and motivation, it pulled me through the toughest days. Thanks to everyone who participated in the research project, it would not have been a success without every one of you.

Abstract

South Africa has developed good environmental legislation, but compliance with these laws is still a challenge (Linde, 2006; Skosana, 2019). According to (Digby, 2016), the South African mining industry has a notorious legacy of inadequate rehabilitation and partially closed mine sites. Mining company directors are the custodians of the company governance and have a duty to ensure compliance with all relevant mining legislation (Bezuidenhout, 2018). Their failure to comply with the law triggers, in many instances, a criminal infraction. All South African environmental legislation relies on criminal penalties to enforce its prescriptions and to punish its offenders (Murombo and Munyuki, 2019). South Africa has strict criminal sanctions for environmental noncompliance and degradation (Truter, 2014).

The awareness of South Africans with regards to environmental crimes has increased due to initiatives such as the annual National Environmental Compliance and Enforcement Report, and online judgment archives such as the South African Freedom of Legal Information Institute (SAFLII) and Juta Law (Department of Forestry, Fisheries and the Environment, 2023a).

The State v Blue Platinum Ventures and Mr Maponya case was used as a case study. This study seeks to investigate whether the threat of environmental prosecution influenced the mining company governance and its director and whether it had any deterrent effect on the company's commission of environmental crimes. A qualitative case study approach was undertaken. Several documentary sources of information were relied on for the analyses of the Blue Platinum case and interviews were conducted to fill in the gaps from the data analyses.

It was determined that the rule of law was being put into practice and that the community had received justice because rehabilitation was conducted and it addressed their concerns. The Blue Platinum Ventures and Mr Maponya case has had a deterrent effect on the company itself and Mr Maponya.

Table of contents

1. Problem Statement / Hypothesis 6
2. Research Questions / Aim 6
3. Introduction 6
4. Legal Framework 9
4.1. National Environmental Management Act 11
4.2. Mineral and Petroleum Resources Development Act 13
4.3. National Water Act 14
4.4. The Law of Criminal Procedure 16
4.5. Dissemination of Criminal Prosecutions 18
4.6. Stringency of Environmental Laws 19
5. Literature Review 19
5.1. Criminal Environmental Enforcement 21
5.2. Criminal Prosecutions 22
5.3. Mining Polluter Accountability 25
5.4. Mining Affected Community's Involvement in Compliance 27
6. Purpose of the Study 28
7. Methodology 29
7.1. Study Approach 31
7.2. Sampling Technique 31
7.3. Interview Questions 32
7.4. Permission Letters 32
7.5. Consent Letters 33
7.6. Interviews 33
7.7. Ethical Standards 33
8. Data Analysis 34
9. Results and Discussion 35
9.1. Factual Background 35
9.2. Interview Outcomes 38
9.2.1. Perception of the Case 38
9.2.2. Fairness of the Sentence 39
9.2.3. Sentence Conditions Fulfilment 41
9.2.4. Community Justice Achievement 42
9.2.5. Deterrent Effect of the Case 42
9.2.6. Environmental & Mining Laws Stringency 44
9.2.7. Mining Companies Inability to Comply with Legislation 45

9.2.8. Mining Industry Legislation Compliance Improvement 46
10. Conclusion 47
References 49
Annexures 56
Interview Schedule 56

1. Problem Statement / Hypothesis

The successful prosecution of Blue Platinum Ventures 16 (Pty) Ltd and its director, for non-compliance with environmental laws has had a deterrent effect on the director and the company.

2. Research Questions / Aim

To determine the deterrent effect of the Blue Platinum Ventures case on the offending company itself and its leadership. This study seeks to investigate whether the threat of environmental prosecution influenced the mining company governance and its director and whether it had any deterrent effect on the company's commission of environmental crimes.

3. Introduction

In our society there is an occurrence of criminal cases daily and there is a constant need to control the occurrence of heinous crimes (Mukul, 2022). The rule of law is important to maintain societal cohesion (Mondal, 2021). The rule of law is enforced to ascertain that the result of any crime is punishment, and the main purpose of punishment is to attain justice, to reform criminals, to establish a peaceful society and to prevent similar crimes from recurring (Mondal, 2021; Mukul, 2022; Nagin, 2013). The rule of law can be enforced by applying different theories of criminal punishment, such as retribution, deterrence, rehabilitation and incapacitation (Meyer, 1968; Nagin, 2013).

The retributive theory is an approach that is based on the 'eye for an eye' saying and it aims to inflict a similar pain that the aggrieved person endured due to the actions of the perpetrator (Summers, 2022). The deterrence theory is an approach whereby perpetrators are punished for committing the crime and to ensure that they do not repeatedly commit the same crime; other potential perpetrators being aware of such a punishment; and mentally fearing the same fate happening to them is created and this fear discourages potential perpetrators from committing similar crimes; thereby curbing the crime rate (Gordon, 2023; Nagin, 2013). The rehabilitation theory is an

approach whereby the perpetrator's behaviour is changed through correctional interventions (Nagin, 2013). The incapacitation theory is an approach whereby the perpetrators is removed from society and therefore physically making it impossible for the individual to commit further crimes whilst he is serving his sentence (Davidson, 2022). For the purpose of this study, the focus will be on the deterrence theory being applied to environmental crimes in the mining industry. This theory was chosen as there is minimal research about the deterrence theory in the mining industry.

The South African mining industry is approximately a century old and it was established when Erasmus Jacobs found a diamond on his father's farm in 1867 and gold was discovered in 1896 (Minerals Council South Africa, 2022a; Ngobese, 2015). According to The World Bank (2019), the Southern Africa economic and financial hub known as the Johannesburg and Pretoria Metropolitans were developed because of the gold mining industry in the area. The industry has grown significantly over the years with several other minerals such as but not limited to diamonds, coal, iron ore, platinum group metals and copper being mined (Ngobese, 2015). Mining has contributed to the economic development of South Africa and it is the fourth biggest industry in South Africa contributing toward Gross Domestic Product (Mabiletsa and Du Plessis, 2001; Minerals Council South Africa, 2022b; Mpanza et al., 2020). During the current prevailing economic climate the mining industry is creating jobs (Minerals Council South Africa, 2022b). In 2022, the taxes paid to government by the mining industry assisted in saving the country fiscus from horrendous debt metrics that were exacerbated by the COVID-19 lockdown and the contraction of the South African economy (Minerals Council South Africa, 2022b).

However, according to Centre for Environmental Rights (2013), the South African mining industry has a notorious legacy of inadequate rehabilitation and partially closed mine sites. Over the years, mining companies have successfully managed to avoid costly closure obligations by undergoing liquidation and business rescue processes (Mpanza et al., 2020).

Liquidation is a process whereby a bankrupt company is placed under the custodianship of a liquidator. The liquidator is mandated to fairly distribute the company assets to its creditors and the remaining assets to the company shareholders (Mpanza et al., 2020). During the liquidation process, the rehabilitation financial provision is not acknowledged as a special claim against the company assets to be saved before creditors are remunerated (Mpanza et al., 2020). As such, this has resulted in abandoned mines, premature mine closures and partially rehabilitated tailings storage facilities which could potentially negatively affect the communities surrounding the mines (Mpanza et al., 2020).

Furthermore, these abandoned mines have an immense negative impact on the surrounding communities in terms of loss of employment opportunities, the establishment of illegal mining activities, health impacts and continuous environmental pollution of natural aspects such as water, soil and air (Digby, 2016). Unfortunately, when the overriding objective of a mining entity is to maximize ore extraction and profits, the environment and communities bear the externalities of mining activities and insufficient focus may be given to land rehabilitation and post-mining land uses (Mabiletsa and Du Plessis, 2001). The development that mining has enabled should not be to the detriment of the environment and the well-being of future generations (Feris, 2008; Rankin, 2014).

Mining company directors are the custodians of the company governance and have a duty to ensure compliance with all relevant mining legislation (Bezuidenhout, 2018). Company governance refers to the manner in which authority is regulated within a company, to ensure that authority is exercised in a uniformly controlled manner, that compliance obligations are complied with and that risks are identified and managed appropriately (Naidoo, 2009). This study seeks to investigate whether the threat of environmental prosecution influences mining company governance and whether it has any deterrent effect on the company's commission of environmental crimes.

This raises an environmental justice issue, as a handful of mining companies and directors have already been prosecuted for environmental crimes, and their infractions have detrimentally affected communities and the receiving environment (South African Human Rights Commission, 2016). The current mining industry practices are characterised by inconsistent compliance with legislation (South African Human Rights Commission, 2016).

4. Legal Framework

The supreme law of South Africa, "The Constitution of the Republic of South Africa" establishes the basis for legislation in South Africa and outlines the rights and responsibilities of citizens and the various levels of government, i.e., local, provincial and national (Kidd, 2011). Furthermore, it outlines how the government is formed, elected, functions and how it is accountable to people who elected it (Department of Justice and Constitutional Development, 1996). The Constitution also reflects the hopes and aspirations of South Africa and our unique history as we strived for freedom and democracy (Department of Justice and Constitutional Development, 1996).

Section 24 of The Constitution of the Republic of South Africa states that everyone has the right to an environment that is not harmful to their health and wellbeing, as well as an environment that is protected for present and future generations (Constitutional Assembly, 1996). This statement implies that as much as people have rights to an environment that is not detrimental to their health and wellbeing, they are obligated to ensure conservation of their environment. According to Glazewski (2000), the right to environmental well-being gives a perception of environmental integrity that we must use the environment in a morally responsible and ethical manner. The notion of intergenerational equity in the sense that the present generation holds the earth in trust for future generations is clearly indicated in Section 24(b), which states that everyone has a right to have an environment that is protected for the benefit of present and future generations, through legislative and other measures (Kidd, 2011). 'Legislative measures' imply that it is the states' responsibility to ascertain environmental protection by enforcing implementation of legislation (Kidd, 2011). According to Kidd (2011) 'other measures' applies to the state and private entities as

well, because private entities should not degrade the environment, therefore implying that it is their duty to ensure that they comply with legislation to protect the environment.

In pursuance of the constitutional right to environment entrenched in section 24 of the South African Constitution, in terms of which the State is duty-bound to take reasonable legislative and other measures to prevent pollution, promote conservation and secure ecologically sustainable development, Parliament has passed various pieces of legislation to prevent environmental degradation and to hold polluters accountable (Lombard, 2018). One of the key purposes of the suite of environmental legislation enacted since 1994, which has the National Environmental Management Act, 1998 at the centre, is to ensure the sustainable use of natural resources and prevent ecological degradation and pollution (Murombo and Munyuki, 2019). The National Environmental Management Act, 1998 (NEMA), and other "specific environmental management Acts" such as the National Water Act, 1996, impose "positive obligations on the state through reasonable legislative or other measures, to prevent pollution and promote conservation, whilst ensuring that ecologically sustainable development can take place" (Murombo and Munyuki, 2019).

All South African environmental legislation relies on criminal penalties to enforce its prescriptions and punish its offenders (Murombo and Munyuki, 2019). South Africa has strict criminal sanctions for environmental noncompliance and degradation (Truter, 2014). Mining related environmental legislation in South Africa includes penalties for various violations to ensure that mining companies perform their activities in a way that is environmentally responsible (Feris and Kotze, 2015; Muswaka, 2017; Snijman et al., 2013). These penalties were created to deter non-compliance with environmental regulations and to minimise the mining operation's environmental impacts (Mabiletsa and Du Plessis, 2001; White et al., 2022). The specific penalties for mining-related environmental violations vary subject to the nature and severity of the offense and according to the applicable laws and regulations (Beech et al., 2017; Snijman et al., 2013). Penalties typically include fines, imprisonment, revocation of

licenses, and orders for environmental rehabilitation or compensation for environmental damage (Snijman et al., 2013).

4.1. National Environmental Management Act

The National Environmental Management Act (Act 107 of 1998) ("NEMA") outlines general national environmental management principles such as the polluter pays principle that obligates individuals responsible for harming the environment to pay for remediation costs. According to Kidd (2011) the polluter pays principle is the cost paid by the perpetrators responsible for degrading the environment to remedy pollution, environmental degradation, and resultant health effects, and prevent, control or reduce any further pollution, environmental degradation or any resultant adverse health effects. This principle is fundamental to enforcing environmental legislation and achieving conservation through sustainable development (Cole and Broadhurst, 2022).

