

Bench Marks Foundation NPC



ANNUAL REPORT 2022

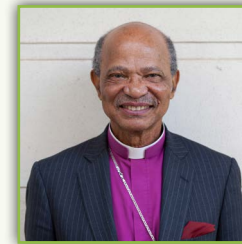




We take this opportunity to thank all our supporting funders, an active board, staff and community monitors for all their contributions in 2022. The success of Bench Marks Foundation belongs to each of you and we appreciate your hard work and dedication.



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Contextual factors

In 2022 the situation of mining affected communities worsened further and human rights activists in South Africa are increasingly under threat and fear for their life. As we reflected on ten years after the Marikana massacre and engaged with communities around Marikana they continued to repeat: “Nothing has changed. In fact, things are worse.” Building community agency and providing support to communities in the post-COVID context has been very complex. Encouraging communities to collectively stand up for their rights, while being faced with the near impossibility of change in terms of power holders and the extra challenge of tight economic situations for everyone, has been difficult.

Overall impact and proud moments

We have continued to follow our advocacy strategies of working in coalition with communities and other civil society organisations, facilitating direct engagements with corporations and government, continuing with international advocacy and creating broader awareness on issues through research initiatives and discussions with the mainstream media. We have conducted successful campaigns with partners, engaged in constructive co-operation with government departments and held some engagements with mining companies. We continued our work in coalitions and had a broad range of media engagements on advocacy issues. Especially after the Marikana events we strengthened rights-holders through a holistic issue-based and capacity building approach. We invested in strengthening community-based structures and empowered them with the knowledge and skills to engage power holders. For example, one community has contested a water licence application in court with our support, another was successful in sourcing money for an implementation plan based on a targeted investigation they conducted on environmental pollution and waste management in their area. In Jagersfontein, where a tailings dam broke in September 2022, we were able to provide relative immediate analytical support through the compilation of the Jagersfontein Tailings Disaster Report and guidance in engaging power holders and the court.

We have identified four process of which we can be proud:

1. The successful holding of a hybrid Annual Conference entitled: “Mine closure – the burning issue of our times” held on 18-19 October 2002 and attended by 195 people, half of whom were in person, and the other half online. At the conference we had four successful working groups on “zama-zamas and artisanal mining”, “Mine closure and post closure management”, “Community perspectives: how to make danger zones visible?” and “Increased regional solidarity work”. We also had a panel discussion on “Mine closure: What has not been done and what has to be done” with an esteemed panel of Tebello Chabana (Minerals Council), Louis Snyman (Centre for Applied Legal Studies, Wits University), Mariette Lieferrink (Foundation for Sustainable Development) and Adv Mluleki Marongo (SAHRC). Getting all the different stakeholder groups into one room, having meaningful conversations and getting new impetus to our advocacy work has been motivating. The participants in this panel strengthened existing alliances and opened new avenues for joint work and collaboration with stakeholders and enhanced our ability to challenge and engage the state and corporations. An example is the MPDRA Alliance in which CALS participates, that is challenging the forced removal of 1 000 households to make way for bigger Anglo American mining in Sekhukhuneland, Limpopo. Based on the evaluation questionnaires we know that 40% of the respondents

represented communities, 33% came from NGOs, 6% came from the mining industry and another 6% from universities. 54% of the respondents were female and 46% male. Just under 20% were below 35 years of age. Two thirds of the respondents rated the conference overall as very good or good. Two thirds also found the opening addresses and the presentations by the Bench Marks teams very insightful or insightful. 56% found the guest speaker’s speech very insightful or insightful. The different working groups and the feedback presentations as well as the panel discussion were rated as having been very good or good by close to 100% of the respondents.

2. In Nyakollong, Free State we have established a good partnership between the community, the University of the Free State and local government stakeholders which has helped our advocacy work. The community is well organised and gets things moving which has been encouraging to see. The engagement and training of local government in Nyakollong in 2023 is a result of the advocacy work around the communities’ water and housing challenges and the successful cooperation with the university.
3. Introducing phytoremediation as a rehabilitation and community empowerment approach has also been a highlight for us. Phytoremediation involves planting on contaminated soil. The poison is absorbed by the roots of the plant and the rest of the plant can still be used for economic activity. While the project is still in its infancy, we have seen that communities are keen to get involved in rehabilitating the polluted tailings that continue to be health hazards to their communities and that there are willing to come together, get organised and form co-operatives. In Snake Park, for example, we brought a scientist from MINTEK (the state training college for mining) and the community together for a phytoremediation project, soil samples were taken and the suitability of the site for phytoremediation was established. Planting of sunflowers will begin in 2023.
4. Our “Outcome harvesting approach” was another highlight in 2022. The process has shown that our work has relevance for building individuals and communities. We have seen testimonies of personal empowerment and skills development, of communities coming together, and of people learning from us and then venturing out to start their own advocacy organisations. We asked community monitors and facilitators and community activists working with the research or in the problem solving space about the changes that their engagement with Bench Marks has created for them as individuals and changes that they were able to create in their communities. The compilation of the results can be found in the Brochure “Walking together for Change” on the community monitors website ([Walking together for Change – Tunatazama – Community Monitors](#)).

As we reflected on ten years after the Marikana massacre and engaged with communities around Marikana they continued to repeat: “Nothing has changed. In fact, things are worse.”

Some quotes about individual development included:

“Today I am empowered and brave enough to challenge people in positions of power.”

The posts are giving us monitors strength to say, we are writing but what I’m writing will at the end of the day bring justice to my community.”

The training from the Bench Marks Foundation has really assisted us as community activists with knowledge and skills around identifying and solving of problems. We know now who to involve for addressing them.”

I would like to be capacitated even further on the legality of mining issues and around land questions. It gives us strength to know that we can approach the issues for the better of the communities.”

Community activists also shared how they managed to create change in their communities as a result of their own personal growth. They, for example, created visibility and publicity for social injustices in mining affected communities, successfully organised awareness raising campaigns, connected people across communities and had successful litigation and court cases.

People from Riverlea in Gauteng that are working with the research unit of the Bench Marks Foundation, for example, shared:

“We created awareness in our community around the toxins around us. Through our work we got rid of the finger pointing in our community and strengthened the community spirit. The changes we have created are visible. For example, fewer people die because we now have oxygen to provide to them in times of need, and the water and the dust levels are tested regularly. The school we are supporting also understands our work now.”

Monitors from Mokopane in Limpopo shared:

“Our community is starting to be more conscious and aware of the issues that are affecting them. If you raise an issue as a monitor now, they are responsive. Before people used to maybe see an issue but felt that there is nothing they can do about it. Now people understand that there are platforms to challenge those issues.”

A monitor from Waterberg in Limpopo shared:

“I created unity, togetherness and solidarity, a sense of working together for a better community. The change I can see is having passionate activists, journalists and researchers in my community.”

To give an example of concrete change:

“I am happy that the sewage spill issue has been resolved, even though the Municipality Manager didn’t acknowledge our letters and didn’t want to meet us. At least there are no more sewage spillages or blockages in people’s homes. But we are not stopping here. We still want to have a proper sewage plant. We want the municipality to understand that they are harming many people, even from neighbouring countries, by polluting the Limpopo River. We want to save the river in the long run.”

“We are also fighting for women representation in meetings. If women are given a chance to lead, they can lead very well. But before you are given a chance as a woman, they will make you smaller. We also stand up for women not being a playground and we are trying to direct the monitors to focus their writing on how women are affected.”

Main Strategic lessons

Main strategic lesson learnt is that we can successfully offer support to communities to defend their human rights and fight for social justice even in challenging times. As the Bench Marks Foundation we managed an internal transition and learnt new ways of cooperating and programmatic integration, of internal transparency and accountability. We have seen that the hybrid way of working using both face to face interaction complemented by digital tools is the way to go – in our team but also in our work with communities. Digital tools can build power and help us to reflect and strategise.

1. COUNTRY CONTEXT



South Africa is traversing a profound and multi-dimensional crisis, a poli-crisis of sorts, where the economy has not recovered from 2.2 million jobs lost when the COVID-19 crisis was at its worse. While larger corporations in the extractive, retail and banking survived, many small to medium scale companies did not recuperate. Mining due to earlier stockpiling reaped huge profits and executives – the bosses – in these sectors walked away with huge salaries and bonuses making the inequalities worse. The low growth that preceded the onset of the pandemic plummeted when exports declined due to the interruption of global supply chains. Unemployment reached unprecedented levels with up to 75% of youth unemployed. This provoked a huge social crisis – with crime, extreme poverty and gender-based violence growing exponentially. Service delivery in the health sector collapsed, and municipal infrastructure in most of the larger municipalities (or metros) declined. A climate crisis deepened – with pollution increasing – and climate catastrophes – floods and drought being more and more common. The state maintained its drive to attract foreign and loosened compliance and requirements to mine and invest. Water supply from years of underinvestment in infrastructure became a scarce commodity in poorer communities. Pollution of water from fossil-based extractions increased further. This dire status quo was further compounded by “state capture” via individuals and private entities linked to government. The Zondo Commission into state capture released its final report confirming endemic corruption and the siphoning of billions of Rands of state resources by political elites linked to the ruling African National Congress. Key amongst these were large State-Owned Enterprises (SOEs) like the electricity generator and power supplier ESKOM. Rolling blackouts “loadshedding”) increased to 6 to 8 hours of supply cuts per day. This crisis led in turn to water supply cuts (“water shedding”) in the biggest municipalities – especially in Gauteng province – the economic and financial hub. This in turn has led to, or fed by divisions in the ruling party, political infighting where the ANC was not in absolute majority in the metros and a high turnover in municipal governments and in the ruling party itself.

