

Mines are not closed – they’re abandoned

Journalist **Mark Olalde** is a young American journalist who first cut his teeth at The Star as an intern from the Medill School of Journalism at Chicago’s Northwestern University. This year, he returned to South Africa, sponsored by the Fund for Investigative Journalism and hosted by Wits University’s Centre for Sustainability in Mining and Industry, to investigate the phenomenon of illegal miners, or zama zamas, for The Star. This is what he found

LOUIS Nel, head of security at the abandoned Blyvooruitzicht Gold Mine, stepped into the sunlight pouring through the face of an inclined shaft. He wore a pistol in a thigh holster and an ammo belt around his waist. “Let’s maybe see some of them running. I’m gonna try something,” Nel said. He lifted a shotgun into the air. BAM. Pause. BAM.

A few hundred metres away, the bushes danced as one of the few zama zamas working in daylight scurried away.

“The way closure happens at the moment, we have this chaotic situation where other forms of ordering are taking over,” said Tracy-Lynn Humby, a law professor at the University of the Witwatersrand who researches the legislation governing mine closure. “It’s the frickin’ Wild West out there.”

According to the Department of Mineral Resources, 6,000 derelict and ownerless mines pierce South African soil. As the department struggles to clean up this massive legacy, the department’s minimal oversight allows mines such as Blyvooruitzicht to close irresponsibly while ignoring environmental and social responsibilities.

Mine closure in South Africa is governed by what many experts call some of the strongest environmental mining regulations in the world, a fail-safe system. To be allowed to mine, the operating company must hold funds in a mine closure trust fund or other financial provisions ring-fenced explicitly for environmental rehabilitation. If the mine fails to take its mess, the department can clean the funds and do so itself.

However, large mining companies have a habit of selling to juniors, or scavengers, that can survive by mining lower grade ore but lack the resources for environmental clean-up.

If a mine closes legally, the owner must apply for a closure certificate. Once the certificate is granted, the department takes on responsibility for the mine and the trust fund can be opened. Until that point, however, the companies control the trust funds, and the department has been wary of taking on liability for closed mines.

A spokesperson for the department said it had received 52 closure certificates over the past three years but could not clarify if any were actually granted.

“The mines have been quite happy with not closing because the costs in that are astronomical when you have to close. But then again, I don’t know of a single mine that has been sufficiently closed, that has a mine closure certificate,” said Louis Snyman of the University of the Witwatersrand’s Centre for Applied Legal Studies.

The Star submitted promotion of access to information requests to the department to determine how many closure certificates had been granted, how much money was held in trust funds and financial provisions and what mines had been sold off.

The department did not respond within the allotted 30 days and did not request an extension.

The Blyvooruitzicht case exists at the confluence of these failings.

Operated since 1937, the mine has been abandoned since it liquidated in 2013. The mine’s environmental management programme listed the cost of rehabilitation at R75 million, the Village Main Reef chief executive put it at R108m in an affidavit filed during liquidation proceedings, the chief executive of DRDGOLD claimed it would cost R190m and experts say all those numbers might be too low.

The original financial provision for rehabilitation was set at R10 000.

“Enough maybe to have catering for a meeting to discuss rehabilitation. It’s absolutely ludicrous,” Humby said.

It was not until 2007 that the financial provision began receiving top-ups. Even now, it sits at about R40m, just over half the absolute lowest estimated rehabilitation cost. Companies get away with putting so little aside for rehabilitation in part because the rulebook on trust funds was written in 2005 and has never been updated, even to account for inflation.

The Department of Mineral Resources is now the entity with the power to use the funds at Blyvooruitzicht, something the



BURDEN OF CLOSURE: An old mine shaft in Carletonville. The writer says there are intractable legal problems in closing a mine – one of the main ones being the expense of rehabilitating the area. PICTURES: ITUMELENG ENGLISH



ON THE LOOKOUT: Security personnel on a routine check. Illegal mining has escalated in the area as miners who used to work for Blyvooruitzicht Gold Mine are unemployed.

department has shown no inclination to do.

“Blyvoor should be the learning ground, and it doesn’t seem like anybody wants to learn,” Nel said.