Section 28 of NEMA that pertains to duty of care and remediation of environmental damage also promotes sustainable development because it states that any person who has conducted activities that have polluted or degraded the receiving environment must mitigate the affected areas and this applies to degradation and pollution caused prior to the promulgation of NEMA (Bareki NO and Another v Gencor and Others 2006 (1) SA 432 (T), 2005).

NEMA section 49A outlines basic criminal offences and NEMA section 49B outlines their associated penalty provisions. Section 49A of NEMA states the various reasons that an individual may be found guilty of an offence if they are found guilty of:-

(1)(a) continuing with an activity that contravenes NEMA section 24F(1);

(b) failing to comply with the relevant norms or standards listed in section 24 (2) (d);

(bA) failing to comply with any offence that was identified within the relevant norm or standard, in instances whereby paragraph (b) does not apply;

(c) failing to comply with or contravening a condition of an environmental authorisation that was granted for a listed activity or specified activity or an approved environmental management programme;

(d) continuing with an activity in terms of section 24 (2) (c), (d) or (e) unless he or she complies with the procedures, criteria or conditions specified by the Minister or MEC in any regulation made under section 24 (5) (bB);

(e) illegally and deliberately or carelessly committing any act or omission which could potentially or definitely cause detrimental pollution or degradation of the environment;

(f) illegally and deliberately or carelessly committing any act or omission which could potentially or definitely cause detrimentally affect the environment;

(g) failing to abide to a directive issued in terms of this Act;

(h) failing to abide to or to infringe any condition that is relevant to an exemption granted in terms of NEMA section 24M;

(i) failing to abide with NEMA section 30 (3), (4), (5) or (6);

(j) infringes NEMA section 31 (7) or (8);

(k) fails to abide to or to infringe a compliance notice issued in terms of NEMA section 31L;

(l) if information that was acquired while exercising or performing any power or duty in terms of NEMA section 31Q (1) is disclosed by any other person;

(m) prevents an environmental management inspector or an environmental mineral and petroleum inspector to execute their official duties;

(n) is found to have pretended to be an environmental management inspector or an environmental mineral and petroleum inspector, or the interpreter or assistant of such an inspector;

(o) provides unfounded or deceptive information when complying with an instruction of an environmental management inspector or an environmental mineral and petroleum inspector;

(p) fails to abide with an instruction from an environmental management inspector or an environmental mineral and petroleum inspector;

(q) fails to comply with NEMA section 24P (3), (4), (5), (6) or (10); (r) fails to comply with NEMA section 24PA (1) or (3).

Section 49B(1) of NEMA states that an individual that is convicted of an offence in terms of section 49A (1) (a), (b), (bA), (c), (d), (e), (f), (g), (q) or (r) is liable to a fine that is not more than R10 million or imprisonment for not more than 10 years, or could be charged with both. 49B(2) An individual that is convicted of an offence in terms of section 49A (1) (i), (j) or (k) is liable to a fine that is not more than R5 million or to imprisonment for not more than 5 years, and in the instance whereby the individual is a second time offender a fine that is not more than R10 million or to imprisonment for not more than 10 years, and possibly to be charged with both. 49B(3) An individual is convicted of an offence in terms of section 49A (1) (h), (l), (m), (n), (o) or (p) is liable to a fine that is not more than R1 million or imprisonment for not more than one year, or to be charged with both.

Criminal proceedings outlined in NEMA section 34 and section 34(5) provide for directors to be held criminally liable for not performing duties on behalf of the employer to achieve compliance with legislation.

4.2. Mineral and Petroleum Resources Development Act

The Mineral and Petroleum Resources Development Act (Act 28 of 2002) ("MPRDA") is not a specific environmental management Act, but its objectives include giving effect to the section 24 Constitutional right, and "ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable way while promoting justifiable social and economic development". Mining operations are also subjected to the environmental impact assessment process in terms of NEMA, therefore the MPRDA and NEMA overlap (Kidd, 2011).

Section 98 of the MPRDA outlines basic criminal offences that perpetrators can be convicted of, if they are found guilty of:- 98(a) Violation or non-compliance with certain

sections of the MPRDA; 98(b) submitting erroneous or deceptive information to meet requirements set out under the MPRDA and 98(c) failing to obtain the Ministers' approval.

Section 99 of the MPRDA outlines the penalty provisions associated with criminal offences detailed in Section 98. Perpetrators convicted of an offence are liable to fines that range from R1 to R500 000 or more and to imprisonment that does not exceed ten years, based on the type of offence contravened as per Section 98 of the MPRDA. Section 101(3) of the MPRDA additionally provides that any individual that contravenes or is noncompliant with regulations is guilty of an offence and will be given a fine or imprisoned. Company directors are liable for any degradation of the receiving environment, as a result of their company's mining activities (Kidd, 2011).

4.3. National Water Act

Water resource management is primarily rooted in Section 24 and 27 of the Constitution (Pejan et al., 2011). Section 27(1)(b) and 27(2) of the Constitution state that everyone has a right to have access to sufficient water and it is the states' duty to provide this right through legislative and other measures (Department of Justice and Constitutional Development, 1996).

The National Water Act (Act 36 of 1998) ("NWA") ensures that the South Africa's water resources are protected, used, developed, conserved and managed in manner that meets water needs for present and future generations. According to Kidd (2011) the Act provides that the state is the trustee of the nation's water resources and therefore is responsible for ensuring that water is protected, used, developed, conserved and managed in a sustainable and equitable manner, that will benefit all South Africans as per the Constitution.

Section 19 of the NWA provides for duty of care that is similar to that of NEMA and it states that "19 (1) An owner of land, a person in control of land or a person who occupies or uses the land on which: Any activity or process is or was performed or

undertaken; or Any other situation exists, which causes, has caused or is likely to cause pollution of a water resource, must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring."

Section 151(1) of the NWA outlines several criminal offences that perpetrators can be convicted of, if they are found guilty of:-

(a) using water without a permit;

(b) failing to provide documents requested as per the Act;

(c) Failure to comply with a condition listed on a water use permit;

(d) failing to comply to a directive issued as per the Act;

(e) unlawfully tampering with water metre or seal attached to waterworks;

(f) failure or refusal to provide information or providing false information as required per the Act;

(g) failure to register a lawful water use as directed by the competent authority;

(h) refusing to perform a duty intentionally or to obstruct an official of the competent authority from performing their duty;

(i) unlawfully, negligently and intentionally commit an act that could potentially or definitely result in polluting a water resource;

(j) unlawfully, negligently and intentionally commit an act that could potentially or definitely detrimentally affect a water resource;

(k) failure to register a dam with a safety risk;

(l) failure to comply with a temporary restriction of water use as per the Act and

(m) to commit contempt of the Water Tribunal.

Section 151(2) outlines the penalty provisions associated with section 151(1) offences. Individuals that contravene an offence detailed in section 151(1) are guilty of an offence and liable on first conviction to a fine or imprisonment for a period not more

than five years or even both. Should the individual be a second time offender, they will be liable to a fine or imprisonment for a period of not more than ten years or both.

According to Strydom (2022) in instances whereby a fine amount has not been identified, it is determined in the court's discretion, as per the maximum term imprisonment in terms of the Adjustment of Fines Act read with the Magistrates Court Act. Furthermore, she indicated that a five-year imprisonment could equate to a R200 000 fine (Strydom, 2022).

Sections 152 and 153 of the NWA states that any individual that has been convicted of an offense under the Act and another individual was harmed or suffered loss due to the offence committed, the perpetrator must compensate the individual or pay for the cost of mitigation measures implemented or to be implemented. This is unique to the NWA. Furthermore, section 154 of the NWA is similar to section 34 of the NEMA because it states that if an offence in terms of this Act occurs with the permission of the employer, the employer and employee will be held liable for the offence. This implies that the employer and employee will be held liable in their personal capacity for the offence.

Section 155 of the NWA provides for an interdict to be obtained from the High Court or even an order against the perpetrator to discontinue any activity constituting the contravention to remedy the adverse effects of the contravention.

4.4. The Law of Criminal Procedure

The Criminal Procedure Act (Act 51 of 1977) is the basis of the South African criminal justice system and it upholds principles of due process, fairness, transparency and serves as an important tool for promoting justice and protecting all South Africans' rights (Ally and Mokoena, 2013). The Act is subject to the Bill of Rights provisions; therefore this implies that criminal proceedings must be conducted in accordance with

the fundamental rights and freedoms. The Bill of Rights details South African citizen's rights and proclaims the democratic values of human dignity, equality, and freedom.

This Act is very comprehensive, it entails rules governing the arrest, detention, questioning of suspects and procedures for conducting criminal trials, such as the pre-trail proceedings, trial process and sentencing. Furthermore, it governs the admissibility of evidence in criminal trials, the victims' rights and the appeals process (Law Guide, 2023). Criminal procedure is made up of three phases, namely pre-trial, trial and post-trial (Law Guide, 2023).

A pre-trial involves the follow:- the compilation of a crime report; an investigation being conducted based on the crime report; a decision to prosecute being taken on the investigation outcomes; the perpetrator being charged; the perpetrator being arrested or summoned and upon arrest the perpetrator may either be given bail, kept in custody or given a warning (Ally and Mokoena, 2013). Furthermore, the prosecution can disclose their evidence to the defence during this phase and a preliminary inquiry and plea bargaining process can be held as well (Law Guide, 2023).

The trial involves the following:- in court the perpetrator must plead guilty or not guilty; the state states its case; the perpetrator and or witnesses will be questioned thereof by the state and defence legal representatives; the presiding officer will make a finding; the perpetrator will be found guilty or not guilty and if the perpetrator is found guilty they will be sentenced to imprisonment, a fine or even both (Ally and Mokoena, 2013). According to Law Guide (2023) a suspended sentence is normally imposed in less serious cases or when special circumstances prevail.

During post-trial phase, the perpetrator has the right to lodge an appeal against the sentence imposed (Kidd, 2011). This is the phase whereby fines imposed are expected to be paid by the perpetrator, the convicted perpetrator is processed and

sent to jailed or the convicted perpetrator ensures that conditions imposed by the court upon a suspended sentence are implemented (Kidd, 2011).

4.5. Dissemination of Criminal Prosecutions

The awareness of South Africans with regards to environmental crimes has increased due to initiatives such as the annual National Environmental Compliance and Enforcement Report that disseminate environmental criminal prosecutions (Department of Forestry, Fisheries and the Environment, 2023a). The annual National Environmental Compliance and Enforcement Report ("NECER") is an annual report that gives an overview of environmental compliance and enforcement activities that provincial and national competent authorities have undertaken for that year (Department of Forestry, Fisheries and the Environment, 2023b). The NECER gives information on enforcement measures taken, including criminal enforcement and compliance monitoring statistics within the blue, green and brown sub-sectors (Strydom, 2022). The brown sub-sector covers pollution, waste and environmental impacts; the blue sub-sector covers the integrated coastal management or freshwater resources, and the green sub-sector covers the biodiversity and protected areas or species (Strydom, 2022). The case study of this research falls under the "brown" sub-sector. According to the Department of Forestry, Fisheries and the Environment (2023b), for the 2022/2023 financial year reporting, administrative enforcement notices were the main preferred tool for some competent authorities that deal with brown issues.

Environmental crimes are also disseminated in provincial Environmental Affairs Department's annual reports as per that specific province (Department of Environmental Affairs and Development Planning, 2023). Furthermore, environmental criminal cases are available on legal databases such as SAFLII and Juta Law Publications (Strydom, 2022). Publication of environmental crimes brings attention to them and helps to inform the public of actions taken against environmental transgressors and seeks to deter other potential transgressors from committing similar offences (Strydom, 2022). Furthermore, Strydom (2022) opined that mainstream crime is dependent on how aware people are or how knowledgeable they are about

legislation, the types of law infringements that have been committed and how strongly people disapproved the law infringements.