The effect on small and medium enterprise has been catastrophic. These multiple crises impacted poorer communities the most.

During the Marikana – “10 years after”- visit led by Bishop Jo Seoka we observed that several health challenges in many mining affected communities remained.:

- » Overflowing sewage due to overcrowding housing and yards with backyard dwellings as a result of the living out allowance
- » The same unsafe railway crossing traversed by platinum mine trains continued to pose a major risk to the public.
- » Air pollution levels related to the mineral processing and smelting plants that still do not comply with World Health Organisation recommended levels for a healthy and safe environment.
- » Limited access to potable drinking water for communities due to the impact of mining in the areas, affecting quality and availability of water and very low local water pressure.
- » Appalling housing conditions in the informal settlement
- » Very poor road maintenance in these areas leading to roads that are barely traversable.
- » Community access to quality and sustained electricity supply was very limited and informal connections have already caused numerous deaths.

In 2021 and 2022 the South African “Just Transition Debate” resurfaced. During the 2022 Conference of Parties on Climate Change (CoP27) Germany, Great Britain, France and the European Union committed to support South Africa with 8.5 billion Euros to exit coal and move to renewable energy sources. This will likely result in further “greenwashing”, where consumers are deceived into believing that a company’s products are environmentally friendly. At the same time mining communities are unlikely to see the benefits of these new projects. However, with Bench Marks experience in supporting mining affected communities there are many concerns around this transition. For the transition to be just communities need to be consulted when renewable energy projects are planned and they need to be able to benefit adequately, there needs to be proper rehabilitation of old coal mines and post-mining economic development models need to be applied to not further increase the social and economic pressures already existing in mining communities. Without a real commitment to systematic change the just transition is likely not to be just and empowering for ordinary South Africans.

2. OUR ADVOCACY APPROACHES



In terms of our advocacy strategies the overall approach has largely stayed the same in 2022. From the described inequality context Bench Marks derives its overall objective: people in mining affected communities successfully defend their human rights and fight for social and economic justice. This is to be achieved through the three core programme objectives:

- Research outputs on the effects of mining on communities and on alternative justice narratives successfully drive Bench Mark’s advocacy work and legal processes with big corporations and government
- Capacitated local communities in areas impacted and affected by mining engage with corporations and government around human rights and resist injustices.
- Bench Mark’s media function drives the organisation’s research and advocacy work around communities struggles for human rights, social and economic justice

In 2022 we started focusing more on working with oversight bodies like the South African Human Rights Commission, and its Section 11 Commission, that provides advice to parliament on legislation, and the Parliamentary Portfolio Committee on Mineral Resources and Energy as mines and government have become even more non-responsive to human rights violations experienced by communities than they had been in the past.

To address the mentioned community fragmentation, we encourage the community representatives we work with to get a mandate for their work from the community. This is important for legal processes or any other formal engagements. We are conscious that in the public space loud and confrontational voices easily dominate and can also put community members at risk. This is something we navigate together with community members.

Advocacy work around the defence of human rights of mining affected communities remains challenging and having united communities speaking with one voice, having responsive duty bearers and having engaging and responsible companies is getting more and more difficult on all fronts.

In terms of our advocacy work 2022 was a year of progress and setbacks, which largely emerged out of external events in the challenging mining context. For example, the pressure that was put on government and mining companies through an incident at the end of July 2022 where eight women, who were filming a music video at an abandoned mine dump outside Krugersdorp (North West Province), were attacked, robbed and gang raped by 10 armed men believed to be zama-zamas (illegal miners). This led to a change in the governmental strategy of dealing with zama-zamas. While we had vastly advanced in our policy engagements around governments strategy of dealing with small-scale mining these engagements were halted and government chose a policing approach of dealing with artisanal miners instead. In the beginning of 2023 President Ramaphosa confirmed that they will follow through with a strong policing approach. Where government departments failed, they resorted to the police to address the subsequent anger from the public. We need to get the mine closure and artisanal mining debate and policy development and implementation back on track, and out of the policing reaction of government. We also want to see the Independent Police Investigative Directorate (IPID) and the SA Human Rights Commission to work for rather than against mine affected and impacted communities.

The Community engagement process pursued by Anglo American was in principle a fitting strategy but the objectives and the approach were wrong. Subsequently, many communities did not feel represented in the process and it did not yield any results. We pushed for renewed engagements with mining companies and reconnected with Anglo American and Ivan Plats in Sekhukhune but no significant community commitments could be achieved. Even high-level engagements did not yet yield sufficient progress. While there have been no commitments by mining companies and we struggle to get concrete results from them, there is clearly an interest in our work. This was evident in three different mining companies attending the Bench Marks Annual Conference. During the Conference new ideas emerged. For example, the idea of a Civil Society Association of Mining Affected communities was welcomed by the Minerals Council of South Africa and we had solid engagements with the Parliamentary Portfolio Committee on Mineral Resources and Energy that are ongoing.

Our work with communities remained a strength in 2022. This is despite existing tensions that sometimes hinders progress. At the end of 2022 we reflected that given the increasing desperation a stronger economic focus with supporting the set-up of community cooperatives and other livelihood projects will be an interesting route to pursue in particular given our push for concurrent and post-mining development opportunities for communities. This seemed to be an interesting approach to give collective energy and power back to communities. We also got a lot of press coverage in 2022, for example around Jagersfontein, zama-zamas and artisanal mining, access to public media for South Africans like the free TV campaign.

Aside from working with communities, we continue to work with a wide range of stakeholders like universities (University of Johannesburg and the University of the Free State), government departments like Department of Mineral Resources and Energy (DMRE) and other NGOs like International Labour and Research Group (ILRIG) the National Association of Artisanal Miners (NAAM), Legal Resources Centre (LRC), Centre for Applied Studies (CALs) and Southern Africa Resource Watch (SARW), with community-based organisations like the Sekhukhune Combined Mining Affected Communities (SMAC) and the media. Advocacy work around the defence of human rights of mining affected communities remains challenging and having united communities speaking with one voice, having responsive duty bearers and having engaging and responsible companies is getting more and more difficult on all fronts.

We are faced with a reality where gender-based violence and abuse remains rife in communities affected by mining and socio-economic rights, remain inaccessible for the majority of women and girls, which is aggravated by the continuing prevalence of patriarchal cultural structures and practices. However, in most of the communities we work in, women are playing a central role in all the activities we engage in. In our interaction with many stakeholders like ILRIG, NAAM and LRC, with UJ and National Institute for Occupational Health (NIOH), there are key leading female participants central to the work we are doing. In terms of our implementers we achieved a gender balance in 2022. We have improved in the collection and reporting of gender disaggregated data by increasing staff’s consciousness and by adjusting forms.

3. LEARNINGS



2022 was a year of organisational transition for the Bench Marks Foundation. We took leave of our founding Chairperson Bishop Jo Seoka and key board members who were a backbone to the organisation. Similarly, some key staff moved on to new endeavours. They all served the organisation well. The transition was challenging but we have pulled through. After having dealt with COVID in 2020 and 2021, we have shown resilience again in 2022 in a keeping the organisation going, rebuilding a collective integrated working approach and focusing the work even more, improving on measuring and reporting our results and on strengthening funder confidence. We are also working on improving the demographic and gender representation in our board and staff internally and have already made great progress.

In 2022 we have become much better in collective planning, collective review and collective strategising. We have strengthening systems, processes and procedures and will continue to do that in 2023. We established a well working system of hybrid work in 2022. Switching between Zoom and WhatsApp meetings / workshops, depending on data availability for those concerned and physical meetings, has worked well. We have been able to have more face-to-face meetings in 2022 compared to 2021 with a two-day planning session end of January, a review meeting in the beginning of June and more regular weekly meetings in the office. Once a month we met for a long in-person staff meeting. This has helped with rebuilding a collective integrated working approach. Also face to face workshops with monitors and facilitators and community engagements have become possible again, which has been positive for the work of the community monitoring school and the community engagements of the research and the problem-solving teams.

During the Annual Conference we saw that we are a respected voice in the mining and human rights space and have the credibility needed to bring different stakeholders together. We are strong in working across all levels with a very good community grounding to national level advocacy and policy engagements. We have learnt that we have incredible knowledge that we can put to use. This stature allows us to interact with a multiplicity of fora, where we both showcase our own work and strengthen alliances. At the risk of stretching our resources we would strive to build unity among competing community organisations, NGOs that entered the extractive space in the last decade since Marikana. This is the case in the Platinum Belt in the North West and Limpopo province, and the Free State following the Jagersfontein Tailings Disaster. In the latter Bench Marks is bringing the municipality, the DMRE and community based organisations together to address issues.

The Bench Marks monthly newsletter has continued to serve as a point of programmatic integration in 2022. And there has been a much stronger integration of programmatic work from across the organisation into the newsletter. However, we believe that beyond the newsletter further communications and collective media work could be achieved.

Moving forward programmatically

The adjusted structuring of the Community Monitoring School with an additional layer of facilitators has worked well in 2022. Face to face workshops with monitors and facilitators and community engagements have become possible again, which has been positive for the work of the community monitoring school and the community engagements of the research and the problem-solving teams. As mentioned above going forward we want to further move into problem solving in 2023. We envisage an integration of the Problem Solving Service into the community monitoring school and a targeted process of moving from alerts to actual problem solving, after a solid issue and stakeholder analysis and a targeted investigation on the issue. The former Independent Problem Solving Service (IPSS) will in 2023 be fully integrated into the Community Monitoring School Programme.

