



SOUTH AFRICA'S STOLEN GOLD:

A legal analysis of the impact of illegal mining on South Africa's national security

by

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ABSTRACT

The proliferation of illegal mining activities in South Africa costs the country's economy an estimated R10 billion a year. Illegal mining activities further jeopardise the future of South Africa's economic development perspective, which is outlined in the National Development Plan (NDP) and highlights the need to eliminate poverty and reduce inequality. Therefore, this posits illegal mining activities as national security threats as they compromise the government's strategic planning programme and directly impact all sectors of security analysis for a modern state: the military, economic, political, social, and environmental sectors.

The current fragmented approaches to combat illegal mining activities and the short-sightedness of mining legislation will continue to exacerbate the impact and spread of these activities, from primarily abandoned mines to operational mines. Hence, any real plan to combat illegal mining activities successfully needs a coordinated approach that involves all stakeholders within the mining industry and the security sector, focusing on the key drivers of this highly organised and global illicit economy. In addition, the South African government will need a well thought out policy development strategy that speaks to the future needs of South Africa's mining industry, which may include artisanal mining as a form of an inclusive economic development policy programme. This dissertation briefly explores all the elements mentioned above of South Africa's illegal mining problem. This paper emphasises policy failures and government strategies that have largely ignored the security of the country's mineral resources as they lie on the surface and subsurface of the earth, specifically in abandoned and derelict mines.

ABBREVIATIONS

AMV	Africa Mining Vision
ASM	Artisanal and Small-Scale Mining
CI	Crime Intelligence
CIP Act	Critical Infrastructure Protection Act 8 of 2019
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DHA	Department of Home Affairs
DMRE	Department of Mineral Resources and Energy
DoJ	Department of Justice and Constitutional Development
DPCI	Directorate for Priority Crime Investigation
GDP	Gross Domestic Product
GILAA	General Intelligence Laws Amendment Act 11 of 2013
ISS	Institute for Security Studies
IWGNS	International Working Group of National Security
MPRDA	Mineral and Petroleum Resources Development Act 28 of 2002
MPMTU	Minerals and Precious Metals Theft Unit
MTSF	Medium Term Strategic Framework 2019 - 2024
NCSMT	National Coordination and Strategic Management Team
NDP	National Development Plan
NEMA	National Environmental Management Act 107 of 1998
NICOC	National Intelligence and Co-ordinating Committee

NIE	National Intelligence Estimates
NPA	National Prosecuting Authority
NPMF	National Precious Metals Forum
NSC	National Security Council
NSI Act	National Strategic Intelligence Act 39 of 1994
NSP	National Security Policy
NSS	National Security Strategy
RDP	Reconstruction and Development Programme
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SANDF	South African National Defence Force
SAPS	South African Police Services
SCOS	Standing Committee on Security
SSA	State Security Agency
UNICRI	United Nations Interregional Crime and Justice Research Institute
VISPOL	Visible Policing

TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	iii
ABSTRACT.....	iv
ABBREVIATIONS.....	v
TABLE OF CONTENTS.....	vii
CHAPTER 1: INTRODUCTION	9
1. Introduction	9
2. Contextual Background.....	10
3. Research Questions.....	15
4. Research Methodology.....	16
5. Research Outline.....	16
CHAPTER 2: STATUTORY FRAMEWORK FOR THE SECURITY OF MINERAL RESOURCES IN SOUTH AFRICA	19
1. Introduction	19
2. Mineral and Petroleum Resources Development Act.....	20
2.1 Reconnaissance	21
2.2 Prospecting	22
2.3 Mining	23
2.4 Closure.....	24
3. The Critical Infrastructure Protection Act.....	26
4. Immigration Act.....	28
5. Defence Act.....	29
6. National Strategic Intelligence Act	30
7. Conclusion.....	32
CHAPTER 3: THE SECURITY OF SOUTH AFRICA’S MINERAL RESOURCES WITHIN THE NATIONAL SECURITY CONTEXT.....	33
1. Introduction	33
2. Understanding National Security.....	35
2.1 The Traditionalist and Wideners Debate.....	35
2.2 South Africa’s Approach to National Security	37
3. National Security Policy	38
3.1 The Role of the National Security Policy.....	38
3.1.1 Addressing All Threats in a Comprehensive Manner.....	38
3.1.2 Optimising Contributions from All Security Actors	39
3.1.3 Guiding Policy Implementation	40
3.2 South Africa’s National Security Policy	40
4. National Security Strategy.....	41
5. Illegal Mining within the National Security Context in South Africa.....	42
5.1 The Root of Illegal Mining and Zama-zamas	43
5.2 The Global Syndicates.....	45
5.3 Impact on Local Communities and the Country	46
5.4 Current Coordinated Measures.....	47
6. Conclusion.....	48
CHAPTER 4: VISION 2030 AND BEYOND.....	50
1. Introduction	50
2. Overview of Artisanal and Small-Scale Mining	52
3. South Africa’s Approach to Artisanal and Small-Scale Mining	53
4. Strategic and Implementation Model for the Future of Mining in South Africa.....	55
4.1 The National Development Plan	56
4.2 Medium – Term Strategic Framework 2019 - 2024	59
4.3 The Impact of Rampant Illegal Mining Activities on Strategic Planning.....	62
5. The Draft Artisanal and Small-Scale Mining Policy 2021	64
6. Conclusion.....	66

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS	68
1. Introduction	68
2. Research Focus and Context.....	69
3. Findings of the Dissertations	70
4. Recommendations	72
4.1 Insertion of Provision for the Physical Security of Mines in National Legislation	73
4.2 Development of the ASM Policy Published in May 2021	73
4.3 Addressing Illegal Mining as a National Security Priority.....	74
BIBLIOGRAPHY	76
Primary sources	76
Legislation	76
Cases.....	76
Literature.....	77
Printed.....	77
<i>Reports</i>	79
Electronic	80