4.6. Stringency of Environmental Laws

The results of Stretesky et al. (2013) study suggested that environmental laws are probably not stringent enough to attain sustainable development (Lynch et al., 2016). Lynch et al. (2016) stated that policy changes are required to deter environmental degradation that is related to significant environmental consequences of corporate behaviour.

According to the study conducted by Sutton and Weiersbye (2007), they found that the South African minerals legislation does provide for the conservation of the environment, however it has flaws and gaps. These gaps and flaws could enable mines to externalise impacts, costs and increased long-term liabilities because suitable mitigation measure were not implemented (Sutton and Weiersbye, 2007). Mentis (2020) stated that should legislation become more stringent, such as rehabilitation regulations being more stringent, it could increase mining companies' costs and erode their competitiveness and as a result they may oppose being regulated.

5. Literature Review

The mining industry is one of the main industries that are responsible for the development of South Africa, but consequently the mining industry impacted the receiving environment negatively (Lombard, 2018; Makua and Kola, 2017). For instance, it was found that the mining industry has worsened the already bad state of social, economic and environmental impacts of mining-affected communities (South African Human Rights Commission, 2016). This is not unique to an undeveloped country context. Similarly in Australia, mining industry is one of the main industries that are responsible for the economic development but consequently had detrimental impacts on the receiving environment (White, 2013). In addition the Australian and South African mining industry has left a legacy of 'ghost towns' and environmental

impacts such as but not limited to, local ecosystems being destroyed and air pollution (Bobbins et al., 2018; White, 2013).

South Africa has developed good environmental legislation, but compliance with these laws is still a challenge (Linde, 2006; Skosana, 2019). In South Africa, this may be attributed to provincial and national government not having enough capacity and minimal resources to undertake compliance monitoring and enforcement where mining companies do not abide by the law (Feris, 2008). Their failure to comply with the law triggers, in many instances, a criminal infraction. Ensuring that mining company offenders are prosecuted for alleged crimes, and that other potential offenders are made aware of successful prosecutions, are part of a compliance law enforcement system. At the very least, a successful prosecution should deter the offending company itself from future prosecutions.

This section has several themes, namely:-

- The criminal environmental enforcement section outlines how criminal law is applied to protect the environment, as well as challenges experienced by competent authorities to enforce law to environmental crimes.
- The criminal prosecutions section outlines the objectives of criminal prosecutions and their applicability, as well as when they should be imposed. This section also evaluates the effectiveness of criminal prosecutions and their deterrent effect.
- The mining polluter accountability section outlines its applicability in South Africa and how it has been enforced on various mining related environmental crimes prosecutions.
- The mining affected community's involvement in compliance section outlines how communities are bearing the brunt for the destruction of the receiving environment as a result of mining companies operating in their areas and how public awareness could create a deterrent effect that could ultimately benefit them.

5.1. Criminal Environmental Enforcement

Criminal law has been used to protect “the environment in several jurisdictions for the past few decades, however criminal measures are fairly recent” (Strydom, 2022). In South African courts, the contravention of environmental laws is not considered to be a violent crime nor are the perpetrators considered to be eligible to serve jail time and as such the penalties imposed are relatively low (Kidd, 2004; Odeku and Gundani, 2017). Currently in South Africa, “environmental laws’ offence and penalty provisions have a maximum prescribed penalty of R5 million to R10 million or imprisonment of five to ten years, based on the nature of the offence” (Strydom, 2022). It is likely that the same maximum penalty in NEMA is stipulated for serious and less serious contraventions (Strydom, 2022). Serious contraventions potentially result in degradation of the environment, whilst less serious contraventions may not result in environmental degradation (Strydom, 2022).

Criminal environmental enforcement in South Africa is poorly done and is a major issue which is further perpetuated by the country not having specialised environmental courts (Murombo and Munyuki, 2019). Kidd as cited by Strydom (2022), stated that it is a burden for enforcement agencies to prepare for prosecution cases, especially when punishment is not severe. Furthermore, enforcement officials are reluctant to attend court and to punish perpetrators for conduct that is deemed to be morally neutral (Kidd, 2004). Implementing enforcement is a challenge that may be attributed to the provincial and national government not having enough capacity and minimal resources to undertake compliance monitoring and enforcement where mining companies do not abide by the law, inadequate policing, lack of public awareness, lack of expertise in court and inadequate penalties that are imposed by judicial officers (Feris, 2008; Kidd, 2004).

One of the challenges of effectively using criminal sanctions is that there may be factual or technical disputes between the competent authority and the perpetrators, regarding the interpretation and application of certain laws to complex industries (Strydom, 2022). These disputes may jeopardise proving the alleged crime undeniable, therefore preventing the perpetrator from being prosecuted (Strydom,

2022). In instances where the perpetrator cooperates with the competent authority by voluntarily admitting to their crime and immediately enforces corrective actions to mitigate the environmental impacts, also affect the enforcement mechanism that should have been implemented (Strydom, 2022).

According to the study conducted by Strydom (2022) to determine whether "criminal sanctions in environmental law have a deterrent effect, it was found that how criminal sanctions are used impacts its deterrent effect". Furthermore, the effectiveness of environmental law can be undermined if enforcement is not applied uniformly nor enforced consistently or is not known by the regulated community (Strydom, 2022). Overregulation and no standardised method for determining the penalty amount is an issue (Strydom, 2022).

5.2. Criminal Prosecutions

Some critics are of the view that the ultimate enforcement tool for environmental infringements should be criminal prosecution, whilst other critics are of the view that it is vital to threaten potential offenders with criminal prosecution and punishment to preserve the integrity of environmental legislation (Strydom, 2022). Nurse, as cited by Strydom (2022), argued that environmental harms are more significant than personal harms because they could cause more widespread and damaging harms; furthermore Nurse indicated that environmental law offences are deserving of a response that is equivalent to "the aims of criminal sanctions, i.e., 'punishment, reparation, rehabilitation or changed behaviour".

According to Reiss (as cited in Kidd, 2002), the principal objective of a criminal prosecution is to secure compliance through deterrence, without the necessity of detecting, prosecuting, and penalizing all infringers. The main objectivity of deterrent law enforcement systems is to ensure that conformity with the legislation is maintained determining law infringements, who is responsible for the infringement, and holding offenders accountable to deter future infringements by already punished and potential offenders. However, the deterrent effect of successful criminal prosecutions is

diminished if potential offenders are not aware of successful enforcement action, or if they believe they will not be caught and prosecuted themselves (Rolfe, 1997).

Lynch *et al.* (2016) thought that environmental harms should be managed by criminal sanctions because it is widely assumed that the severity of the sanction is directly proportional to the deterrent effect that the sanction poses. Shimshack and Ward, (2005) aimed to determine whether the deterrent effect of fines on non-fined companies for water pollution contraventions was driven by financial penalties. They found that non-fined companies reduced their infraction rates by two-thirds, post the fining of their offending peers (Shimshack and Ward, 2005). Lynch *et al.* (2016) cautioned however that organisations do not publicly disclose their infractions therefore it cannot be assumed that they are compliant. Furthermore, Lynch *et al.* (2016) stated that the maximum financial penalty required to generate optimal deterrence is unknown as well as how the financial penalty and other factors interact to affect the compliance rate of organisations.

Stretesky et al. (2013) conducted a study on a group of United States of America based-corporations, that had received the largest environmental fines for non-compliance with legislation. The study results indicated that even though the state implemented severe interventions, these had minimal effect on the way in which these sample companies governed their businesses as their volume of toxic releases into the receiving environment increased over a long-term period of time (Stretesky et al., 2013).

Environmental crime sanctions deter mining and extractive ventures perpetrators in South Africa and are normally concluded on administrative actions or civil suits (Odeku and Gundani, 2017). These have not been able to deter mining and extractive ventures perpetrators from causing harm to the receiving environmental because perpetrators are financially enabled and can settle fines and claims imposed on them by the courts or competent authorities (Odeku and Gundani, 2017). According to Odeku and

Gundani (2017), strengthening sanctions against perpetrators by imposing criminal sanctions will induce a deterrent effect.

According to Strydom (2022), there has not been any recent critical analysis of South African criminal sanctions in environmental law, the utilisation of criminal sanctions in actual prosecutions, nor has critical analysis been conducted on key stakeholders' views on criminal enforcement measures. Strydom (2002) compared how criminal sanctions were applicable to industrial facilities since their promulgation in the 1990s and early 2000s; her main focus was on certain criminal sanctions and how they were applied in prosecutions that were concluded. Furthermore, she interviewed experts to get their views regarding industrial facilities having sanctions being imposed on them and the issues encountered in implementing criminal sanctions as the law frequently gets amended (Strydom, 2022). She found that criminal sanctions in South Africa are widely prescribed for environmental law infringements (Strydom, 2022). She found that the annual NECER indicated that there was a rise in the number of EMI's staff from 2008 to 2019 and this development and the NECER publication have brought attention to environmental crimes, the public is informed of actions taken against these transgressors and they aim to deter potential transgressors from committing similar crimes (Strydom, 2022).

Strydom (2002) believed since the establishment and increased activity of the Environmental Management Inspectorators ("EMI") there has been an increase in the number of criminal prosecutions. EMIs investigate acts that could potentially cause environmental offences and once the criminal investigation is has been completed, the case can be referred to the Director of Public Prosecutions ("NDPP") at the National Prosecuting Authority ("NPA"); the NDPP decides whether prosecution should be instituted or not (Strydom, 2022). The accused is normally not arrested but summoned to court in industrial environmental crimes (Strydom, 2022). Industrial criminal prosecutions can have different outcomes, they can either be concluded via trial, guilty pleas or an agreement (Strydom, 2022).

Husak as cited by Strydom (2022), stated that it is doubtful that criminal statutes produce any marginal gains in deterrence and that lengthy delays in the criminal justice system ruin the deterrence value. Kidd as cited by Strydom (2022), outlined the immanent and fortuitous flaws of criminal sanctions and opined that sanctions are to be enacted in cases of intentional and persistent lawlessness, or in instances whereby the perpetrator caused detrimental damage to the environment or humans. Furthermore, Kidd stated that effective prosecution is dependent on whether there is a potential acceptable prospect of obtaining a conviction and penalty (Strydom, 2022). Kidd as cited by Strydom (2022) stated that the law is not insufficient, but regulators are possibly not correctly implementing it.

5.3. Mining Polluter Accountability

According to section 2(4)(p) of NEMA the polluters pay principle is specific in the fact that it refers to who must bear the cost, “The costs of remedying pollution, environmental degradation and consequent health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.”

In South Africa, accountability emanating from the polluter pay principle is a vital aspect of the country's efforts to make provision for environmental impacts caused by mining activities (Centre for Environmental Rights et al., 2017). Accountability involves holding mining companies and individuals responsible for their actions and ensuring they take measures to mitigate pollution and remediate and restore environmental damage (Mabiletsa and Du Plessis, 2001). Lombard (2018) believed NEMA needs to be made more stringent in terms of the State enforcing its administrative, criminal and civil measures to ascertain that mining companies heed the polluters pay principle and to ensure that duty of care is prioritized in the mining industry.