Organisational changes

Two staff members have resigned in 2022: Brown Motsau (Programmes Coordinator in the Research Team) and Chris Molebatsi (Community Liaison Officer). Both joined another organisation. We thank them for their long-standing service with the Bench Marks Foundation.

Two board members- Chairperson Bishop Jo Seoka and Piet Beukes- retired from the Board at the end of 2022. We thank them for their significant leadership and the contributions they made to the work of the Bench Marks Foundation over the past decades.

4. REPORTING BY OUTCOMES



4.1 Research



The set objective for the research pillar of Bench Marks work is that: Research outputs on the effects of mining on communities and on alternative justice narratives successfully drive Bench Mark's advocacy work and legal processes with big corporations and government

In 2022 four studies were conducted but have not yet been officially launched.

- 1) A report on the breaking of the Tailingsdam in Jagersfontein in September was compiled in this reporting period and is attached to this report and more information can be found in the September newsletter ([Heed the call from frontline workers and communities- Bench-Marks Foundation](#))
- 2) A report on the impact of mining on children done in cooperation with Save the Children in the Welkom area in the Free State has been finalised, edited and laid out. It is with Save the Children and we are awaiting their feedback around the publication of the report.
- 3) A report on Tharisa mine has been written this year and was to be finalised this year. Due to the current division of the Madithlokwa community the findings of the report could not be validated in the community yet. We are currently busy with negotiating a peace agreement that will allow collective advocacy work of the community to proceed.
- 4) A Health Study with NIOH is being conducted in Riverlea. The study was completed in both the control area and in Riverlea. The results are being written up and we are expecting the final report by end of March 2023

In terms of holding power holders to account: 9 meetings took place where mines were held accountable. This included 6 meetings with Sibanye Stillwater continuing the process on reparations for Marikana victims and BASF, the Bench Marks Foundation also participated in the Sibanye-Stillwater AGM and Bishop Jo Seoka has met with and supported the Justice for Miners Network, a meeting with Bread for the World, Asanda Benya and parliamentary stakeholders from Germany.

Further, six initiatives by rights holders to hold duty bearers to account took place in 2022.

1. In Madithlokwa Bench Marks set up a group of activists who monitor the impact of Tharisa on their households including recording air quality with dust meter readings. They met with DMRE three times, they have stopped the blasting several times, had the ENCA programme "Checkpoint" putting spotlight on the challenges they face as a result of mining. They are engaging officials of Tharisa Mine, DMRE and the local government. They have opened a case against Tharisa Mine and DMRE at the African Union Human Rights Commission and formed an alliance with other partners such as Right to Protest. While all these advocacy actions were taking place the mine purposefully created community division. At the end of 2022 the Bench Marks Foundation has been focussing on creating community unity to allow for the advocacy work to continue.

2. The Bench Marks Foundation gave support to Sekhukhune Combined Mining Affected-Community (SCMAC) in dealing with the social labour plans (SLP) and holding Anglo American accountable. SCMAC did an audit of SLPs in the area in 2022 and noted gaps and shaped its advocacy work around a push for closure of the gaps and solving of associated problems. SCMAC also challenged Anglo to open the Twickenham shaft which is under care maintenance for over 3 years, to allow for job creation. However, no agreements could be reached though meetings and marches but it lead to negotiations with DMRE. DMRE convened a meeting and invited Anglo platinum to discuss the Twickenham project and other SLP compliance issues. The meeting did not exhaust the issues or lead to a clear way forward and DMRE committed to convene another meeting.
3. The Riverlea Mining Forum and its cooperative Sehlahla 68 had two engagements with the municipality of Johannesburg in 2022, one with the Office of the Mayor and one with representatives from the Engineering and Energy unit. The Riverlea Mining Forum also submitted a contestation to the granting of a water license for DRD Gold. This was followed by a direct engagement with the mine in the last quarter of 2022. At the Bench Marks Conference in October 2022 representatives of the Riverlea Mining Forum shared that it is only since they made a legal submission and challenged the mine that they are being taken seriously as a community representative structure.
4. Five Problem Solving Specialists received specialist training in 2021 when we moved from the Independent Problem Solving Service to a more integrated problem solving approach and have been further capacitated in 2022. They belong to the group of 10 Community Monitoring School facilitators with a special focus on problem solving. They identified problems that are of concern to their communities and have been following up and resolving them in 2022 by engaging power holders. Three of the five identified problems focus on sewer spillages, one is the concern with the lack of trees in the community, and lastly the traffic circle which has been a danger to the community in Klerksdorp. All problems have a link to mining.
5. In Jagersfontein we have supported the community to engage with the media and lawyers after the disaster, to obtain social and medical assistance for individuals in the community that were injured in the disaster, to construct a memorandum of demands from the mine and government and set up working relations with the Kopanong Mayor's Office. We also supported the Jagersfontein Development Forum in a contestation of the mine ownership in court as well as the Jagersfontein Stakeholders Mining Forum representing the communities of Charlesville and Itumeleng and demanding compensation for the damage caused through the tailings breaking.



Testing water quality: an important aspect of monitoring the damage caused by mining.

6. The Bench Marks Foundation, with members of the Urban Development Department at University of Free State, members of the Environmental Justice Forum and GUBICO supported the Nyakolong Community with advocacy around the rising water levels of Voelpan and the threat it poses to them and on the road infrastructure. We assisted with documenting their challenges around water quality, housing and post-mining development. The community is hoping to stop the inflow of water from the operation across the road from the Township. A community protest march to the mine took place in November and led to an invitation to meet the mine (Harmony Gold) on 7 December 2022.

We continue to engage and educate the public and the law enforcement official about the importance of this sector of work and are systematically building NAAM into a national federation for artisanal miners.

The work around artisanal Mining continued: We have been in partnership with other civil society organisations (Legal Resources Centre (LRC) International Labour Research and Information Group (ILRIG) and the National Association of Artisanal Miners) for three years. We assisted artisanal miners to organise themselves in groups to ultimately register a cooperative so that they can apply for mining licences and constitute their operation within the South African labour law. We have made input into the current policy framework; we are now involved in the sharpening of these policies as they are crafted to integrate this sector of work within the mining regime. We continue to engage and educate the public and the law enforcement official about the importance of this sector of work and are systematically building NAAM into a national federation for artisanal miners. However, since the Krugersdorp event the situation regarding Small Scale and Artisanal Mining has worsened, because the government has turned the matter into a policing rather than a mining issue despite the fact that the policy document has been gazetted. As a consequence, NAAM finds itself in a difficult position and we are currently assisting them with sourcing legal advice and engaging DMRE in an urgent meeting.

Mine Closure Strategy: In 2022 Bench Marks together with the Council for Geosciences and DMRE organised 16 Consultations on concurrent and post-mining economics in relation to the national mine closure strategy. They included consultations with Mining Impacted Communities, Environmental Organisations, Mining Lawyers, the Minerals Council, Organised Labour, Junior and Emerging Miners, Mining Professionals, Internal Stakeholders and Provincial Government, District and Local Municipalities. Unfortunately, there has also been little progress on the finalisation in the latter part of the year.

4.2 Community Monitoring School



The set objective for the community building pillar of Bench Marks work is that: Capacitated local communities in areas impacted and affected by mining engage with corporations and government around human rights and resist injustices.

In 2022 the Community Monitoring School had 60 community monitors working in 42 communities and belonging to 30 different organisations. They were coordinated by 10 facilitators. Monitors and facilitators were trained on how to write alerts. Usually a post / alert is 300 words, mentions the issues, the location and a picture. They are submitted by monitors, get reviewed by facilitators and then get posted on the website (<https://communitymonitors.net/category/southafrica/>). A programmatic Zoom Launch was held and physical meetings took place where facilitators and monitors met in their area. In 2022 the monitors posted over 500 alerts. In 2022 the website has also gone through a redesign to allow for filtering of posts by region and community. As such some of the newer posts are not yet uploaded. Four publications were produced in 2022: the 2021 Monitors Report, the Sekhukhune Targeted Investigation Report, the 2022 Resource book and the 2022 Monitors Report. In addition, monthly newsletters for the monitoring school were compiled and monthly podcasts were produced since May 2022. These can be accessed on the Community Monitors website (www.communitymonitors.net).



Empowering communities in areas impacted and affected by mining to raise human rights issues and resist injustices.



Capacitated local communities are able to engage with corporations and government.

Eight community-based events were held by monitors in 2022 with 184 community members attending in support of their campaigns. In November 2022 we conducted an evaluation with monitors to get their feedback on possible improvements for 2023. Overall the project implementation in 2022 was rated as good. The newly introduced Facilitator structure worked well and we were able to follow through the year with a clear plan. Monitors suggested that for 2023 the Community Capacity Building Approach and relationships with the media team can be strengthened, the writing of monitors can still be more focused and the coordination team could benefit from a stronger regional presence. In 2023 the Community Monitoring School will put a stronger focus on moving from alert to problem solving and foster more self-organisation at community level.

