Illegal Mining in South Africa

Fact Sheet
2015
Facts on illegal mining

Illegal mining is a criminal activity. There is a specific prohibition in the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) on mining without the required statutory authorisation (section 5(4)). It usually also involves at least trespassing and theft.

As far as is known, South Africa is about the only country in the world where it is illegal to be in possession of unwrought (unrefined or partly refined) precious metal ore (platinum group metals [PGM’s] and gold bearing material [GBM]) without the required statutory authorisation. South Africa is also one of the few countries in the world where it is considered to be a criminal offence to be in possession of rough diamonds without the applicable license.

Illegal miners (zama-zamas) are often heavily armed, have explosives, and set ambushes and booby traps for employees, security and rival groups of illegal miners.

There is an increasing level of violence, gang war and intimidation by illegal miners.

The growth in illegal mining, which is now happening on a large scale nationally, could be attributed to the combination of a difficult socio-economic climate and limited resources at the disposal of law enforcement agencies, such as police, immigration, border controls and prosecuting authorities.

Poverty, unemployment and large numbers of illegal immigrants in South Africa, are contributing to higher crime levels in general, including in illegal mining. About 70% of all arrested illegal miners are illegal immigrants, mostly from Lesotho, Mozambique and Zimbabwe.

Illegal mining activities and organised crime are inter-related. Very often, illegal mining is spearheaded by illegal mining syndicates operating in South Africa. These syndicates are professionally run and very well organised.

Illegal mining is not only taking place in abandoned mines but happens in operating mines as well. Sometimes formal mine employees engage in illegal activities, either while at work (abandoning their working places) or during their leave periods. Sometimes the employees merely collude with the illegal miners and aid them in their endeavours, very often making use of this as an alternative income stream.

Illegal miners gain access to underground mining areas in a number of ways, including using explosives to blast open concrete seals of surface shafts entries (the DMR and mining companies have sealed some 180 entrances over the last year or so); going down ventilation shafts; going through existing mine entrances, bribing their way in.

Usually illegal miners spend extended periods of time underground because of the difficulty or costs of bribes in getting there. They are often supplied with food and drinks by existing miners who smuggle these down in exchange for huge profits.
The underground workers, mostly illegal immigrants from neighbouring countries, who do the physical mining. Many have worked in the mines previously. They use chemical substances (usually mercury) to primitively refine the product to about 70% purity.

The buyers on the surface around the mines. They also organise the level one illegal miners and support them with food, protection, equipment and means to access underground mining operations.

The regional bulk buyers who usually are entities which in most cases have permits issued in terms of the Precious Metals Act to trade in precious metals.

The top international receivers and distributors, usually through international refineries and intermediary companies.

Levels three to five seldom handle the product, instead devising and executing plans to get the product out of the country.

Some of the money may be brought back into the country. The rest would remain overseas.

Often the proceeds are used to fund other syndicated criminal activity, such as gun smuggling, human trafficking and human smuggling, or drugs.
Illegal mining has a serious detrimental financial impact on the state, employees, companies, the mining sector and the country because of loss of revenue, taxes, employment opportunities, capital expenditure, exports, foreign exchange earnings, procurement, etc. It also presents a serious risk to the sustainability of the industry and its ability to contribute to a meaningful future for all South Africans.

The Institute for Security Studies (ISS) CONSERVATIVELY estimated in 2006 that the value of gold theft in South Africa (during 1999 - 2004) was about R2 billion and of PGM theft about R255m. Current estimates by security experts are that it could now be between 5% - 10% of annual South African production, which production in 2013 was just over R72 billion for gold and just under R63 billion for PGM.

Mining companies have to spend a significant amount of time and money on security.

Illegal miners present a major risk to themselves and to the health and safety of the employees of legal mining operations, often threatening them and their families to assist in the crime. The illegal miners also steal explosives, diesel, copper cables and other equipment from mines and make illegal electricity connections from the mine’s electricity infrastructure. Any interruption of the mine’s electricity supply could create significant risks to the mine’s ventilation system underground and to the ability to hoist persons out from underground, particularly in cases of emergency.

Illegal mining destroys the social fabric of mining communities because of, amongst others: the bribery of workers to gain access to mines and to secure food and other supplies; the threats and violence against workers and management; and the high number of illegal miners in the communities around the mines.

Illegal mining leads to other criminal activities in surrounding communities, such as prostitution, substance abuse and illegal shebeens.

Some of the major mining disaster incidents in recent years have been related to illegal miners who are often working in abandoned mine shafts which do not have the necessary safety mechanisms in place. Often they mine away the support pillars that have been left to ensure ground stability, thereby risking/causing falls of ground and surface instability.