To date, there have been at least four mining-related environmental prosecutions. They are as follows:-

- *State v Vunene Mining* (Ermelo): “Vunene mining made a guilty plea for mining in a wetland, stripping soil, altering the land, removing vegetation, excavating and conducting various unlawfully water uses 21(a), (b), (c), (f), (g) and (i) of the National Water Act, and lastly, commencing with five listed NEMA activities without an authorisation” (CAS 94/11/2010, 2012). They were given a five-year suspended sentence subject to certain conditions; accused paying “R750 000 to the Environmental Protection Agency, R250 000 to the Ermelo Animals Rescue Services, R1,5 million to the Inspection, Compliance and Monitoring division of the Wildlife Protection Services office in Ermelo; R500 000 to Working for Wetlands”. Post the expiration of the suspended sentence the accused appeared in court for the court to consider if it could be charged (CAS 94/11/2010, 2012).
- *State v Golfview Mining*: Golfview Mining made a guilty plea for mining in a wetland, diverting a watercourse with insufficient pollution control between the period of March 2009 to August 2010 and negligently using water as permitted under NWA and lastly, they commenced with two NEMA listed activities without an Environmental Authorisation (462/04/2009 // ESH 82/11, 2012). The accused was given a R1 million fine, that was suspended for five years, if the accused was not to be convicted of an offence that was similar; they were instructed to compile a rehabilitation plan and implement it; they were instructed to pay R1 million to the Water Research Council and R 1 million to the Environmental Empowerment Services of the Mpumalanga Department: Economic Development and Tourism, and lastly, they were instructed to pay R1 million to the Mpumalanga Tourism and Parks Agency – Lydenburg Aquatic Services (462/04/2009 // ESH 82/11, 2012).
- In Blue Platinum Ventures 16 (Pty) Ltd and Matome Maponya case, a non-compliant company and its director were convicted under NEMA and the director was given a conditionally suspended prison sentence with nomo fine option (RC126/2013, 2013). Mr Matome Maponya was given a five-year suspended sentence on the condition that he would not contravene the provisions of section 24(F) of NEMA during the period of suspension and that he had to rehabilitate all areas that were damaged by the mining activities (RC126/2013, 2013). The National Environmental Management Act No. 107 of

1998, section 34(7) states that a company director can be guilty of an offence and held liable if the director failed to take all the reasonable steps that were necessary to prevent the commission of the offence under the circumstances. In this case, the director's liability was a result of the company's noncompliance with accordance to NEMA and not a result of the director breaching his duties towards the company (Avenant, 2014). The accused was ordered to pay R200 000 to the Department of Environmental Affairs (RC126/2013, 2013).

- *State v RR Govender* (Durban): The accused made a guilty plea for thirteen charges that of the contravention of water regulations and the commencement of NEMA listed activities without an authorisation (Strydom, 2022). The perpetrator's conviction entailed paying a R1 million fine or serving a two years imprisonment sentence that was suspended for five years, if the perpetrator is not to be convicted of a similar offence in future and lastly, the perpetrator was instructed to pay a R300 000 fine to the Department of Environmental Affairs (Strydom, 2022).

5.4. Mining Affected Community's Involvement in Compliance

South Africa has established all the necessary environmental legislation to prosecute and to deter perpetrators that cause environmental harm, but mining communities continue to be burdened with the harmful impacts of mining operations (Chauhan, 2018). The Department of Mineral Resources and Energy is not very active in criminal prosecutions for contravention of mining, environmental and water laws; this could potentially be because they are incapacitated or they are unwilling to tackle these crimes (Centre for Environmental Rights, 2013).

South Africa has various crucial environmental challenges such as environmental harm, degradation and contamination that is caused by mining companies not conducting their mining activities responsibly (Makua and Kola, 2017; Ncube, 2022). Mining has significant environmental and social ramifications that are directly related to the ecological wellbeing and human health (Makua and Kola, 2017; Ncube, 2022). According to Krause and Snyman (2014), South Africa is not unique to the failure of preventing severe mining legacy harms and ensuring that mine affected communities

participate meaningfully in closure and rehabilitation processes. Unfortunately, mining affected communities have less resources and as a result they experience challenges in obtaining justice and realizing their environmental and socio-economic rights (Krause and Snyman, 2014). This is evident in case law and violent strikes in these communities (Chauhan, 2018).

Section 32(1) of NEMA states that “any person or group of persons may seek appropriate relief in respect of any breach or threatened breach of any provision of NEMA, or any other statutory provision concerned with the protection of the environment or the use of natural resources either in that person's or group of person's own interest; in the interest of, or on behalf of, a person who is, for practical reasons, unable to institute such proceedings; in the interest of or on behalf of a group or class of persons whose interests are affected; in the public interest; or in the interest of protecting the environment.”. Although criminal prosecutions are initiated by the State in terms section 2 of the Criminal Procedure Act of 1977, section 33 of NEMA allows private individuals to get companies prosecuted for the degradation that they cause to the receiving environment (Sutton and Weiersbye, 2007).

Mining companies that fail to prevent water pollution and to rehabilitate mined areas should be criminally charged for degrading the environment of mining communities (Qumbu, 2019). However, accountability and sanctions imposed on mining companies degrading the environment in mining communities is poor (Makua and Kola, 2017). More mining companies and their directors should be prosecuted for the injustices that they are causing in mining affected communities, so that a deterrence to commit similar criminal acts is reduced (Chauhan, 2020). Mining affected communities and their surrounding environment will be the ultimate beneficiaries if potential perpetrators in the mining industry are deterred from committing similar environmental degradation activities that their peers have been prosecuted for (Chauhan, 2020, 2018).

6. Purpose of the Study

The purpose of the study is to determine the following:

- To analyse the Blue Platinum Ventures case and to determine the crimes committed, the role of the different stakeholders, the approach of the prosecutors and the courts, and the punishment imposed.
- To explore the deterrent effect of the prosecution on the company and its director in his personal capacity.

7. Methodology

This research was based on a case study method. According to Yin (2011), case study research is “an empirical inquiry that investigates a contemporary phenomenon within its real-life context: when the boundaries between phenomenon and context are not evident; and in which multiple sources of evidence are used.” Case study research helps make accurate findings, interpretations, assessments and clear conclusions (Lombard, 2018).

Several documentary sources of information were relied on for the analyses of the Blue Platinum case and they are as follows:-

- Environmental Assessment Management Plan for Bathlabine Brickworks, Greater Tzaneen Municipality, Limpopo Province (Sue Posnik and Associates, 2003).
- Background Information on the Project (Posnik, 2000a)
- Minutes of Authorities’ Meeting Held at Department of Minerals and Energy (Posnik, 2000b)
- Minutes of Authorities’ Site Meeting Held at Bathlabine Community Hall (Posnik, 2000c).
- Bad luck will come to us (Tlhabine, Limpopo Province) – Video (*Bad luck will come to us (Tlhabine, Limpopo Province)*, 2016).
- Bathlabine Brickworks Environmental Management Programme Soil Erosion Management Plan (Terblanche, 2000).
- Bathlabine Brickworks EMP Initial Assessment of Vegetation (Winter, 2000).
- Bathlabine Brickworks Environmental Management Plan Surface Water Assessment and Management Report (V3 Consulting Engineers, 2000).

- Bathlabine Brickworks EMP: Initial Faunal Survey (Cook, 2000).
- Performance Assessment Report for Bathlabine Brickworks, Greater Tzaneen Municipality, Limpopo Province (Dzerefos, 2011).
- Compliance Monitoring Report and Corrective Measures for The Bathlabine Brick Works Mining Sites at Thabina Village in Mopane Municipality, Limpopo (Jannasch and Botha, 2013).
- Environmental Rehabilitation Plan for the Bathlabine Brickworks in Tlhabine valley 13 KT, Uplands 653-LT and Small portion of the adjoining farm, Moim 656-LT (Mudzielwana, 2016).

Furthermore, interviews were conducted to fill in the gaps from the data analyses. The main limitation of a single case study approach is the risk of bias because my personal opinions and preferences may influence the research. Furthermore, another significant limitation of the study is that only the deterrent effect of the prosecution on the company that was prosecuted was of interest.

A case study method could possibly have errors of memory or judgement because reconstructing case history is memory based and this could lead to errors. Also, interviewees perceptions of the past could be different, and this could create errors (Universal Class, 2023). Generally, people tend to focus on issues that are important to them, and this may cause prejudice (Hancock et al., 2021; Universal Class, 2023). A case study approach is time consuming because the researcher needs to immerse themselves in the case to develop a detailed case analysis (Hancock et al., 2021; Universal Class, 2023; Willis, 2014). General conclusions cannot be made from a single case study and insights from one case study cannot be used to make future predictions (Learnovate, 2022; Willis, 2014). Lastly, a single case study has limited validity and reliability because they are based on a small sample (Hancock et al., 2021). The significant limitation of the study is that only the deterrent effect of the prosecution on the company that was prosecuted was of interest.

7.1. Study Approach

A qualitative case study approach was undertaken. The justification to take this approach is that it will allow me to explore the multiple dimensions and perspectives of the case, to possibly uncover new insights and to capture the uniqueness of the case. A case study approach requires situating the researchers. It must therefore be noted that I was appointed as an external auditor by Blue Platinum Ventures (Pty) Ltd, to audit their rehabilitation programme progress every month. I was subpoenaed by the National Prosecution Authority to be an expert witness of the case, for their court appearances. As such I had access to the case-related data that I could analyse. The gaps in my data analysis were filled in by conducting interviews with role players of the case.

My involvement in the case resulted in the risks of potential bias because to a certain extent some level of preconception may have influenced the research. The risk of bias was mitigated in various ways through the research design. The interview content was strictly reported as communicated by the participants and direct quotations were used in the report. The interview questions may have been bias but the interviews were in a form of a discussion, therefore participants were able to elaborate on their own views and that allowed participants to provide additional comments on the subject matter. Allowing participants to provide additional information mitigated the bias of the interview questions.

My involvement in the case also posed a potential risk of interviewer bias because I obviously have my own views of the case. Interviewer bias was avoided by ensuring that all participants had the same experience, i.e. all participants were sent the interview questions a day before the interview and the interview questions were asked in the same order in all interviews.

7.2. Sampling Technique

A purposeful sampling technique was utilised because the interviewees were able to provide detailed information about the case study. According to Palinkas et al. (2015),

a purposeful sampling technique involves identifying and choosing individuals that are thoroughly knowledgeable and experienced in the case of interest, as well as their willingness to participate. The criteria for selecting the interviewees was based on their involvement in the case, their perspectives and diversity.

“Involvement in the case” defines the interviewees function in the case and how they contributed to the case. Their involvement in the case makes them credible participants that add value to the interview because of their experience of the case. There was diversity as all the participants have different backgrounds. There was inclusivity as all the participants had different roles in the case, therefore, different viewpoints were expressed.

7.3. Interview Questions

Interview questions were compiled. It was ensured that these questions were inclusive and open-ended, to allow for further discussions, should the interviewee agree. The interview schedule has been attached as annexure 1.

7.4. Permission Letters

Consent letters were sent to organisations to request permission to use data that they have rights over and to request permission for their employees to participate in interviews for this research project. The letters explained the terms of research participation to show transparency and to ensure that rights of interviewees were protected. The letter assured the interviewees that their responses would be treated confidentially, their identities would be kept anonymous, and only their roles would be detailed in all published and written data resulting from the study. Furthermore, the letter reassured research participants that they could withdraw their permission at any time during this project without any penalty and that they would not be paid for their participation in the study.

7.5. Consent Letters

The consent letters sent to an organization and individuals seeking to obtain consent explained the terms of research participation and the interview process to ensure that the rights and interests of the interviewees were protected. Participants provided written consent prior to the commencement of the interview. Their consent indicated that they understood what the study pertained to, they voluntarily agreed to participate in the research project and gave permission to being recorded. Where applicable, an organization consent letter granted permission to conduct an interview with the employee of such an organization.

7.6. Interviews

Semi-structured interviews were held, and interview questions were shared with interviewee's prior the interview. On average the interviews took 15 to 40 minutes, depending on the interviewees availability and information that they were willing to share and debate. The interviews were all conducted online, on Zoom and each interview was automatically recorded and later transcribed by the interviewer. The transcripts will not be attached to the dissertation to prevent interviewees from being recognised. The transcripts are referenced by the order in which the interviews were conducted.

Some of the limitations of this methodology were that the interviews were mainly conducted online because the Gauteng based participants were too busy to meet physically during the week and some participants are based in Limpopo which was too far to travel to host a physical interview. The interview recordings were transcribed by the interviewer to maintain anonymity, confidentiality and accuracy. This also allowed the interviewer to record associated body language that may be relevant to the analysis and could not be picked up by audio recording.

7.7. Ethical Standards

This research involved human participation therefore an ethics clearance was required from the Witwatersrand University Human Research Ethics Committee (Non-Medical).

The Australian Macquarie University Human Research Ethics Online Training Module for the Social Sciences and Humanities was successfully completed. This training record assisted in obtaining an Ethics Clearance Certificate (Protocol number: H23/03/21) from the Witwatersrand University Human Research Ethics Committee (Non-Medical). The clearance certificate was issued on 8 August 2023.