In addition to engagements via the Community Monitoring School, the Bench Marks Foundation worked with 215 rights holders in different communities in 2022. In the area of Mokopane and Skimming Leruleng Bench Marks supports and trains the Magalakwena Mining Communities with 3 task team members and 50 community representatives. In Riverlea Bench Marks works with 12 rights holders in the Riverlea Mining Forum and with 6 additional members in Sehlahla 68. In Snakepark 7 are engaged, in Madithlokwa 11, in Marikana 13, in Bapitseng 30, in Bagkatla ba Kgafela 9, through Communities against Mining (West Rand) 6 and in Geluksdal (East Rand) 4, Jagersfontein via the Jagersfontein Development Forum, the Jagersfontein Stakeholder Mining Forum and a group of aggrieved mine workers 25, Nyakolong 30.

The three Resources Centres in Rustenburg, Limpopo, and Mpumalanga are utilized by local organisations such as Bafokeng Land Buyers Association (BLBA), BuaMC, Vukani Environmental Movement (VEM), and Sekhukhune Environmental Justice Network (SEJN). In 2022 there has been gradually increasing traffic in the Resource Centres. In the North West a move of the resource centre to Marikana is considered for 2023.

4.3 Problem Solving



The objective for the problem solving pillar of Bench Marks work is: Problem Solving and engaging power as well as coalition work for stronger advocacy

Work on problem solving approaches continued in 2022 via the MPRDA (Minerals, Petroleum Resources Development Act) which represents 35 organisations. The coalition is a loose network of organisations concerned about the broader mining issues, which include mining legislation and policy in South Africa. The coalition has been meeting regularly in 2022 to discuss issues of support to communities affected by mining. The coalition has taken the decision to support the Skimming Leruleng Community affected by Anglo American platinum in Limpopo, which is facing a 1000 house

hold relocation. Those households will be making way in order for Anglo American Platinum to expand its operation in Mogalakwena. The efforts to build a support system for this community are steadily shaping up, however the potential set back is that there seem to be limited resource in the hands of many organisations for this campaign. The achievement so far is that the DMRE has opened a room for engagement with Mogalakwena Mining Communities (MMC) on an array of issues including the pending relocation. The DMRE has proposed that a mediation be set up involving both MMC and Anglo American, to discuss issues and disputes and a mediator is currently sought. Anglo American also conducted a survey at the end of 2022 to ascertain a decision by the community for relocation.

The other issues which the MPRDA deliberated on in 2022 was Anglo American Platinum's (AAP) approach to dealing with mining affected communities which ignores communities' efforts to engage with Anglo American on material issues and is of concern. This development was due to the Alternative Mining Indaba (AMI) 2022 having accepted the invitation by AAP to facilitate an engagement with communities. This was received with suspicion by some communities affected by mining and sowed division which affected the coalition. The MPRDA coalition had to intervene and represent the interests of mining affected communities and request from AMI to withdraw from the AAP engagement process. While further engagements are needed, the engagement at the end of 2022 yielded positive results: the agreement to withdraw AMI from the engagement process and invite the MPRDA coalition to it and provide a space for representative from the AMI steering committee in the engagement, was welcomed.

4.4 Media and Advocacy



The set objective for the media and advocacy pillar of Bench Marks work is that: Bench Mark's media function drives the organisation's research and advocacy work around communities struggles for human rights, social and economic justice.

We organised a SLAPP (Strategic lawsuits against public participation) Suits Teach-In in February 2022, a day before a historical constitutional court case in South Africa. SLAPPs are lawsuits intended to censor, intimidate, and silence critics by keeping them busy defending themselves in needless defences that will weaken not only their financial resources but also their will to resist injustices. The aim is clear: to force them to abandon from organising and resisting the causes they hold dear. BMF was the convener of the event and cooperated with SAWR in making it happen. Given the increasing occurrence of SLAPP suits we also prepared the launch of Southern African SLAPP Suit Coalition in 2022 that is to take place in May 2023.

The Bench Marks Foundation together with the People's Media Consortium, which develops democratic community based alternative mass media platforms and creates access to mainstream media platforms, ran the Free TV Coalition Campaign and created visibility for it. On 10 March 2022 we held a Peoples Assembly to demand the government to #SaveFreeTV and united civil society behind a campaign to delay the switch-off on Analogue TV. The court ruled that two million people will be cut off from TV through the intended move away from analogue TV which has been halted. This was a real victory in terms of the ruling and in terms of Bench Marks support, which created immense coverage.

Bench Marks has also been very active in the South African and international tailings working group with 5 organisations driving the process, BMF serves as a secretariat. Earth Works and Canada Mining Watch are international partners. FSE and IANRA are South African partners in the working group. The working group has been meeting regularly throughout 2022 and launched a tailings report on 31 May 2022.

Bench Marks has further been in cooperation with the London Mining Network to set up an Africa Desk for mining communities. This is ongoing work and there is no formalised network yet.

The Bench Marks Foundation is also a founding member of the Alternative Mining Indaba (AMI) and serves on its Steering Committee. The AMI develops a counter narrative to the official Annual Mining Indaba. In 2022 we became the Deputy Chairperson of the Alternative Mining Indaba and are thus together with the Chair responsible for the organisation of AMI 2024.

B.N. Jooste & Co.
Practise No. 918900E

Chartered Accountants (SA)

Registered Auditors

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INDEPENDENT AUDITOR’S REPORT

To the directors of Bench Marks Foundation NPC

Opinion

We have audited the Annual Financial Statements of Bench Marks Foundation NPC set out on pages 8 to 17, which comprise the Statement of Financial Position as at 31 December 2022, and the Statement of Comprehensive Income, Statement of Changes in Reserves and Statement of Cash Flows for the year then ended, and notes to the Annual Financial Statements, including a summary of significant accounting policies.

In our opinion, the Annual Financial Statements present fairly, in all material respects, the financial position of Bench Marks Foundation NPC as at 31 December 2022, and its financial performance and cash flows for the year then ended in accordance with International Financial Reporting Standard for Small and Medium-sized Entities and the requirements of the Companies Act 71 of 2008.

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing. Our responsibilities under those standards are further described in the Auditor’s Responsibilities for the Audit of the Annual Financial Statements section of our report. We are independent of the company in accordance with the Independent Regulatory Board for Auditors Code of Professional Conduct for Registered Auditors (IRBA Code) and other independence requirements applicable to performing audits of financial statements in South Africa. We have fulfilled our other ethical responsibilities in accordance with the IRBA Code and in accordance with other ethical requirements applicable to performing audits in South Africa. The IRBA Code is consistent with the corresponding sections of the International Ethics Standards Board for Accountants’ International Code of Ethics for Professional Accountants (including International Independence Standards). We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Key audit matters

Key audit matters are those matters that, in our professional judgement, were of most significance in our audit of the Annual Financial Statements of the current period. These matters were addressed in the context of our audit of the Annual Financial Statements as a whole, and in forming our opinion thereon, and we do not provide a separate opinion on these matters.

We have determined that there are no key audit matters to communicate in our report.

Other information

The directors are responsible for the other information. The other information comprises the Directors’ Report as required by the Companies Act 71 of 2008, which we obtained prior to the date of this report. Other information does not include the Annual Financial Statements and our auditor’s report thereon.

Our opinion on the Annual Financial Statements does not cover the other information and we do not express an audit opinion or any form of assurance conclusion thereon.

In connection with our audit of the Annual Financial Statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the Annual Financial Statements or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on the work We have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Responsibilities of the directors for the Annual Financial Statements

The directors are responsible for the preparation and fair presentation of the Annual Financial Statements in accordance with International Financial Reporting Standard for Small and Medium-sized Entities and the requirements of the Companies Act 71 of 2008, and for such internal control as the directors determine is necessary to enable the preparation of Annual Financial Statements that are free from material misstatement, whether due to fraud or error.

In preparing the Annual Financial Statements, the directors are responsible for assessing the company’s ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the company or to cease operations, or have no realistic alternative but to do so.

Auditor’s responsibilities for the audit of the Annual Financial Statements

Our objectives are to obtain reasonable assurance about whether the Annual Financial Statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor’s report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with International Standards on Auditing will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these Annual Financial Statements.

As part of an audit in accordance with International Standards on Auditing, we exercise professional judgement and maintain professional scepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the Annual Financial Statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the company’s internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the directors.

- Conclude on the appropriateness of the directors’ use of the going concern basis of accounting and based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the company’s ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor’s report to the related disclosures in the Annual Financial Statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor’s report. However, future events or conditions may cause the company to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the Annual Financial Statements, including the disclosures, and whether the Annual Financial Statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with the directors regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

BN Jooste & Co

BN Jooste & Co
Jeff Pierce
Partner
Chartered Accountants (S.A.)
Registered Auditor

16 March 2023
Randburg

BENCH MARKS FOUNDATION NPC

(Registration number 2002/026620/08)

Annual Financial Statements for the year ended 31 December 2022

STATEMENT OF FINANCIAL POSITION AS AT 31 DECEMBER 2022

Figures in Rand	2022	2021
Assets		
Non-Current Assets		
Deposits	19 664	19 664
Property, plant and equipment	83 910	72 497
	103 574	92 161
Current Assets		
Accounts receivable	16 591	210 097
Prepayments	-	22 951
Cash and cash equivalents	3 276 916	2 661 638
	3 293 507	2 894 686
Total Assets	3 397 081	2 086 847
Reserves and Liabilities		
Reserves		
Fixed asset reserve	83 910	72 497
Sustainability fund	562 250	562 250
Operating reserve	804 971	748 752
	1 451 131	1 383 499
Liabilities		
Current Liabilities		
Accounts payable	36 379	38 376
Deferred income	1 862 414	1 508 900
Provision for leave pay	47 157	56 072
	1 945 950	1 603 348
Total Reserves and Liabilities	3 397 081	2 986 847

STATEMENT OF COMPREHENSIVE INCOME

Figures in Rand	2022	2021
Revenue	7 852 334	8 556 659
Operating expenses	(7 850 762)	(8 334 918)
Operating (deficit/surplus)	1 572	221 741
Investment revenue	66 060	41 841
Surplus for the year	67 632	263 582
Other comprehensive income	-	-
Total comprehensive income for the year	67 632	263 582

MINE CLOSURE:
THE BURNING ISSUE OF OUR TIMES

Bench Marks Foundation Annual Conference
18 - 19 October 2022

OPENING ADDRESS - RT REV DR JO SEOKA

The conference was opened by **Rt Rev Dr Jo Seoka**, Chairperson of the Board of the Benchmarks Foundation. He spoke on many issues around mine closure, referred to the Jagersfontein tragedy and the Jagersfontein report written by the Bench Marks Foundation, artisanal mining, the worsening situation of communities around Marikana 10 years after the Marikana massacre and the damage caused by tailing dust in Soweto. He emphasised the fact that mining companies are still not taking responsibility. In closing Dr Seoka urged everyone to reach out and connect with those they have never met before during the conference and to learn about what the organisations or companies do.