Illegal mining activities threaten the viability of the mining companies’ mine closure efforts.

Business and production are disrupted due to the theft of copper cable or damage to underground workings (such as ventilation, lighting, pumps etc).

The company carries a significant cost for repair and ongoing maintenance, and there is risk to local communities (especially children) and livestock, where perimeter fences are broken by illegal miners to gain access to old mine shafts and tailings dumps.

There is a cost to the state and mining companies to commission the Mines Rescue Services for rescue emergencies and sealing of voids created by illegal miners.

The rescue efforts pose a moral dilemma for Mines Rescue Services, as they are a purely voluntary service and their volunteers have to risk their lives to save people who are undertaking illegal activities. The mine rescue teams are a small group of people who are highly skilled and there is not a big pool of them available in the country.
Some legislative background

In order to determine statutory liability for health and safety obligations at mines one should distinguish between three classes of mines: a) a mine that is lawfully being worked; b) a mine that is not being worked but in respect of which no closure certificate has been issued; and c) a mine that is not being worked and in respect of which a closure certificate has been issued and a mine placed under liquidation.

Section 2 of the Mine Health and Safety Act (MHSA) obliges the employer (the mineral right holder) of a mine which is being worked to ensure, as far as reasonably practicable, that the mine is designed, constructed and equipped to provide conditions for safe operation and a healthy working environment; and commissioned, operated, maintained and decommissioned in such a way that employees can perform their work without endangering the health and safety of themselves or of any other person.

Section 2 of the MHSA also requires the employer of a mine which is not being worked and in respect of which a closure certificate has not been issued under the MPRDA to take reasonable steps to continuously prevent injuries, ill-health, loss of life or damage of any kind from occurring at or because of the mine.

Section 43 of the MPRDA requires the holder of a mining right to apply for a closure certificate upon, amongst others, the lapsing, abandonment or cancellation of the right. A closure certificate is only issued once the holder’s obligations in relation to environmental, health and safety liabilities have been complied with. It entails a cumbersome process to obtain and is not easily issued by the DMR.

So-called “abandoned mines” mines could fall into one of two categories, i.e. those in respect of which closure certificates have been issued and those in respect of which closure certificates have not been issued. Technically in the case of the latter, the mineral right holder remains responsible under section 2 of the MHSA “to take reasonable steps to continuously prevent injuries, ill-health, loss of life or damage of any kind from occurring at or because of the mine”. However, in practice this responsibility is usually picked up by the state as the holder cannot be found or has insufficient funds to perform its obligations (sometimes the mine is under liquidation). Further, the obligation is only “to take reasonable steps”, which are often insufficient to prevent or deter illegal miners, as they will use all available means (explosives, bribery, violence, etc) to gain access to minerals and retrieve them.

In South Africa the state is the custodian of all minerals and often the mineral right holder is not the landowner. In such cases there can be confusion about the different responsibilities of the land owner and mineral holder. The landowner, where it is in control of the land, would still have a common law obligation to take reasonable steps to prevent reasonably foreseeable damage being caused to anyone on its land.

A collaborative approach

Until all the socio-economic factors contributing to illegal mining (and other crimes) are addressed, we will be addressing only the symptoms. In addition, the whole legal enforcement system needs to be addressed, not only from a socio-economic point of view, but also in terms of policing, prosecution, immigration and border control.

It has long ago been recognised that the only way to deal with the problem is to focus on both the supply and demand side of illegal mining, i.e. all 5 levels of the syndicates need to be addressed. While local police (Vispol) and mine security deal with level ones and twos, the Chamber
of Mines, the SAPS and various other SA govern-
ment structures through the National Coordinat-
ing Strategic Management Team (NCSMT) and
DMR for example are working hand-in-hand with
international agencies, such as the United Na-
tions Interregional Crime and Justice Research
Institute (UNICRI), European police, Interpol and
international embassies, to identify and deal with
level threes, fours and fives that constitutes the
buyer market.

Various forums have been established to ad-
dress the different challenges and these should
be used and strengthened where needed rather
than duplicating efforts.

State involvement is not always optimal be-
cause of shortage of human and financial re-
sources, overlapping jurisdictions and slow deci-
sion and implementation processes.