Ethics clearance was obtained to ensure that the interviews conducted complied with the ethical research requirements of the University of Witwatersrand. All rights and interests of interviewees were respected and protected. Personal information was collected in compliance with the Protection of Personal Information Act of 2013 (Act No. 4 of 2013) as amended.

The ethical standards regarding identity protection are maintained throughout the research project.

8. Data Analysis

A desktop data analysis was conducted on the Blue Platinum Ventures 16 (Pty) Ltd and Matome Maponya case study and the applicable environmental legislation. An inductive qualitative analysis method was chosen to analyse the data. A thematic content analysis was conducted on the interview transcripts, to try and identify themes across the interview data by thoroughly reading the interview transcripts. Relevant words, phrases and sentences were annotated on the interview transcripts and these themes were labelled. This assisted in identifying patterns and organizing the data for dissemination. The data was then conceptualised by aligning and categorising the relevant themes that were annotated and labelled. The data was then segmented by connecting the important categories and creating a spreadsheet of the data. The data was tabulated and graphs were extrapolated from the table to show the comparison. The interviews and data analysis outcomes were analysed to determine trends and the deterrent effect of an environmental prosecution on the governance of the mining company.

9. Results and Discussion

A literature review was conducted on the Blue Platinum Ventures and Matome Maponya case and interviews were conducted to fill in the gaps. The outcome of the literature review is as follows:-

9.1. Factual Background

Blue Platinum Ventures 16 (Pty) Ltd is a private company that was initially incorporated on 30 July 2001 and the company registration number was M2001016902. The company had seven directors when it was initially incorporated and one of those directors was former Limpopo premier Cassel Mathale's wife (b2bhint, 2001; Centre for Environmental Rights, 2013). Blue Platinum Ventures 16 (Pty) Ltd wanted to collaborate with the local community to re-open the Bathlabine Brickworks that consisted of a brickworks plant and several clay pits situated in Greater Tzaneen Municipality (Sue Posnik and Associates, 2003). The landowner of the land that the clay pits were located on belongs to the Magoboya Tribal Authority that is headed by Kgoshi Magoboya (Sue Posnik and Associates, 2003).

Blue Platinum Ventures 16 (Pty) Ltd appointed Sue Posnick and Associates in 2003 to conduct the environmental impact assessment process for the re-opening of the brickyard and a mining right application for where they would mine the raw material i.e. clays that they required to manufacture bricks. Several specialists were involved in conducting specialist studies that informed the environmental assessment; the studies included a faunal survey, vegetation assessment, surface water assessment and management plan, as well as a soil erosion management plan (Sue Posnik and Associates, 2003).

An approved Environmental Assessment and Management Plan and Mining Right with reference number LP30/5/1/2/3/2/1(05)MR were granted in December 2005 (Dzerefos, 2011). Mining operations only commenced in 2007 due to conflicts with one of the partners from NALDEV Agency (Dzerefos, 2011). NALDEV Agency was appointed by Blue Platinum Ventures 16 (Pty) Ltd to develop a socio-economic

implementation plan that would form a part of the empowerment scheme set up for the local community (Sue Posnik and Associates, 2003).

The Environmental Assessment and Management Plan had various conditions such as but not limited to:- clay pits must be graded so that water flows away from the pit and does not cause soil erosion; concurrent rehabilitation to be conducted; continual removal of plant alien invasive species and stormwater drains at the quarries to be cleared and rebuilt (Sue Posnik and Associates, 2003).

In 2011 Blue Platinum Ventures appointed a consultant to audit the Environmental Assessment and Management Plan. The outcome of the audit was that Blue Platinum Venture were not compliant, they had totally disregarded their environmental management plan (Dzerefos, 2011). The consultant made several recommendations to assist them but subsequently they did not follow through on those recommendations (Jannasch and Botha, 2013). At the time, the Bathlabine community were not happy about the degradation of their environment and deaths emanating as a consequence of the Blue Platinum Ventures mining activities (*Bad luck will come to us (Tlhabine, Limpopo Province)*, 2016; Centre for Environmental Rights, 2013). The Bathlabine Foundation complained to the Department of Mineral Resources but their complaints fell on deaf ears (Centre for Environmental Rights, 2013; Interviewee 4, 2023). The Foundation continued to pursue the matter, until they received assistance from the national DFFE (Centre for Environmental Rights, 2013; Interviewee 4, 2023). The national DFFE enforcement section acknowledged their grievances and they decided to investigate the allegations (Centre for Environmental Rights, 2013). The investigation outcome was that Mr Matome Maponya was found to be guilty of contravening section 24F(1) of NEMA (Interviewee 5, 2023). DFFE requested The National Prosecuting Authority to assist them to prosecute Blue Platinum Ventures and its directors (Interviewee 2, 2023; Interviewee 5, 2023).

Initially when the case was heard in court, the presiding officer only found Mr Matome Maponya guilty in his personal capacity (Interviewee 2, 2023; Interviewee 5, 2023).

He was given a conditionally suspended five-year prison sentence without a fine option on the condition that he would not contravene the provisions of section 24(F) of NEMA during the period of suspension and that he had to rehabilitate all affected areas (Interviewee 5, 2023). The DFFE case officer was not satisfied with the ruling (Interviewee 5, 2023). She approached the National Prosecuting Authority ("NPA") in 2013 and requested their assistance (Interviewee 5, 2023). The NPA studied the record of the proceedings and recommended that the matter must be taken on review because the magistrate omitted to convict Blue Platinum Ventures (Interviewee 2, 2023). The review was heard in the High Court in Pretoria on 5 August 2015 (Interviewee 2, 2023). The judge ordered that the company should be convicted and that sentencing proceedings should continue (Interviewee 2, 2023). In January 2014 sentence proceedings were heard in the Naphuno Regional Magistrate Court and during those proceedings the NPA submitted their intention to issue a confiscation order in terms of section 18(2) of the Prevention of Organized Crime Act of 1998 (126/139 & 126/1321, 2014). On 21 November 2014 the inquiry into the confiscation order was held (126/139 & 126/1321, 2014).

Mr Matome Maponya pleaded guilty on behalf of himself and Blue Platinum Ventures. Blue Platinum Ventures was given a confiscation order of R200 000.00 and instructed to rehabilitate all affected areas with accordance to the Mineral Resource Petroleum and Development Act regulations and the Department of Mineral Resources and Energy Guideline on Mine Closure (126/139 & 126/1321, 2014). The company was also given the condition that it was not allowed to contravene the provisions of section 24(F) of NEMA for the next five years (126/139 & 126/1321, 2014).

Prior to the sentences being made in court, Blue Platinum Ventures was willing to rectify their wrongs and wanted to be given a chance to be allowed to continue mining (Interviewee 3, 2023). As part of the NEMA rectification process, they had to conduct public participation and the DMRE was invited to this meeting and they were present (Interviewee 3, 2023). The Bathlabine community was not willing to be engaged, they were hostile and wanted them to shut down their operations (Interviewee 3, 2023). Due to this conflict, the company decided to cease mining activities and opted to

rehabilitate the affected areas, so that they could obtain a closure certificate for their mining right (Interviewee 3, 2023). This contributed to the court rehabilitation ruling.

The rehabilitation programme had to be compiled by a qualified service provider and approved by the Magistrate before it was implemented (Interviewee 5, 2023; Mudzielwana, 2016). The rehabilitation programme was monitored by the Lenyenye Regional Magistrate Court from the beginning until its completion (Interviewee 1, 2023; Interviewee 5, 2023). The rehabilitation programme was implemented over eight years and Blue Platinum Ventures spent millions of rands, over and above the predicted rehabilitation fee in the rehabilitation plan, towards the implementation of this programme (Interviewee 1, 2023; Interviewee 2, 2023; Mudzielwana, 2016).

In this case, the judiciary gave much-needed guidance on the application and adherence to environmental rights, as well as giving effect to the principle of sustainable development (Feris, 2008).

9.2. Interview Outcomes

The outcomes of the interviews are as follows:-

9.2.1. Perception of the Case

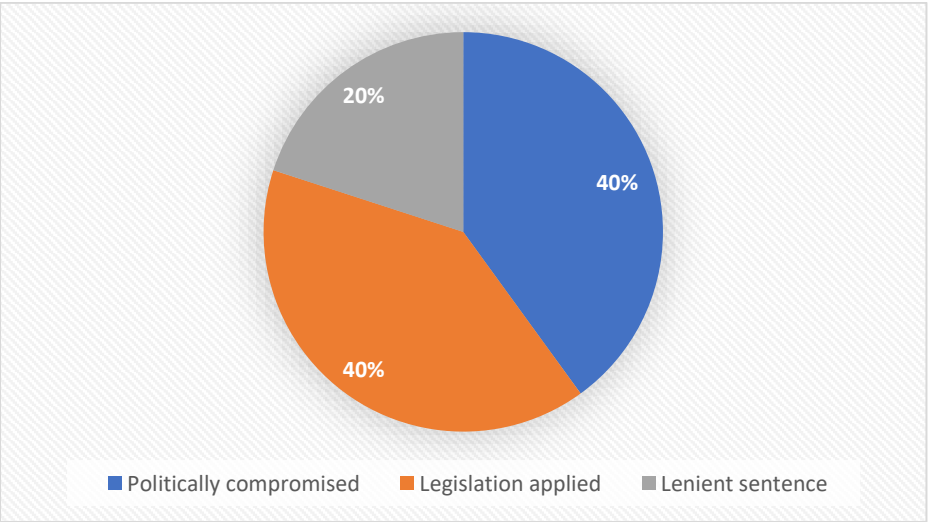


Figure 1: Perception of the case

According to *Figure 1*, the 40% of respondents perceived the case as being politically compromised because of the politician's involvement in the case, as well as the rule of law being put into practice. According to interviewee 3 and 4 the case was politically compromised because former Premier Cassel Mathale's wife was one of the directors of Blue Platinum Ventures 16 (Pty) Ltd. This notion was supported by the Centre for Environmental Rights (2013b). Interviewee 3 mentioned that the company was purposefully targeted and an example was to be made of the company because of this political association. Truter (2014) was of the opinion that it was not clear as to why charges were not brought against all six directors of the company.

Forty per cent of respondent believed that the rule of law was applied as a fair sentence with accordance to the relevant legislation was given. According to interviewee 5 in South Africa we normally do not have criminal cases whereby the judiciary simultaneously imposes environmental and community justice and goes above and beyond the normal criminal justice.

Interviewee 2 stated that the sentence was too lenient because the accused received a suspended sentence, which according to him did not send a message to other companies that they face dire consequences for non-compliance.

9.2.2. Fairness of the Sentence

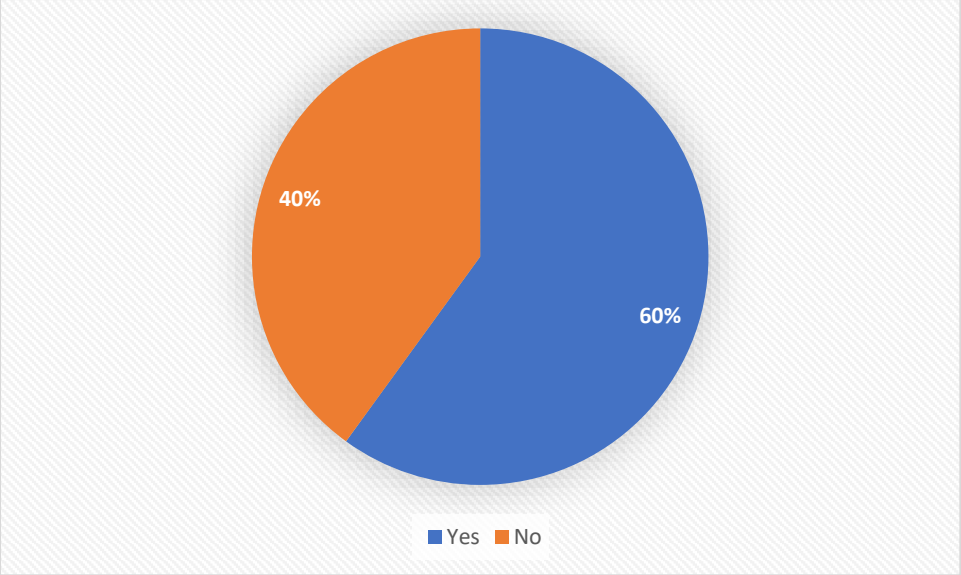


Figure 2: Fairness of the sentence

The majority stated that the sentence given was fair, as depicted in Figure 2. This was due to the that fact that Mr Maponya and Blue Platinum Ventures were first time offenders and they spent more money than what they had committed to in the rehabilitation plan and on rehabilitating the damaged areas. It is worth noting that even before the Blue Platinum Ventures mining activities commenced, the area was already disturbed.