This is a shortened version of his speech.

On behalf of the Board of the Bench Marks Foundation and myself, I officially open the annual conference. We are here to share our work with everyone and showcase what we do on the ground.

I am very grateful that after two challenging years, we can finally sit down and share the thoughts and ambitions of the Bench Marks Foundation going forward. I'm hopeful that most of you who have been associated with the Bench Marks Foundation since its inception two decades ago are proud of what we have done to serve those who look up to us for services, guidance and leadership on matters of corporate social responsibility.

I ask that we stand and pause, reflecting on those who have lost their lives, known and unknown to us, individuals and collectively and remember who they are and what they did with us or without us but in the communities, they serve. It is a fact, not an exaggeration that many of us have lost loved ones and colleagues. At the Foundation itself, we lost two or three people. We were very scared as two colleagues were severely attacked by COVID-19 but thankfully survived.

At the end of last year and the beginning of this year, we lost, as members of staff, Mr John Capel, one of our founding directors, and Mr Brown Motsau. Both were the first employees of the Bench Marks Foundation. We thank them and wish them well. This happened when we began to experience some financial challenges as an organisation; though not insurmountable, they did threaten our future.

COVID-19 might not dictate our daily lives as it has done in the past years, we do find ourselves in a vastly different world compared when we last met, in person in 2019 in Johannesburg.

Reflecting on the past years, one cannot help but lament the economic challenges resulting from COVID-19 and the Russian-Ukraine war. A result of both the pandemic and the Russian-Ukraine war, the price of oil has been skyrocketing. The outcome, of course, is increases in basic household goods. The price of bread became unaffordable for the poor.

We cannot talk about the challenges without reference to unemployment. It is a huge challenge. There are references to 39.9% as unemployment stats but the real problem is “the youth unemployment rate, measuring job-seekers between 15 and 24 years old, which fell to 61.4% I was in KwaZulu Natal to accompany a friend whose daughter had finished university and has a master’s degree in linguistics and committed suicide because, we suspect, she found herself doing nothing for two years after graduation. Many such people are taking their lives. 34 medical students who trained in Cuba, sent by the government, are sitting idle two years later without help and can’t afford to register for the board exam. This while we are talking about a shortage of medical doctors in the country, and we are told there are young people like this, sitting at home, and the government is not doing anything. We shouldn’t wonder why people are discussing a possible Arab Spring in this country. We must not say we were not warned. The current statistics and rumours may instil a feeling of doom and gloom, and rightly so to all concerned. This places huge pressure on our country’s economy and on hard-working South Africans, particularly young people, many of whom are our partners in this work of serving the poorest of the poor.

Notwithstanding, Bench Marks Foundation has done well in its efforts to be faithful to its founding objective, which is why we are still on our feet. Our objective is to serve the working poor. Many organisations, even businesses, had to close shop because of the abovementioned challenges. I am personally grateful to our dedicated staff who remained on board when the ship seemed to be sinking and for the guidance of the Board, whom I am immensely proud to have worked with, and that we have remained standing in the most trying times. Also, I am thankful to our partners locally and abroad We don’t take you for granted; we know that we exist because you support us materially, morally, and spiritually.

It is said that history repeats itself. It may be a cliché to say this, but nature can confirm such predictions. In 2011, for instance, the Bench Marks Foundation, through its Policy Gap report, warned the mining industry predicting a massive wage strike in the platinum belt, particularly at Lonmin. The same has once again happened, and the mine in Jagersfontein neglected the warning given by workers at the tailing dam.

The consequence is that people lose their lives. So, we’ve seen at Jagersfontein that lives and property have been lost due to the tidal wave from the tailing’s sludge. People were standing watching the scenes helplessly. These disasters are man-made, and we are here today to examine what is happening in the mining communities and the problems arising from the mine closures.

There is no doubt, dear friends, in my mind, and I suspect in yours too, that most residents of Jagersfontein, Charlesville and Itumeleng whose air is polluted, and water is contaminated will suffer from silicosis, TB, and possibly asbestosis and some other related diseases. In Jagersfontein the incident wasn’t long ago, and they are already coughing up blood and experiencing respiratory problems. What I think we need to address in years to come is already happening.

We keep on saying not without our consent, but companies keep on coming, prospecting, extracting, and polluting the air and contaminating water

I want to encourage each of you, and collectively so, to have a robust discussion on what needs to be done to prevent such man-made accidents in communities around mining areas. We keep on saying not without our consent, but companies keep on coming, prospecting, extracting, and polluting the air and contaminating water. So, dear friends, we must do this as a matter of prevention. If builders of tailings dams won’t comply with the prescripts and protocols of the Minerals Council, we must be part of monitoring and of making sure that all protocols have been adhered to.

One of the problems and challenges are abandoned mines. This conference is about mine closures. Reading the Auditor General's report, I noted that there are about six thousand abandoned mines in South Africa. Of that, about 2,322 are classified as high risk to the public. Again, I am making an example of myself. I was a priest in Soweto for about five years, and every winter, I coughed and got sick. When I left Soweto to work in Pretoria, I never coughed once. And that's because in Diepkloof, in particular, those mine dumps blow sand into the township during that time of the year, and people inhale whatever is in that sand. You can see the dust on your hand when you touch the table. If you have 2,322 mines of high risk to the public, what does that tell you?

With all these high-risk abandoned mines, it is said that only 27 of these have been closed properly since 2009. Only 27! We are also aware, friends, of mines set to be placed under care and maintenance, which is a catchphrase for abandoning mines rather than closing and rehabilitating them.

Therefore, this conference is very important as it talks about the current and real situation in the Free State. This has led to the proliferation of illegal mining, small-scale survival mining, environmental destruction, human desperation, and crime. We may say things about zama-zamas, but those are people like us, just trying to survive amidst the high unemployment rate we face. We must not forget who is behind these criminal activities. I must remind you of the recent rapes of women in Kagiso, which has caused tension and physical conflict between the community and the zama-zamas community and raised questions about the syndicates behind the crimes. Only last week, it was mentioned that one of the syndicate people involved and behind the criminal activities in that particular area was a former policewoman.

The matter of zama-zamas is a difficult one. The Bench Marks Foundation, along with the National Association of Artisanal Miners and some civil society partners, have been working tirelessly with the Department of Mineral Resources and Energy to develop a legislative framework that aims to assist in the survival of small and medium-scale mining. Most of you would agree that if the DMRE could oversee the closure and rehabilitation of mines with the same enthusiasm, energy, and speed at which they issue licences, the problems and challenges we are experiencing today would not be there.

We are complaining about water now, but who is the huge consumer of water? Water is God's gift to humanity for free, but most of it is being used for destructive purposes rather than providing livelihoods for people.... I want to appeal to you to be honest with yourselves as you speak to each other, to be honest to the powers that be that there is a problem.... But maybe it's sufficient to say that the Bench Marks Foundation has walked with mine-affected and impacted communities, and, therefore, we do think we understand their concerns and the challenges they face. We did that to find, with them, solutions to the problems and answers to the challenges they face as communities in mining areas.

As a result, friends, we can say without fear of contradiction that we have facilitated policy discussions between the DMRE and ministries on the issues of artisanal miners, communities, civil society organisations and mining companies and aimed at tidying up the mess we have witnessed in communities. We have also actively participated in policy development around mine closure, rehabilitation, and current and post-mining economies.

I don't know how many of you have been to the Bench Marks Foundations meetings with old women carrying oxygen tanks as if they were carrying babies. Some are brought in by wheelchairs. As a result of these experiences, my eyes were opened. I've been a priest for over 40 years, living a very comfortable life, and I hadn't seen this before Bench Marks, even though I had an interest in the working class and had an interest in trade unions and so on. I didn't know that there were people born who can't sit, stand, or walk and who spend their lives lying down. One may say it's a burden to the mother, but I think it's a blessing. Whichever way, the evil in it is caused by people who are only thinking about money. Capitalism.

That's why I'm asking for transparency, honesty and responsibility in our discussions, owning these matters and committing ourselves to do something about it. This conference, today and tomorrow, takes place amidst the crisis around mining communities and must ask the following questions:

- » Can civil society organisations such as the Bench Marks Foundation play a role in eradicating or at least eliminating the problems and challenges arising from mine closures? If so, what role can it play?
- » What role can churches, faith-based organisations and other religious communities play in overcoming these disasters?
- » In this context, what role can the legal fraternity play in ensuring environmental and social justice?
- » What is the role of universities?
- » How can we ensure that government leads and regulates mining companies and that they are held accountable? And what can we do to get the government to stop the unnecessary expenditures such as us paying for schooling for their children, election promises, etc.?
- » How do we ensure that, as a society, we are part of the big plan for the post-mining economy, and what would such an economy look like?