Blyvooruitzicht liquidated because there was not enough money to cover costs, even though both DRD, which earned R164m profit in the second half of last year and Village, which earned R141m in the same period, continue to operate well in

the black. This situation is possible because the liabilities were actually held by an entity called the Blyvooruitzicht Gold Mining Company Limited, and DRD and Village were merely majority shareholders when they each operated the mine.

This use of shell companies pervades the industry, where liability is apportioned to companies that do not actually hold the money. This directly affects those living or working near the mine. “It’s legally rein-



UNDERGROUND WATCH: Security personnel investigate a tunnel in the disused Blyvooruitzicht Gold Mine. Zama zamas operate in these hard-to-reach tunnels and conduits.

forced basic confusion,” Snyman said. “You have absolutely no idea who to call if there’s a major spill or violence on a mine.”

Without an observant regulator, loopholes persist and mines such as Blyvooruitzicht can fall through all of them. “The mere fact that there is a share-

holder relationship does not impose or establish some kind of a responsibility or liability,” DRD chief executive Niel Pretorius said.

“One of the reasons those regulations were so weak was that the department had the power to make the regulations, so they

made the rules of the game and they implemented it,” Humby said.

Blyvooruitzicht is now in the hands of a liquidator who is resorting to selling of the property’s assets piece by piece because he can’t find someone willing to buy the mine. While there may still be gold in at least one of the shafts, any buyer would have to deal with issues of water electricity and housing for the villages adjacent to it and informal settlements of top of the mine before beginning mining. The liquidator estimated at least 60 percent of the affected people should not be there they moved in after the mine ceased operating.

“There’s no provision for 11 000 people. Now who must manage that? Their water their electricity, everything,” Nel said.

Because the mine liquidated instead of applying for a closure certificate, insolvency – not closure legislation – is at play. With no closure certificate, it becomes difficult to access trust funds and begin rehabilitation, and government departments concerned with the environment do not even have to be notified of the closure.

“You might not even find out that it’s happening,” Humby said.

Regardless, Pretorius said DRD would keep the trust fund out of the liquidator Leigh Roering’s hands to protect the money.

“Traditionally, all a liquidator is supposed to do is look at the assets, look at the liabilities, have a fair process for distributing the proceeds of whatever remains. Social obligations? No,” Humby explained.

“The state has to assume the position. No one else can,” Roering said. “As my rules tell me, I must sell my assets and pay off my creditors.”

Roering concluded: “I don’t have the solution to the sad story.”

Past the environment and communities the sad story is simply bad for business. When legal operations ceased at Blyvooruitzicht, so did the pumping of water out of the void. The rising water threatened to flood two of AngloGold Ashanti’s nearby gold mines, and the company was forced to begin pumping out of its abandoned neighbour.

A court ruling handed over control of two shafts to AngloGold, but the company now must pay an estimated \$14 million a year – nearly R200m – to pump, according to its spokesperson.

Just up the road, AngloGold is actually working on one of the mining belt’s few successful remediation projects. Using reed beds and stands of trees planted in a strategic order, the initiative can remove contaminated groundwater and other mine waste products coming off the tailings before they leave the property.

But this and other projects like it might go to waste when the remediating companies sell their mines to smaller, scavenger outfits. “It depends on the next company that purchases the operations. We can suggest, but we can’t force the next owner of a mine to follow exactly the same methodologies,” Jozua Ellis, AngloGold’s senior environmental manager, said.

Changes in the legislation governing financial provisions for closure close some loopholes and are currently being implemented. In them, the Department of Environmental Affairs regained the power to set the regulations governing the environmental aspects of closure. Additionally, auditors will be assigned to periodically check to make sure the amount of money a company sets aside for remediation is actually enough to accomplish that.

However, the power to enforce these regulations remains firmly with the department. As the new legislation takes effect, it comes at a time when the department aims to rehabilitate 10 times as many derelict and ownerless mines as it did five years ago. With so many legacy issues imbedded in the industry, it has an uphill battle to also manage mines closing currently.

“The sins of our forefathers will haunt us for years to come,” Ellis predicted.

Olalde’s final part in this series, under the subject of how the remnants of South Africa’s once proud gold mining industry have been reduced to squalter camps in a toxic sea of cyanide dust, will be published in this week’s Saturday Star