Prior the mining right application process was initiated, Sue Posnik conducted an assessment of the potential mining right areas and they noted that there was poor water quality, erosion, fauna was severely impacted on by human habitation which had caused habitat fragmentation, as well as the vegetation that was negatively impacted on due to firewood collection, severe overgrazing and trampling (Posnik, 2000a). A meeting was held with the authorities at DMRE on 13 April 2000 prior the lodgement of the right and during this meeting an official indicated that Blue Platinum Ventures do not have to include all the previously disturbed mine areas in the new mine application (Posnik, 2000a). From these two statements it can be deduced that the previous company that went into liquidation was never held accountable for not rehabilitating the areas that they disturbed and Blue Platinum Ventures inherited the

liability by virtue of applying for the right. Therefore, the sentence was fair, considering the fact that they inherited another company's liability.

9.2.3. Sentence Conditions Fulfilment

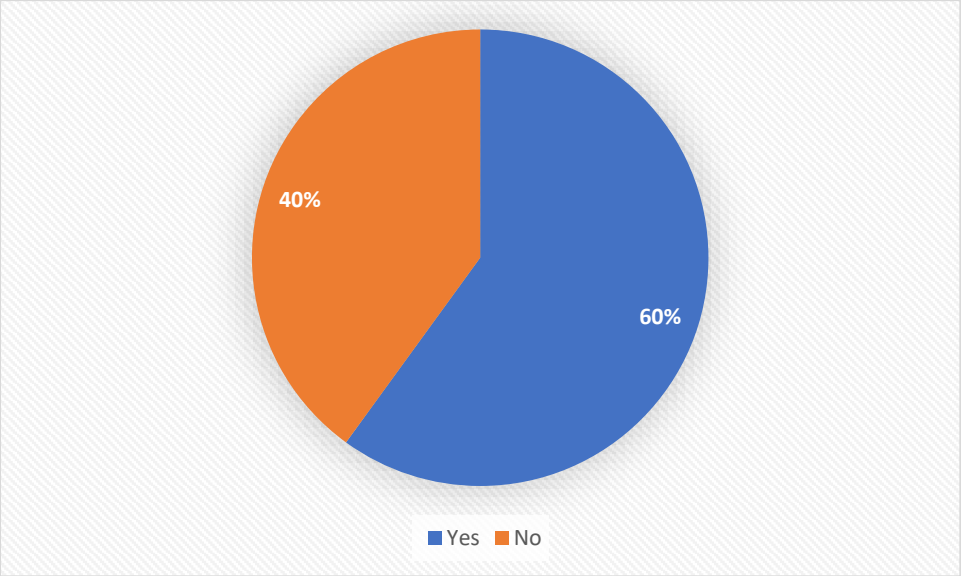


Figure 3: Sentence conditions fulfilment

Rehabilitation was conducted to the satisfaction of the expert, community and government, therefore the majority stated that the sentence conditions were fulfilled, as illustrated in *Figure 3.* Interviewee 1 stated that "Blue Platinum Ventures did not stick to the areas that they were authorized to mine they encroached on other areas and they did not rehabilitate at all, when they were actually supposed to rehabilitate concurrently as they were mining." Furthermore, she stated that she thought that Blue Platinum Ventures assumed that it was okay to operate in this manner because there is an area close to one of their operational areas, where the municipality and building contractors have excavated and never rehabilitated. She further stated that the municipality was condoning it and everyone has been quiet about it and it is actually more of an environmental damage than what Blue Platinum Ventures has caused. Interviewee 2 stated that the justice in the case was the receiving environment being rehabilitated and that signified the fairness of the sentence.

9.2.4. Community Justice Achievement

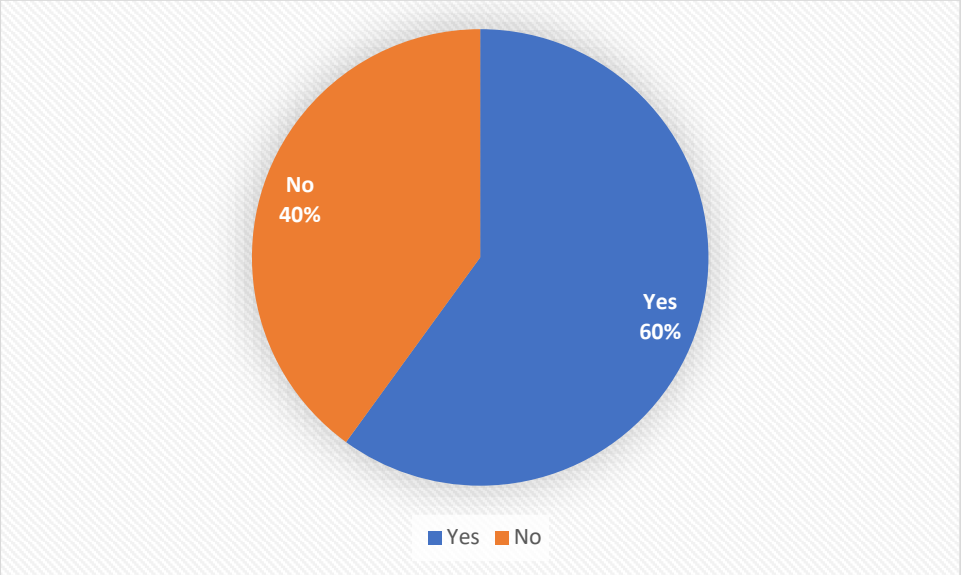


Figure 4: Community justice achievement

According to *Figure 4,* the majority believed that the community had received justice because rehabilitation was conducted and it addressed their concerns. According to one of the interviewees the accused rehabilitated satisfactorily and that they should have done more to show that they were remorseful, by empowering the community. Another interviewee stated that the community was demanding environmental justice, but they themselves were illegally dumping on the affected areas that the accused needed to rehabilitate.

9.2.5. Deterrent Effect of the Case

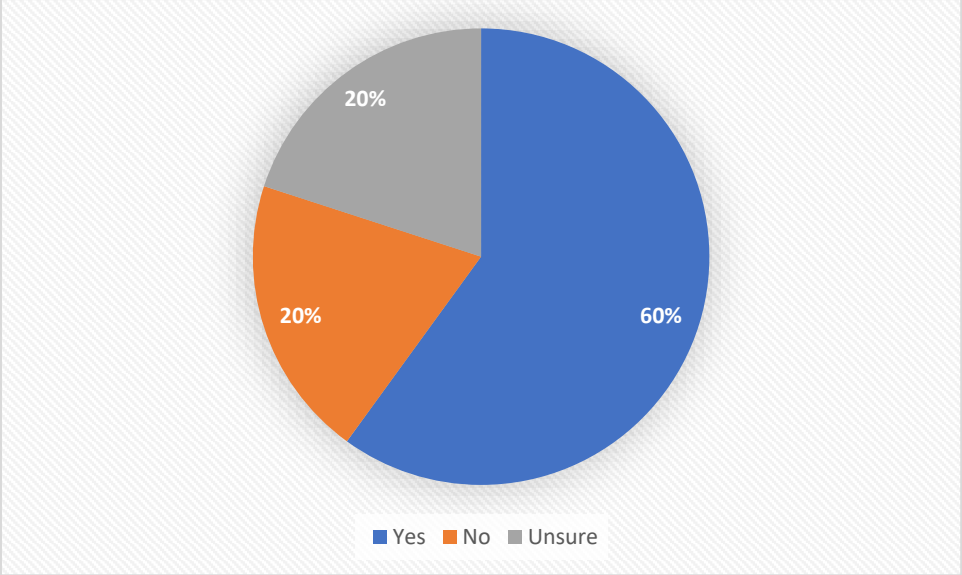


Figure 5: Deterrent effect of the case

The majority stated that the case had a deterrent effect on Mr Maponya and Blue Platinum Ventures to govern better, i.e*. Figure 5.* One of the interviewees stated that she recently attended a Land Rehabilitation Society of South Africa conference where all rehabilitation specialists of South Africa were present. She said that she presented that the case was a deterrent and that they should let their clients know that this could happen, but it is not spoken of enough. Her statement is further supported by the article written by (Truter, 2014), whereby he stated that the case is a deterrent. According to another interviewee the case also indicated that mining affected communities can take mining companies to court and get justice.

During the sentencing proceedings Magistrate stated that if the court were to order a payment of a fine of R5 million, that money would be credited to the account of the Department of Justice and the affected community would continue to suffer, therefore a suitable sentence would be one that benefitted the affected community and simultaneously deter the accused from committing the same offence (126/139 & 126/1321, 2014). The sentence imposed by the presiding officer impacted the accused's mined in a way that if he conducts illegal mining activities, there would be severe consequences and that would deter him from committing such crimes again (Mukul, 2022). To date the accused has not committed the same crime.

Interviewee 1 highlighted that successfully prosecuted cases are being documented in scientific publications but people are not reading them, hence the public's lack of awareness. Furthermore, Interviewee 1 stated that educating or raising awareness about prosecuted cases to the public is paramount to achieving deterrence. The deterrent effect of successful criminal prosecutions is diminished if potential offenders are not aware of successful enforcement action, or if they believe they will not be caught and prosecuted themselves (Rolfe, 1997).

According to Reiss (as cited in Kidd, 2002), the principal objective of a criminal prosecution is to secure compliance through deterrence, without the necessity of detecting, prosecuting, and penalizing all violators. The principal objective of deterrent law enforcement systems is to secure conformity with the law and this was achieved as the accused and the laws that they violated were determined and they were penalized to deter them from committing the same violations in the future.

9.2.6. Environmental & Mining Laws Stringency

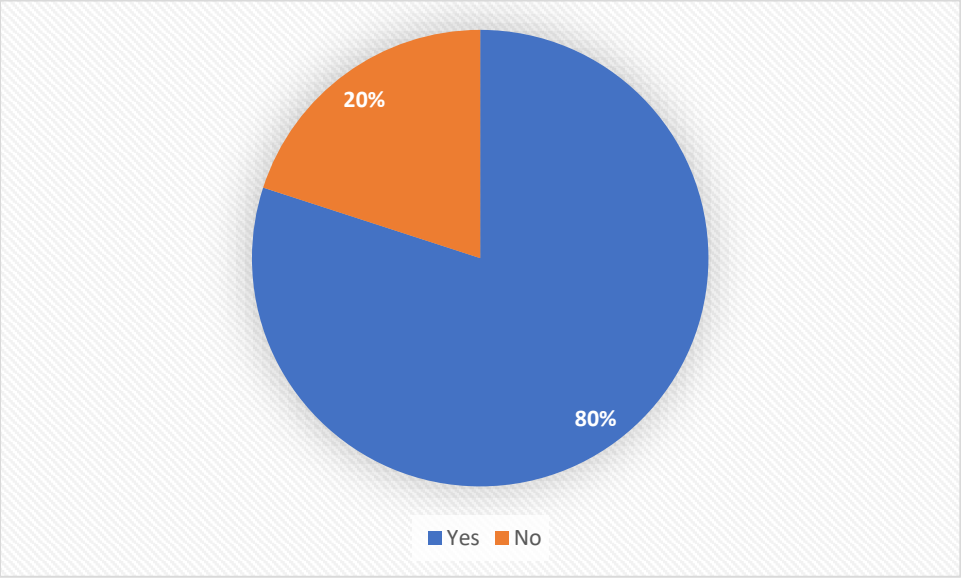


Figure 6: Environmental & mining laws are stringent

In terms of the stringency of mining and environmental legislation, the majority believed that the current legislation is stringent enough, as depicted on *Figure 6*. The consensus was that we lack the ability to efficiently enforce compliance of the current legislation. Interviewee 5 stated that the government is struggling to implement and enforce environmental laws in the mining industry and that since DFFE was booted out by DMRE from the sector, implementation and enforcement levels have declined.