These questions, my friends, should be at the centre of our discussions throughout the conference. Introspect; look at yourself. What can I do? Not what can they do? That is, of course, if we are serious about empowering and educating people to end the level of ignorance in our communities and to create sustainable opportunities.

In conclusion, I would like to challenge all of us at this conference that through our actions, and not clichés, we must.

- » Educate our communities on their democratic human rights and encourage people to physically participate in enduring that our rule of law is upheld.
- » Stop the government from being quick in issuing mining licences without proper consultation with mining communities. Not without us, we must give rights to mining houses. They can't just come in and extract minerals without our consent and permission. It cannot be business as usual with all these debts that we are experiencing.

We need to rededicate ourselves to resisting the exploitation of our mineral resources for profit. They must contribute towards human rights, decent human lives and the protection of the environment. Unless we take this as our responsibility and unashamedly confront the powers that be to stop it, it will never be. We have the power to stop it. Working together, as I heard from various organisations, we can make a difference, and that difference depends on each one of us and collectively working together.

On behalf of the board, I wish this conference on Mine Closure – The Burning Issue of our Times much success.

Thank you.

**MINE CLOSURE: THE BURNING ISSUE
OF OUR TIMES**

**Bench Marks Foundation Annual Conference
18 - 19 October 2022**

**MINE CLOSURE: THE ELEPHANT IN THE ROOM -
NTOMBIFUTHI MONEDI-NOKO (PHD CANDIDATE WITS UNIVERSITY)**

Coal mining has been at the centre of South Africa’s development and has contributed to the country’s economy for over 160 years. However, mining is a temporary land use activity and mine closure is inevitable. Mining activities degrade the land and often leave behind a negative environmental legacy. The problem is that little is known about whether regulatory frameworks for mine closure facilitate the broadest range of post-closure land uses for mining communities. Mine closure represents the completion of mineral extraction or the abandoning of uneconomical mineral reserves, including decommissioning, removal of infrastructure and followed by rehabilitation of land for post-mining uses. Yet, mining companies worldwide have a notorious history of abandoning mines without conducting proper mine closure.

In South Africa, this has left an unsightly environmental liability. The 2009/10 Auditor-General’s report highlighted that of approximately 6 000 abandoned mines, 1 730 were classified as high-risk requiring approximately R28.5 billion from the state. In the period 2011 to 2016 the mining regulator DMRE issued 787 closure certificates across the country.

A significant number (81%) of those closure certificates were assigned to prospecting rights and small-scale mining permits. A further 57 closure certificates were issued for mining rights for road works associated with highway construction. Only 27 closure certificates (3%) were assigned to mining rights relating to mining activities. From this, it is clear that the mining regulator is reluctant to close mines and issue closure certificates, particularly those classified as high-risk. The mining regulator’s failure to acknowledge that mining is temporary and that mine closure is a process in the mining life cycle is short-sighted.

There is a dearth of research on the extent to which current mine closure regulatory frameworks take cognisance of new approaches to post-mining land-use (PMLUs) outcomes. Furthermore, there is limited literature regarding to what extent PMLU choices and progressive rehabilitation in the coal mining industry are driven by compliance with the legislation.

My research addresses these research gaps by interpreting and critiquing the regulatory framework that governs mine closure and post-closure of South Africa’s coal mines.



Sustainable farming: will this be possible on land that has been mined and inadequately rehabilitated?

MINE CLOSURE PLANNING

Mine closure in South Africa is regulated by several legislative frameworks mainly the MPRDA, NEMA, EIA Regulations 2017 and the Financial Provision Regulations, 2015 under NEMA.

The mineral regulatory authority, DMRE, recently gazetted the draft National Mine Closure Strategy under the MPRDA. The strategy intends to provide the basis for the mining industry from which to develop a holistic approach to mine closure plans. At times, however, the mine closure planning affected communities and their inputs are excluded, which may lead to a mismatch between the planned mine closure outcomes and the communities’ expectations.

Independent consultants appointed to develop closure plans conduct stakeholder engagements when developing closure plans. However, research participants said these mostly provide communities with information instead of extracting information from the communities to use as input into mine closure plans. Developing mine closure plans that are detached from the communities’ post-closure desires and expectations fail to accomplish socio-economic objectives for communities.

When developing mine closure plans, socio-economic aspects must be considered and mapped into the LoM. The stakeholder engagement process undertaken when developing mine closure plans needs to be used as a platform to further gain insight into the communities’ post-closure expectations and desires.

STAKEHOLDER ENGAGEMENT

When a mine ceases to operate several stakeholders are affected to differing degrees. My research findings indicate that mining communities are the most affected stakeholders. When a mine closes, the livelihoods of communities are affected negatively. Therefore, it is fundamental for mining companies to engage communities meaningfully when planning for closure to manage the expectations of mine communities.

In the context of mine closures, South Africa’s regulatory framework considers environmental factors more than social factors. But the rights of communities must also be considered and protected.

Therefore, the definition of ‘meaningful consultation’ needs to be expanded further in the MPRDA to include social parameters for mining authorisation and mine closure planning processes.

PROGRESSIVE REHABILITATION

Progressive rehabilitation is fundamental to managing environmental impacts and remedying land degradation resulting from mining activities. In terms of NEMA section 24N, mining operators are obligated to use the EMP as an instrument to manage environmental impacts, including rehabilitation of mine-degraded land.

Most research participants claimed that rehabilitation is often done to the lowest land quality and capability – either restored to the wilderness or allocated to grazing as the final land use. Currently, the regulator’s expectation of rehabilitation is low in requiring mine operators to rehabilitate the land to return to its pre-mining or close to acceptable conditions.

FINANCIAL PROVISION

Financial provision refers to financial assurance where the amount is quantified and allocated for the remedying of environmental liability when the mining operator is undertaking mine closure. The mining right holder is required by law under NEMA to make provision for financing to be provided at the mine development phase for rehabilitation, mine closure and latent or residual environmental liabilities. The financial provision can be allocated by one or a combination of methods, trust funds, cash guarantees or bank guarantees that are stipulated in NEMA Financial Provisions Regulations 2015.

A finding in my research is the inadequate calculation of financial resources for mine closure planning. This poses a serious risk to the implementation of mine closure activities.

COMPLIANCE AND ENFORCEMENT

The current regulatory framework NEMA obligates mining companies to comply with and consider environmental aspects of mine closures.

To some extent, the mining industry, particularly big mining companies, have demonstrated their commitment to the management of environmental impacts and their contribution to mechanisms that protect the state from incurring financial liability.

However, my research shows that mining companies approach compliance as a ‘tick box exercise’ and usually approach mine closure planning in a minimalistic manner with the primary objective of complying with the regulatory framework rather than aspiring for sustainable closure.

On the other hand, the enforcement of compliance is critical for regulating mining activities, including mine closure. This is the responsibility of the regulatory authorities. However, my research shows that compliance enforcement is insufficient for two reasons:

First, there is a misalignment amongst the three regulatory authorities, DMRE, DFFE and DWS.

Secondly, there is a deficiency of skills and knowledge in the regulator’s office. Thus, a tedious closure application process and hesitancy to issue closure certificates by the regulator unfortunately may lead to the mining operator walking away without conducting proper mine closure, leaving the environmental liability and detrimental post-closure socio-economic conditions that will ultimately be the sole responsibility of the state.

MINERAL ASSET TRANSFER VS MINE CLOSURE

South Africa’s mining landscape is changing – big mining companies that have previously dominated are exiting the industry by transferring mineral assets to junior companies.

My research indicates that a few years before the end of LoM, mining companies tended to transfer mineral assets instead of initiating mine closure. The mineral assets were often acquired by junior mining companies as either new entrants or companies expanding their mining portfolio. The regulator favours the acquisition and transfer of mining assets to another operator, thus discouraging mine closure in favour of ‘saving jobs’. In some instances, there are legitimate reasons why mining companies choose to transfer mineral assets to other companies, where closure is not always the only or preferable option and mineral assets can be transferred to operate as late-life mines. However, the practice of transferring near-exhausted mineral assets to junior miners is not a sustainable closure strategy because acquiring mineral assets closer to the end of LoM may have an adverse impact on the acquiring company’s ability to accumulate adequate financial provisions for mine closure.

RELINQUISHMENT

Lastly, a challenge and concern to the mining industry is relinquishment. The International Council on Mining and Metals (ICMM) defines relinquishment as **‘the return of ownership to the corresponding jurisdiction following completion of closure activities’**. It is the final step to ending the relationship between the mining rights holder and the mining regulator. My research identified the importance of establishing relinquishment criteria for mine closure planning in the South African regulatory framework.

In conclusion, mine closure is the elephant in the room and is becoming a burning issue that can no longer be ignored but needs all industry players, mining companies, mining communities and mining regulators to work together. Legislation and guidelines need to be aligned to support unified goals and provide a clear direction to the mining industry. The regulator of the mining industry in South Africa must acknowledge that mining is a temporary land use activity and that the workforce is temporary. Therefore, discouraging mine closures and expecting mining to continue in perpetuity, primarily to preserve jobs, risk mines not being closed but abandoned.