Other national and international initiatives

The Chamber of Mines has a long estab-
lished Standing Committee on Security
(SCOS) where its members deal with all
issues relating to security at mines and product
theft from mines. The SCOS led the establish-
ment of the multi-stakeholder National Precious
Metals Forum (NPMF) over a decade ago. The
NPMF consisted of representatives of mining
companies, the Chamber of Mines, SAPS (vari-
ous branches and its forensic science laborato-
ry), the SA Precious Metals and Diamonds Regu-
lator, Rand Refinery and the National Prosecuting
Authority. Other role-players were brought in as
needed. It was chaired by a SAPS General. The
functions of the NPMF were recently absorbed
into the SCOS following some re-structuring
within certain relevant SAPS structures.

SCOS/NPMF initiatives include:

» Establishing a precious metals finger-printing
database at the SAPS forensic laboratories
  • Formal agreement between the COM/
    mining companies and the SAPS
  • According to the Precious Metals Act,
    samples must be submitted every six
    months or when called for
  • Can determine where gold/platinum has
    originated from
  • Highlights problem areas/trends

» Created a special investigative task force
  • Included mining companies and SAPS
  • Investigated syndicate activity at national
    and international level
  • Worked with international agencies (such
    as UNICRI, European police and Interpol)
    and international refineries
  • Task force no longer exists, but joint op-
    erations are still conducted on an ad hoc
    basis

Provincial multi agency forums exist in five of
the nine provinces and these feed into a national
multi-disciplinary coordinating body which deals
with illicit mining (illegal mining and the smug-
gling of precious metals and diamond) across
the five syndicate levels. These forums imple-
ment provincially based disruptive operations
and measures to identify and apprehend illegal
miners. Some of these measures include, but are
not limited to:

• Sensitising prosecutors on the nature, extent
  and effect of the problem so that appropriate
  charges are brought and sentences imposed.
  (Often the illegal miners were merely charged
  with trespassing and sentences to a fine of
  R200. Lately various charges are brought under
  the Criminal Procedure Act, MPRDA, explosives
  legislation and Hazardous Substances Act, etc
  and more severe penalties have been imposed
  in many cases.)
• Providing awareness and training to SAPS and
other authorities in identifying the different forms of precious metals, especially PGMs.

- There has also been regional and international engagement to create global awareness.

The NPMF and the Standing Committee on Security

Illicit mining was identified in South Africa as a national threat and priority for Government as the phenomenon impacts across various sectors and clusters of government. A special multi-agency team was convened in order to co-ordinate Government’s efforts against illicit mining in South Africa and beyond its borders.

South Africa and the Russian Federation have since engaged in talks with the United Nations Interregional Crime and Justice Research Institute (UNICRI) and the United Nations Office on Drugs and Crime (UNODC) to develop a global strategy to assist in dealing with the crime phenomenon. This initiative will bring together all the different national, regional and international public and private actors and design a common strategy to disrupt the value chain of these criminals on all levels.

In April 2013, South Africa tabled a resolution, dealing with the combating of transnational organised crime and possible links to illicit trafficking in precious metals, at the 22nd session of the UNODC Commission on Crime Prevention and Criminal Justice (CCPCJ) in Vienna, which was co-sponsored by Russia, Zimbabwe, Namibia, Ghana, Belarus and Colombia. The resolution was adopted by the Economic and Social Council (ECOSOC) on 25 July 2013 as is concerned with the growing involvement of organised criminal groups, as well as the substantial increase in the volume, rate of transnational occurrences and range of offences related to illicit trafficking in precious metals in some parts of the world. The resolution further stressed the need to develop comprehensive, multi-faceted and coherent strategies and measures, including both reactive and preventative measures, to counter illicit trafficking in precious metals.

UNICRI will be assisting the South African Government in a global initiative to deal with the findings of the ECOSOC resolution.

In a separate development, it was announced on 26 February 2014 in the Budget Review, as part of the budget speech by the then South African Minister of Finance, Mr Pravin Gordhan, that second-hand goods made from precious metals are to be excluded from obtaining notional input tax under the VAT legislation, as a measure to avoid fraudulent claims in this regard. (A notional input tax is allowed when a VAT vendor acquires second-hand goods from a non-VAT vendor, allowing for the unlocking of part of the VAT on goods previously paid by final consumers as those goods re-enter the formal supply chain. Sales of certain gold coins are zero-rated for VAT. While the resale of gold jewellery by non-VAT vendors to VAT vendors should allow for the deduction of notional input VAT, in practice such jewellery is smelted along with gold coins and illegally acquired raw gold. This has created an enabling environment for fraudulent input tax deductions.)

Looking ahead

No single stakeholder can address the challenge of illegal mining on its own – collaboration is key. The industry, individually and through the Chamber of Mines, remains committed to working with other stakeholders to address this serious challenge.