Interviewee 3 stated that mining and environmental legislation is stringent but the problem is that it is complicated, it is amended frequently and only environmental practitioners understand them well; the people who need to apply them daily do not understand them.

9.2.7. Mining Companies Inability to Comply with Legislation

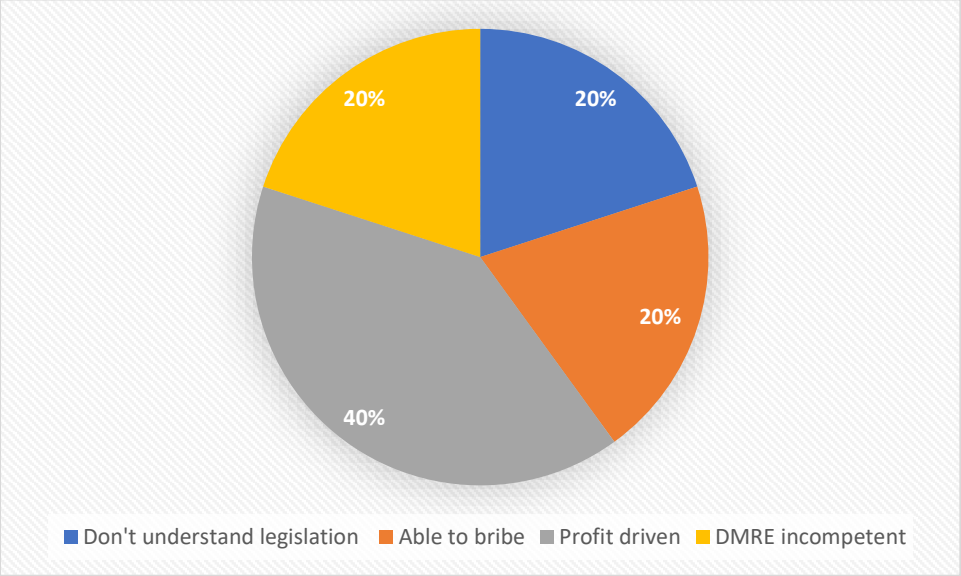


Figure 7: Mining companies inability to comply with legislation

The inability to enforce compliance efficiently in the mining industry is mainly attributed to the fact that most mines are profit driven (as depicted on i.e. Figure 7) and they deem spending money towards the conservation of the receiving environment an unnecessary expense or as an expense that will be covered at the end of life of mine.

According *to* one interviewee, it is difficult for the competent authority to enforce compliance, due to political interference.

Implementing enforcement is a challenge that may be attributed to a lack of capacity and insufficient resources at a provincial and national government level to undertake compliance monitoring and enforcement where mining companies do not abide by the law, inadequate policing, lack of public awareness, lack of expertise in court and inadequate penalties that are imposed by judicial officers (Feris, 2008; Kidd, 2004).

9.2.8. Mining Industry Legislation Compliance Improvement

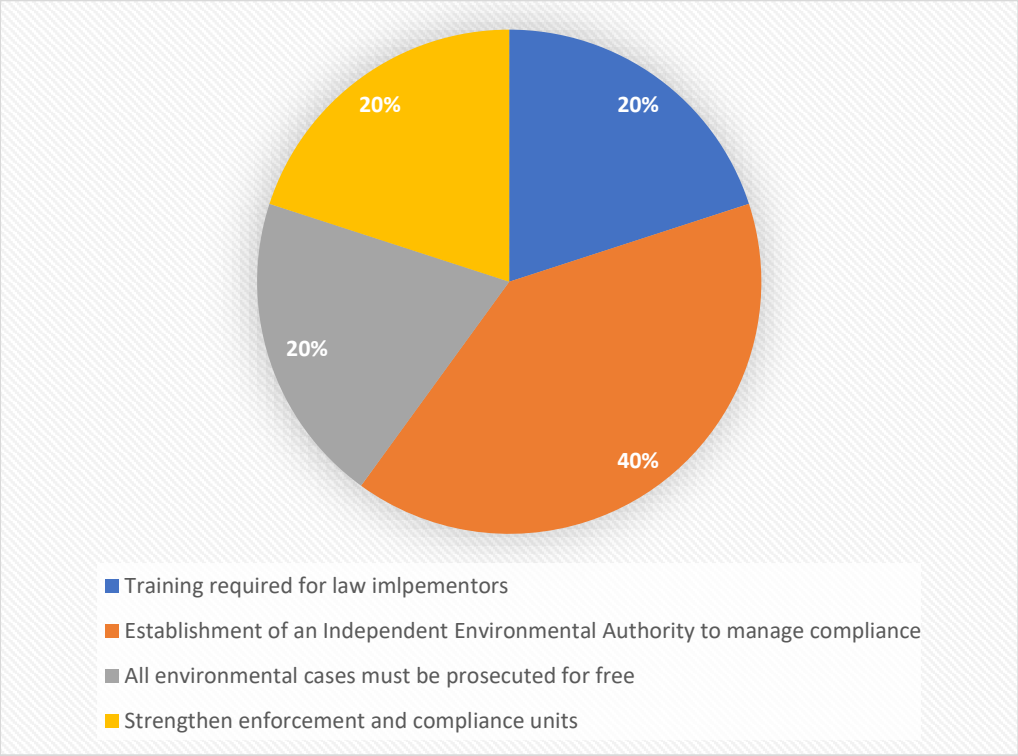


Figure 8: Mining Industry Legislation Compliance Improvement

According to *Figure 8,* the majority believed that if an independent environmental authority is established to enforce compliance with mining and environmental legislation in the mining sector, it would greatly improve the compliance levels because it is believed that the DMRE is conflicted. DMRE is expected to issue mining

and environmental licenses, to enforce compliance and to promote the same mines for economical reasons, therefore they cannot be objective.

Interviewee 3 and 5 stated that strengthening enforcement and compliance units by hiring more competent experts and by training existing units could improve compliance to legislation. Interviewee 5 said, “The laws are there, we just need to strengthen the enforcement and compliance units. Using the available legal remedies to impose compliance and enforcement. I noticed that environmental authorities only follow administrative law and issue compliance notice and hardly follow-up. Therefore, companies ignore those compliance notices, and no further action is taken. The law provides for interdicts to force companies to comply through litigation or even force them to comply through criminal prosecutions.”. Interviewee 1 stated that reporting an environmental crime at the police station and not being taken seriously is also part of the problem and she has first-hand experience of this, furthermore, she highlighted that at provincial level there is no understanding of how environmental degradation is setting us back in terms of sustainable development, for them it is just a job. Adam (2023), opined awareness and education programmes need to be created, especially in the SAPS regarding the types of environmental pollution and illegal dumping being a crime.

10. Conclusion

South Africa has good and stringent mining and environmental legislation, the problem is failure to implement and enforce it in the mining industry. The various reasons for this occurrence are that mining companies are mainly profit orientated and they regard spending money on ensuring conservation of the receiving environment as an unnecessary expense. It is also due to the fact that individuals that are expected to implement the legislation do not understand it, there is a culture of bribing officials to deter them from enforcing compliance and the DMRE lacks competence and objectivity, therefore it is failing to enforce compliance.

Compliance with legislation in the mining industry can be improved in the following manners:- (1) An effort should be made by mining companies, DMRE, the mining council and related affiliations to train all mining employees about the legislation. This will improve their understanding and change their perception about the importance of conserving the receiving environment. (2) The establishment of an independent environmental authority that will solely be mandated to enforce compliance with mining and environmental legislation in the mining sector, would greatly improve the compliance to legislation. The Department of Mineral Resources and Energy ("DMRE") is conflicted because they issue licenses, economically promote these mines and are still expected to enforce compliance at the same mines. (3) The costs involved in taking environmental transgressors to court is too high and that deters whistleblowers, activists and communities from taking transgressors to court. The South African government should explore altering the law to allow all environmental cases to be prosecuted for free. (4) Enforcement and compliance units in DMRE should be strengthened in terms of competency and man-power. (5) Communities in mining areas need to become more proactive in monitoring compliance with legislation of mines operating in their surrounding areas, because they are the direct beneficiaries of mining company's operating in an environmentally responsible manner. As affected parties they have the power to hold mining companies accountable for degrading their surrounding environment. Communities should familiarise themselves with whistle blowing channels and be courageous enough to follow through, until the mine is held liable. (6) Creating more public awareness regarding the publications that are already in place that publicise environmental criminal prosecutions, to try deter potential perpetrators from being prosecuted for similar crimes that their peers have been prosecuted for. (7) Enforcement should be applied uniformly and consistently to ensure its effectiveness and to prevent it from being undermined.

To-date Mr Maponya and Blue Platinum Ventures have not contravened conditions of their sentence. I hereby conclude that the Blue Platinum Ventures and Mr Maponya case has had a deterrent effect on the company itself and Mr Maponya.

References

126/139 & 126/1321, 2014. State v Blue Platinum Ventures 16 (Pty) Ltd & Matome Samuel Maponya and National Director of Public Prosecutions v Blue Platinum Ventures 16 (Pty) Ltd & Matome Samuel Maponya.

462/04/2009 // ESH 82/11, 2012. State v Golfview Plea and sentence agreement.

Adam, F., 2023. We tried to lay criminal charges against Joburg for water pollution – the SAPS didn't know how [WWW Document]. Dly. Maverick. URL https://www.dailymaverick.co.za/article/2023-05-24-water-pollution-is-a-criminal-offence-someone-should-tell-the-saps/ (accessed 2.14.24).

Ally, D., Mokoena, M.T., 2013. Basic Guide to Criminal Procedure A rights-based approach, 1st ed.

Avenant, L.P., 2014. Avenant_Director_2014.pdf. University of Pretoria.

b2bhint, 2001. Blue PLatinum Ventures 16 - M2001016902 - South Africa [WWW Document]. BLUE Platin. Ventur. 16 - M2001016902 - South Afr. URL https://b2bhint.com/en/company/za/blue-platinum-ventures-16--M2001016902 (accessed 1.28.24).

Bad luck will come to us (Tlhabine, Limpopo Province), 2016.

Bareki NO and Another v Gencor and Others 2006 (1) SA 432 (T), 2005. Bareki NO and Another v Gencor and Others.

Beech, W., Veltman, N., Lovells, H., 2017. Environmental law and practice in South Africa: overview [WWW Document]. Pract. Law. URL http://uk.practicallaw.thomsonreuters.com/4-502-7865?transitionType=Default&contextData=(sc.Default)&firstPage=true (accessed 10.16.23).

Bezuidenhout, W., 2018. A corporate governance framework for South African mining companies when placing a mine on care and maintenance.

Bobbins, K., Trangoš, G., Phasha, P., Butcher, S., Munakamwe, J., 2018. Mining Landscapes Of The Gauteng City2018-Region (No. 7).

CAS 94/11/2010, 2012. State v Vunene Mining (Pty) Ltd S105A Plea Sentence Agreement.

Centre for Environmental Rights, 2013. Media Release: Response to recent cases of enforcement action against mining companies for environmental violations [WWW Document]. Cent. Environ. Rights. URL

https://cer.org.za/news/media-release-response-recent-cases-enforcement-action-mining-companies-environmental-violations (accessed 1.28.24).

Centre for Environmental Rights, Centre for Applied Legal Studies, Groundwork, South Durban Community Environmental Alliance, Vaal Environmental Justice Alliance, Highveld Environmental Justice Network, Earthjustice, 2017. The threats to human rights from mining and coal-fired power production in South Africa.

Chauhan, R., 2020. Effective Environmental Compliance With Specific Reference To Extractive Mining Industries. University of Johannesburg.

Chauhan, R., 2018. Social justice for miners and mining-affected communities : the present and the future.

Cole, M.J., Broadhurst, J.L., 2022. Sustainable Development in Mining Communities: The Case of South Africa's West Wits Goldfield. Front. Sustain. Cities 4, 895760. https://doi.org/10.3389/frsc.2022.895760

Constitutional Assembly, 1996. The Constitution of the Republic of South Africa.