When mines are abandoned and not closed properly, the communities are left with an unrehabilitated landform that becomes a safety hazard, diminishing any prospects of viable land-use choices post-mining.

WORKING GROUPS

1. Zama-zamas and artisanal mining

BACKGROUND

The term ‘zama-zama’ is synonymous with informal or unregulated artisanal mining activities in South Africa. Essentially zama-zamas are the miners involved in informal mining. Informal mining in South Africa happens in varying contexts, including operating in active mine sites and abandoned mine sides. This discussion is framed under the latter.

There are over six thousand (6000) abandoned shafts without proper closure scattered across South Africa. Some of these deserted shafts are the base for zama-zama activities. Sites like Durban Deep mines are an example of hubs of zama-zama activities in Johannesburg. These activities, as documented, go way beyond mining activities to include criminality.

The inability to properly close shafts has had consequences that encourage activities that make headlines. Syndicates have taken control of small scale mining activities and regular turf wars resut, which lead to deaths- a feature which is now identified with zama-zama activities. While this problem of informal mining has attracted criminality, it is also viewed as an alternative livelihood activity for areas near and around old mining shafts. The high rates of unemployment and the lack of intervention in the social plight of ex-miners leave no options for the communities.

WAY FORWARD

The Bench Marks Foundation needs to come up with a programme of action and propose a tangible solution. The solution is in the hands of the people. It should be harnessed and a programme be put in place till the next conference.

- » There is a need for the community to leave this conference with an idea on the way forward because zama-zamas are in a serious situation and miners are pawns.
- » We need to create greater cooperation among civil society including getting the community to work with artisanal miners and not rely on the government for the solution.
- » A baseline study is needed to understand this sector holistically. The study should respond to the where, the how and the what of zama-zama and artisanal mining. This should create a data hub and help shift the narrative.
- » DMRE should engage on the ground with community organisations like NAAM, MACUA, Snake Park and many others.
- » Artisanal miners need to be skilled to develop the sector further.

2. Mine closure and promoting a just transition

INPUT FROM THE PANELISTS

The chairperson opened the discussion questioning whether the current transitions from fossil fuels to alternative energy, from large scale industrial mining to small and medium scale mining, from an extractive to a post mining economy represents a just or an unjust transition.

Clyde Malinson spoke about the need to audit all mining infrastructure for both operational mines and closed and abandoned mines to determine how these might be made available to nearby mine communities for alternative economic uses and economic integration as we move towards a post mining society. Infrastructure such as workshops, electricity substations, sport and recreation facilities as well as health, education and housing infrastructure often found in old mining towns built by the now departed mining companies could play an important role in a transition.

Marian Manuel spoke about the opportunities offered by agromining (agricultural mining), the use of crops to extract heavy metals and toxins from the soil helping to rehabilitate mine degraded land. This could provide near mine communities with economic opportunities both from the harvests of the crops as well as from extracting the heavy metals from their roots to sell to mineral refineries.

Jennifer Mohamed Katerere emphasised the importance of near mine communities organising community forums with proper community mandates, to engage with mining operations and with government around planning concurrent and post mining economics.

Jagersfontein report
The Jagersfontein Report can be accessed here: [Jagersfontein-report.pdf \(bench-marks.org.za\)](#)

3. Community perspectives - How to make danger zones visible

Community activists and monitors across the country write many posts which express their community’s dissatisfaction, and in many posts they have written about the danger and hazards mining poses to the community. This is because of the socio-economic issues in the society and that people don’t know how to approach issues boldly because they lack resources.

Community activists spoke out about government and mining companies not taking them seriously. Community activists often fear for their lives and don’t feel safe about reporting on dangerous issues.

CAUSES OF HAZARDS

Mining closures have brought more danger because the tailings are not rehabilitated, sign posted or fenced, children are swimming in evaporation ponds, people lose their livestock, criminal activities are taking place, people are being killed and raped and illegal mining is increasing.

In our view, every danger spot must be marked and we must focus on how to solve this. We could do this by creating a danger list and come out with solutions that will solve these problems. How do we remove the dangers of these zones because activists must prove their facts, for example, that the health issues threatening their communities are more than just tailing dumps. But how do they prove that the asthma and eczema is caused by the tailing dumps?

The government undermines and neglects its responsibility and the issues that are reported by community activists. As a result, people keep on suffering the consequences of mining.

A worrying factor is that danger hazards are normally left to exist in poor communities where people lack information and resources. The most powerful tool is for the community monitors to build knowledge in our communities, to mobilise and to take action. Every danger must be documented and the data on dangerous issues must be saved so that authorities could see that we are not just activists or whistle blowers but that every issue we report is accurate and factual.

Issues to be identified and documented include the following:

- » Drownings of children in dug holes filled with water
- » Holes on the ground
- » Fire underground
- » Acid mine drainage
- » Tailing dams danger
- » Trucks passing through villages and knocking down children
- » Stock-pilling of materials without barricades
- » Cattle falling in holes without proper fencing
- » Exploration or drilling companies leaving holes open.

4. Rethinking regional solidarity

A very robust discussion and debate took us back into our history. We started to look at how mining used to take place back in the day. We realised that mines used diverse nationalities as labour. The labour that was used was from the different parts of the region. Looking at this question is important because it helps us to answer why there is a lot of disagreement as to who my brother is and why it is so difficult to identify my brother in the region.

We are talking about the biggest issue- mine closures and what mine closures have brought about. It has brought about a lot of conflict between locals and zama-zamas, and the zama-zamas are from different countries. Now we have this big elephant in the room: xenophobia. How do we address xenophobia?

In looking at what causes xenophobia, we went back a little into the history and looked at who came to this country. Who was taking part in mining? We noticed that even though there were so many different people from the region, there was no conflict back then. So, what has caused the conflict that we are looking at now? If we look at it, xenophobia is a war of the poor with the poor; it’s not pitting rich mine owners against poor, dispossessed people. It’s pitting poor and dispossessed people against people who are victims of mine closures that have not been done properly. The zama-zamas are people wandering around because they have lost their employment and are trying to find a means of survival that pits them against the local communities.

There is a deepening crisis of capitalism because the burdened masses are getting deeper and deeper into poverty. We have a 40% unemployment rate. Of the employed, 60% receive the minimum wage, and 75% of employed South Africans earn less than R5 000, and much of that they’re using for energy and transport, which has both gone up exponentially. This means that ordinary South Africans live in devastating poverty conditions. But poverty is not new. Therefore, there should not be an increase in conflicts. We have a minority in power that has divided the majority so they can rule effectively over them, which is why the poor are fighting against each other. But what is amazing now is that crime, which has risen exponentially, now has a face in South Africa. Crime now has a Zimbabwean or Nigerian face, so migrants, it seems, have brought crime to South Africa. But this is because communities are fragmented due to poverty and powerlessness. This new form of conflict is being hyped by the media, which is effectively pouring fuel on this fire of crime by naming the crime by giving it a nationality. We also have the issue of police being complicit in illicit minerals trade.

We need solidarity. We need to liberate and sanitise our spaces and our platforms. The uses of conferences such as this one, and the Alternative Mining Indaba must be constructive and we should not let the voices that have muted our voices come to our spaces to again mute the voices that they’ve already muted. All voices matter. All voices are important, and we should not silence those who disagree with us or do not repeat what we believe in.

PANEL DISCUSSION

The panel discussion included the following panelists:

Tebello Chabana (Minerals Council), Louis Snyman (Centre for Applied Legal Studies, Wits University), Mariette Lieferrink (virtually) (Foundation for Sustainable Development), Adv. Mluleki Marongo (SAHRC) and Sahlulele Lusipho (virtually) (Parliamentary Portfolio Committee Mineral Resources and Energy).

The panel discussion was **moderated** by Hassan Lorgat (Bench Marks Foundation).

Opening speech by **Mariette Lieferrink** (Foundation for Sustainable Development, FSE)

The FSE identified the following complexities:

Lack of articulation between the closure requirements in the MPRDA and the process for winding up companies as set out in Chapter 14 of the Companies Act (1973).

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

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

One of the most common practices for mining companies avoiding their closure commitment is **pass the parcel**, that is, the selling of mines close to closure on to less resourced companies who will relieve them of the responsibility and liability of dealing with the problems of closure. This approach allows mines to end up in the hands of the weakest companies who have neither the resources, will or intention to manage closure responsibility.

The **complex corporate structures** of mining companies obfuscates responsibility for closure. Listing mining companies currently have the option of exiting a liability escalating venture by changing the controlling interest of the corporate entity holding the right. There is no state oversight of this process at present.

Delays in:

- » The finalisation of the 2017 Draft National Mine Water Policy.
- » The finalisation of the Draft National Mine Closure Strategy (2008).
- » Finalisation of the National Nuclear Regulation’s establishment of criteria and requirements for the rehabilitation of radioactive contaminated land under NNR regulation and the remediation (remediation plan) for contaminated land not under NNR Regulation (2015).

NON-COMPLIANCE AND NON-ENFORCEMENT:

Operators must take responsibility and prioritise the safety of tailings facilities, through all phases of a facility’s lifecycle, **including closure and post closure with the ultimate goal of zero harm to people and the environment and zero tolerance for human fatality.**

Louis Snyman (Center for Applied Legal Studies):

We have had more than 100 years of mining in South Africa, where communities have been left worse off. Communities are in crisis because there is a lack of reasonable and impactful closure. The companies are taking the profits. They are not absorbing the costs of the impacts of mining and of energy generation in this mineral energy complex. The backbone of the South African economy is minerals and has been for many years.

We have the SA Human Rights Commissions. We had hearings, the report came out, and we identified the issue of non-compliance across the board.

We have what some may call a legal system that is human rights centred but it’s centered around trying to balance rights where the powerful often exert influence over the final outcome.

We have the Minerals Council. The basic issue we were fighting for is participation in formulating a document that controls the benefits around mining.

Another issue that is central is the control of benefits. For many years, mining companies have said they are not developers of mine-affected communities in terms of local economic development.

Companies are bulldozing through their particular prerogative and municipalities are weak, accepting whatever they can get. We need a powerful role player there that has community influence and is community-led.

The very hot topic at the moment is “illegal mining activities”. Who is looking into that?

We should put into place specific laws that have a time limit on care and maintenance, and if that time limit is breached, the mine should be handed over to communities.

It requires a powerful movement; there are a lot of powerful movements starting to develop in and around the country, but we need to come together, and we need to start formulating a strategy to get into those conversations where these decisions are made.

Advocate Mluleki (South African Human Rights Commission):

When the state does not work, when officials are apathetic, or where there’s corruption, ineptitude or gross incompetence, the best laws will not work. When state institutions suppress the voices of communities through criminalising protest action, when the state colludes with the corporate sector to litigate against activists, lawyers, to kill activists, the best of laws will not work. State capacity is one of the most important areas where the focus needs to be dedicated.

A lot of the effort now needs to be on looking into particular state departments, seeing if the right people are there, if they are skilled and ethical individuals.

Part of what the SA Human Rights Commission does is meet the communities. The Commission would like to see more of this as a collaboration that aims to draft more policies and that is aimed at capacitating the state.

Tebello Chabana (Minerals Council):

If the mining industry was not there to rescue the fiscus, the country would be in trouble. Does that filter down into communities? We do not always see that direct benefit to some of those communities on the ground in terms of jobs, opportunities, and infrastructure.

Mine closure is really fraught with challenges in South Africa. We have 6 100 abandoned mines and there has been mining in this country for centuries. Before democracy, it was a matter of literally just closing the fence, and that was how you closed the mine. That’s the legacy that we are dealing with. Now the regulator is not helping to rehabilitate those mines at a sufficient pace. A lot of the mines in terms of the commodities that we all understand have really not been touched in terms of rehabilitation. As an industry, we need to work hard to support DMRE to rehabilitate those mines.

One challenge to which people are not really applying their minds is how to curb the criminality taking over South Africa. Mining of virgin territory is happening at an industrial scale in South Africa. There are procurement mafias that make it almost impossible for instance, for people in the construction sector. We have similar challenges in the mining sector. It is one thing to criticise the zama-zamas, the diggers, but they are not the real problem. The syndicates are the big issue. We need to be taking those syndicates out.

Areas of convergence that we need to work on are:

Representation: Bench Marks has been saying we want greater representation of communities in determining policy that impacts mining. We fully support that as the Minerals Council and have stated that publicly.
Transformation: we are saying we need an Industry Transformation Council.

There was talk about forcing mining companies to have the SLPs look more at the region than only their individual projects. We welcome that. We want mining companies to collaborate with their neighbouring mines. The draft national mine closure strategy talks about having regional entities to drive regional growth. We support and welcome it.

Enforcing transparency and accountability on mines and the regulator is where civil society can be really strong: ensure that you can see the numbers, what companies are doing, what the DMRE is doing. Enforcing that transparency will then enforce accountability.

Sahlulele Lusipho (Parliamentary Portfolio Committee, Mineral Resources and Energy) :

Mine closure is a legacy that we have inherited from the past. Prior to the enactment of the Minerals Act 50 in 1991, mining companies used irresponsible mining methods by leaving an area unrehabilitated. Over 6 000 mines have been abandoned, and have become the responsibility of government. Most of these old mines have become a home for illegal miners.

The mine closure process is expensive. Just for closing holdings, Mintek told the Committee in August 2022 that with the annual budget allocation of about R140 million, closing all the remaining open holes would take 17 years.

The Committee on Mineral Resources and Energy, Home Affairs and the Police recently finished oversight visits on illegal mining in five provinces where communities shared their lived experiences and the consequences of mines that are not closed.

We cannot shy away from the fact that, while the MPRDA regulates the mine closure process, enforcement aspects have been lacking.

Government needs to strengthen the enforcement of all the legislation governing the mine closure processes, including urgently finalising the National Mine Closure Strategy.

Moving forward

The following outcomes of the conference are considered as we move forward:

1. Consider establishing a national communities minerals council as an umbrella structure that would draw together mine affected communities and civil society organisations active in mine affected communities to struggle for a just transition in energy and mining and climate change.
2. Develop a disaster monitor system that identifies possible disasters and hotspots towards prevention and mitigation.
3. Develop a coordinated approach to “illegal mining”, to define the issue and those involved more clearly and to work towards a common strategy to realise the transition from large scale industrial mining to small and medium mining.
4. Develop an effective regional approach to allow for solidarity and common positions with regard to mining, near mine communities and social and environmental challenges faced in countries in the region, including labour migration.
5. To engage more effectively with Chapter 9 institutions such as the South African Human Rights Commission, the Public Protector and the independent Police Investigative Unit.
6. To interact more actively with the Parliamentary portfolio committee on mineral resources and energy, and that of the National Council of Provinces. The same should apply to the portfolio committees on water Affairs and the environment.



Delegates to the Bench Marks Foundation conference in October 2022 heard a wide range of presentations.



Speakers and panellists were passionate in their views about the safe closure of mines.

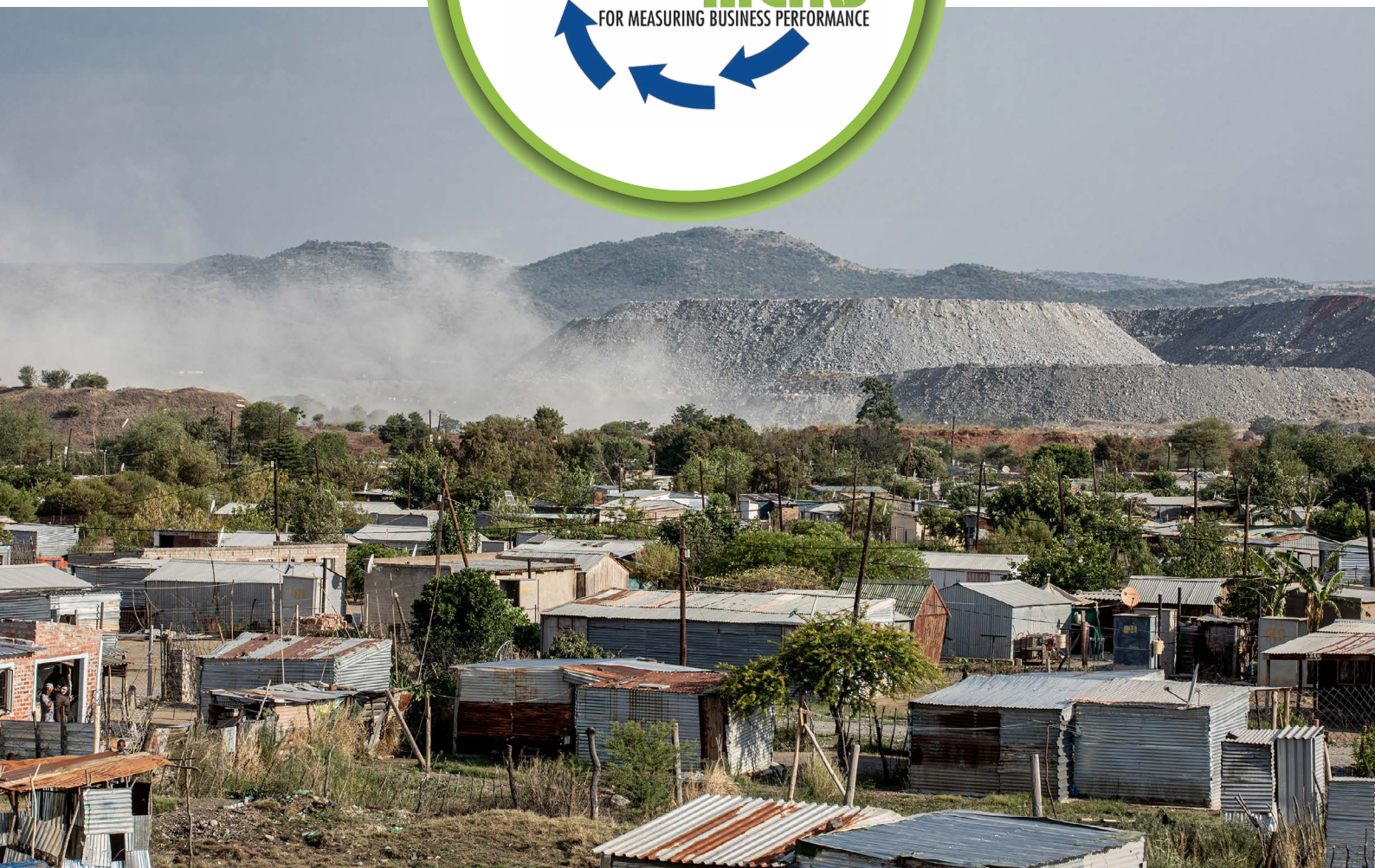


A full house of attendees rated the Bench Marks Foundation conference highly.



Plenary sessions brought together the input from groups and also provided much food for thought.

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