Cook, C.L., 2000. Bathlabine Brickworks EMP: Initial Faunal Survey. Sue Posnik & Associates Environmental Consultants cc.

Davidson, S., 2022. Preventing Crime Through Incapacitation. URL https://ace-usa.org/blog/research/research-criminaljustice/preventing-crime-through-incapacitation/ (accessed 1.7.24).

Department of Environmental Affairs and Development Planning, 2023. Department of Environmental Affairs and Development Planning vote 9 Annual Report 2022/23 (2022/23).

Department of Forestry, Fisheries and the Environment, 2023a. 2022/23 National Environmental Compliance and Enforcement report shows a significant increase in the reporting of environmental crimes by South Africans | Department of Environmental Affairs [WWW Document]. Dep. For. Fish. Environ. URL https://www.dffe.gov.za/mediareleases/necer (accessed 1.28.24).

Department of Forestry, Fisheries and the Environment, 2023b. National Environmental Compliance & Enforcement Report (No. 2022/23). Department of Forestry, Fisheries and the Environment.

Department of Justice and Constitutional Development, 1996. The Basic Provisions of the Constitution of the Republic of South Africa, 1996, Made Easy for Learners.

Digby, C., 2016. Mine Closure & Rehabilitation: From Dereliction to Accountability?

Dzerefos, C., 2011. Performance Assessment Report for Bathlabine Brickworks, Greater Tzaneen Municipality, Limpopo Province.

Feris, L., 2008. Constitutional Environmental Rights: An Under-Utilised Resource. South Afr. J. Hum. Rights 24, 29–49. https://doi.org/10.1080/19962126.2008.11864946

Feris, L., Kotze, L., 2015. The regulation of acid mine drainage in South Africa: law and governance perspectives. Potchefstroom Electron. Law JournalPotchefstroomse Elektron. Regsblad 17, 2104. https://doi.org/10.4314/pelj.v17i5.07

Glazewski, J., 2000. Environmental Law in South Africa. LexisNexis.

Gordon, J., 2023. Theories Behind Criminal Punishment - Explained [WWW Document]. URL https://thebusinessprofessor.com/en_US/criminal-civil-law/theories-behind-criminal-punishment (accessed 10.14.23).

Hancock, D.R., Algozzine, B., Lim, J.H., 2021. Doing case study research: A practical guide for beginning researchers.

Interviewee 1, 2023. Interviewee 1 Interview.

Interviewee 2, 2023. Interviewee 2 Interview.

Interviewee 3, 2023. Interviewee 3 Interview.

Interviewee 4, 2023. Interviewee 4 Interview.

Interviewee 5, 2023. Interviewee 5 Interview.

Jannasch, H., Botha, J., 2013. Compliance Monitoring Report and Corrective Measures for The Bathlabine Brick Works Mining Sites at Thabina Village in Mopane Municipality, Limpopo (No. L12 173 E). Africa Geo-Environmental,Engineering and Science (Pty) Ltd, (known as AGES).

Kidd, M., 2011. Environmental Law, 2nd ed. Juta and Company [Pty] Ltd, Cape Town (South Africa).

Kidd, M., 2004. Sentencing Environmental Crimes.

Krause, R.D., Snyman, L.G., 2014. Rehabilitation and mine closure liability: An Assessment of the accountability of the system to communities.

Law Guide, 2023. South African Criminal Procedure – Law Guide. South Afr. Crim. Proced. URL https://lawguide.co.za/south-african-criminal-procedure/ (accessed 1.23.24).

Learnovate, M.I.M., 2022. Case Study Research Method | Benefits, Limitations [WWW Document]. MIM Learn. URL https://mimlearnovate.com/case-study-research/ (accessed 2.4.24).

Linde, C., 2006. A critical review of the environmental impact assessment system in South Africa based on case studies and a literature review.

Lombard, D., 2018. Law Enforcement in the South African Gold Mining Sector: The nexus between Company, Environmental and Equity law. Unisa.

Lynch, M.J., Barrett, K.L., Stretesky, P.B., Long, M.A., 2016. The Weak Probability of Punishment for Environmental Offenses and Deterrence of Environmental Offenders: A Discussion Based on USEPA Criminal Cases, 1983–2013. Deviant Behav. 37, 1095–1109. https://doi.org/10.1080/01639625.2016.1161455

Mabiletsa, M., Du Plessis, W., 2001. The impact of environmental legislation on mining in South Africa 29.

Makua, M.P., Kola, O.O., 2017. Harmful mining activities, environmental impacts and effects in the mining communities in South Africa: a critical perspective. Environ. Econ. 8, 14–24. https://doi.org/10.21511/ee.08(4).2017.02

Mentis, M., 2020. Environmental rehabilitation of damaged land. For. Ecosyst. 7, 19. https://doi.org/10.1186/s40663-020-00233-4

Meyer, J., 1968. Reflections on Some Theories of Punishment. J. Crim. Law Criminol. Police Sci. 59, 595. https://doi.org/10.2307/1141839

Minerals Council South Africa, 2022a. Brief history of diamond mining in South Africa - Mining for schools [WWW Document]. URL https://www.miningforschools.co.za/lets-explore/diamond/brief-history-of-diamond-mining-in-south-africa (accessed 3.15.24).

Minerals Council South Africa, 2022b. Facts & Figures Pocketbook.

Mondal, D.M., 2021. Preventive or Deterrence Theory: A doctrine concerning punishment. Sch. Publ. Karimgani Assam India VII, 97–104. https://doi.org/10.29032/ijhsss.v7.i5.2021.97-104

Mpanza, M., Elhadi, E., Moolla, 2020. Perceptions of external costs of dust fallout from gold mine tailings: West Wits Basin. Clean Air J. 30. https://doi.org/10.17159/caj/2020/30/1.7566

Mudzielwana, M., 2016. Environmental Rehabilitation Plan for the Bathlabine Brickworks in Tlhabine valley 13 KT, Uplands 653-LT and Small portion of the adjoining farm, Moim 656-LT. Tshikovha Environmental and Communication Consulting.

Mukul, M., 2022. Deterrent theory of punishment. iPleaders. URL https://blog.ipleaders.in/deterrent-theory-of-punishment/ (accessed 1.7.24).

Murombo, T., Munyuki, I., 2019. The Effectiveness of Plea and Sentence Agreements in Environmental Enforcement in South Africa. Pioneer Peer-Rev. Open Access Online Law Publ. http://dx.doi.org/10.17159/17273781/2019/v22i0a5685

Muswaka, L., 2017. An Analysis of the Legislative Framework concerning Sustainable Mining in South Africa. Sustainable Mining in South Africa.

Nagin, D.S., 2013. Deterrence in the Twenty-First Century. Crime Justice 42, 199–263. https://doi.org/10.1086/670398

Naidoo, R., 2009. Corporate governance: an essential guide for South African companies. Double Storey, Cape Town.

Ncube, V., 2022. The Forever Mines. Hum. Rights Watch.

Ngobese, S.S., 2015. Examining the Socio-Economic Impact of Mining on the Livelihoods of Amajuba District Mining Communities.

Odeku, K., Gundani, S., 2017. Accentuating criminal sanctions for environmental degradation: issues and perspectives. Environ. Econ. 8, 28–37. https://doi.org/10.21511/ee.08(2).2017.03

Pejan, R., du Toit, D., Thompson, H., 2011. Norms for policy implementation lags in the South African water sector (No. KV 286/11). Water Research Commission.

Posnik, S., 2000a. Background Information on the Project.

Posnik, S., 2000b. Minutes of Authorities' Meeting Held at Department of Minerals and Energy.

Posnik, S., 2000c. Minutes of Authorities' Site Meeting Held at Bathlabine Community Hall.

Qumbu, B., 2019. The role of courts in promoting water security in South Africa. North West.

Rankin, W.J., 2014. Chapter 4.1 - Sustainability, in: Treatise on Process Metallurgy. Elsevier Ltd, pp. 1376–1424. https://doi.org/10.1016/B978-0-08-096988-6.00033-X

RC126/2013, 2013. Confiscation order in terms of section 18 of the prevention of organised crime act.

Rolfe, C., 1997. Administrative Monetary Penalties: A tool for ensuring compliance.

Shimshack, J.P., Ward, M.B., 2005. Regulator reputation, enforcement, and environmental compliance. J. Environ. Econ. Manag. 50, 519–540. https://doi.org/10.1016/j.jeem.2005.02.002

Skosana, V., 2019. Environmental Impact Assessment.

Snijman, P., Thomson, B., Horsfield, C., Townsend, D., 2013. When Mines Break Environmental Laws: How To Use Criminal Prosecution To Enforce Environmental Rights.

South African Human Rights Commission, 2016. National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa.

Stretesky, P.B., Long, M.A., Lynch, M.J., 2013. Does environmental enforcement slow the treadmill of production? The relationship between large monetary penalties, ecological disorganization and toxic releases within offending corporations. J. Crime Justice 36, 233–247. https://doi.org/10.1080/0735648X.2012.752254

Strydom, M., 2022. The use and impact of criminal sanctions for environmental law transgressions in industrial facilities: Determining the boundaries of overcriminalization. Witwatersrand, Johannesburg.

Sue Posnik and Associates, ., 2003. Environmental Assessment Management Plan for Bathlabine Brickworks, Greater Tzaneen Municipality, Limpopo Province. Sue Posnik And Associates CC.

Summers, S.J., 2022. Sentencing and Human Rights: The Limits on Punishment, 1st ed. Oxford University PressOxford. https://doi.org/10.1093/oso/9780192870384.001.0001

Sutton, M.W., Weiersbye, I.M., 2007. South African Legislation Pertinent to Gold Mine Closure and Residual Risk.

Terblanche, I.W., 2000. Bathlabine Brickworks Environmental Management Programme Soil Erosion Management Plan.

The World Bank, 2019. Digging Beneath the Surface: An Exploration of the Net Benefits of Mining in Southern Africa. https://doi.org/10.1596/32107

Truter, J., 2014. Environmental law compliance – the noose is tightening.

Universal Class, 2023. The Strengths and Weaknesses of Case Studies [WWW Document]. UniversalClass.com. URL https://www.universalclass.com/articles/business/a-case-studies-strengths-and-weaknesses.htm (accessed 2.4.24).

V3 Consulting Engineers, 2000. Bathlabine Brickworks Environmental Management Plan Surface Water Assessment and Management Report.

White, B.V.I.-B., Katumba, M., Beech, W., 2022. Snapshot: environmental regulations for mining activities in South Africa [WWW Document]. Lexology. URL https://www.lexology.com/library/detail.aspx?g=3e71139e-c3e5-4311-8371-50855c3d7c1d (accessed 10.16.23).

White, R., 2013. Resource Extraction Leaves Something Behind: Environmental Justice and Mining. Int. J. Crime Justice Soc. Democr. 2, 50–64. https://doi.org/10.5204/ijcjsd.v2i1.90

Willis, B., 2014. The Advantages and Limitations of Single Case Study Analysis. E-Int. Relat. URL https://www.e-ir.info/2014/07/05/the-advantages-and-limitations-of-single-case-study-analysis/ (accessed 2.4.24).

Winter, P., 2000. Bathlabine Brickworks EMP Initial Assessment of Vegetation. Sue Posnik & Associates Environmental Consultants cc.

Annexures

Interview Schedule

Interview Questions

1. Please describe your role and involvement in the Blue Platinum Ventures case.
2. What is your perception of the case?
3. Do you think that the sentence given was fair?
4. Are you aware if the sentence conditions have been fulfilled? If not, does this change your perception of the fairness of the sentence?
5. In this case, do you think that justice has been served for the community? And for the environment?
6. Cases such as the Blue Platinum Ventures case are supposed to have a deterrent effect. Have you come across any evidence of the case having a deterrent effect on other mining companies? Do you think the case as had any influence on better mining rehabilitation?
7. Do you think that the current environmental and mining laws are stringent enough?
8. Why do mining companies fail to comply with their environmental and mine closure-related obligations?
9. What do you think should be done to improve compliance to legislation in the mining industry?