Chapter 1: Introduction

1. Introduction

Over the last decade, South Africa's mining industry has witnessed a constant decline in economic output.¹ Despite the country's considerable mineral resources, the industry's global market share of production has significantly changed from what it was in the 1970s.² Gold mining had been the cornerstone of South Africa's economic development, with production peaking at 1000 tons per annum in 1970.³ However, production has drastically shrunk in the 2000s, with an output of 250 tons recorded in 2007, 138 tons in 2017 and 99 tons in 2020.⁴ The decreasing performance of the mining industry can be attributed to several factors that include rising production costs and static commodity prices, which in turn, are accompanied by job losses and the concerning rise of illegal mining activities in ownerless and derelict mines.⁵

Nevertheless, the South African government's strategic economic policy proposals still look forward to the mining industry being a sunrise industry and an important driver for inclusive economic development.⁶ The government's speeches and policies regard the mining industry as an important component of economic policy planning strategies as the country heads towards the 2030 developmental milestone envisioned in the National Development Plan (NDP).⁷ However, the rise of

¹ P N Neingo and T Tholana 'Trends in productivity in South African gold mining industry' (2016) 283 *The Journal of the Southern African Institute of Mining and Metallurgy* at 289. CEIC 'South Africa Gold Production' available at <https://www.ceicdata.com/en/indicator/south-africa/gold-production> accessed on 30 June 2021.

² S. Macfarlane 'Presidential Address: Towards the future: African Mining Vision, Mining Phakisa and the SAIMM' (2018) 118 *The Journal of the Southern African Institute of Mining and Metallurgy* at 901.

³ *Ibid* at 901-2.

⁴ *Ibid*. CEIC op cit note 1. Gold production in 2020 was significantly impacted by disruptions of business that were a result of the Covid-19 pandemic. To contain the spread of the virus, the government halted economic activities in a number of industries including mining, see Classification of National Disaster (GN 312 GG 43096 of 15 March 2020); Declaration of a National State of Disaster (GN 313 GG 43096 of 15 March 2020); Minerals Council South Africa *Standard Operating Procedure (SOP) for addressing cases of COVID-19: Prepared for members of the Minerals Council South Africa* (23 March 2020); and Guidelines for a Mandatory Code of Practice on the Mitigation and Management of Covid-19 Outbreak (GN 280 GG 43335 of 18 May 2020).

⁵ Minerals Council South Africa *Facts and figures pocketbook* (2019) at 20. Neingo and Tholana op cit note 1.

⁶ John Kane-Berman 'The impact of mining on the South African economy and living standards' *FSE Online* 10 February 2018 available at <https://fse.org.za/index.php/2018/02/10/the-impact-of-mining-on-the-south-african-economy-and-living-standards/>, accessed on 30 September 2020. See also Chapter 3, 6 and 8 of *The National Development Plan 2030: Our future – make it work* (2012) and Joel Netshitenzhe 'Towards Mining Vision 2030' in Salimah Valiani (ed) *The Future of Mining in South Africa: Sunset or Sunrise?* (2018) at 27.

⁷ Department of Mineral Resources and Energy 'Remarks by the Minister of Mineral Resources and Energy, Mr Gwede Mantashe (MP): Debate of the State of the Nation Address (SONA) 2020' (2020) available at <https://www.gov.za/speeches/remarks-minister-mineral-resources-and-energy-19-feb-2020-0000> accessed on 29 June 2021. See also 'NDP to drive radical economic transformation in mining' (2017) *SANews.org* available

illegal mining activities pose economic, environmental, social, and security burdens on South Africa.⁸ Negligence in government policy planning and policy failures in addressing these activities has led to further revenue losses in the mining industry, an increasing disregard for the authority of the State, and reputational damage for the country.⁹

This research examines how the proliferation of illegal mining activities in South Africa poses a threat to South Africa's national interests, the legislative environment that has failed to address these activities, and their impact on governance and planning. It aims to examine whether any explicit policy provisions¹⁰ in current legislation concern the security of South Africa's mineral resources, as they lie on the surface or subsurface of the earth. Furthermore, this research examines national security concerns that arise due to increasing illegal mining activities in South Africa. Finally, this paper proposes approaches to cure legislative gaps in the Mineral and Petroleum Resource Development (MPRDA) concerning the security of mines and mineral resources, measures to combat illegal mining, and policy reform for the mining industry's future.

2. Contextual Background

In 2012, the government adopted the NDP as the country's long-term vision and development plan heading towards 2030.¹¹ The NDP is South Africa's strategic plan to eliminate poverty and reduce inequality by 2030 through, amongst other things, encouraging inclusive economic growth and building a capable state.¹² The document identifies several critical actions necessary to deliver on its outlined vision. These include (i) raising employment and investment; (ii) boosting investment in labour-intensive areas; (iii) economic growth through competitive exports; (iv) improving community

at <https://www.sanews.gov.za/south-africa/ndp-drive-radical-economic-transformation-mining> accessed on 29 June 2021.

⁸ Parliamentary Monitoring Group (PMG) 'Illegal Mining: Hawks & Department of Mineral Resources briefing' PMG 25 August 2017, available at <https://pmg.org.za/committee-meeting/24894/>, accessed on 30 September 2020. See also Cecilia Johnson 'Lethal toll of informal gold mining' *GroundUp* 17 August 2016, available at <https://www.groundup.org.za/article/lethal-toll-informal-gold-mining/>, accessed on 09 January 2021.

⁹ *Ibid.* The disregard for the State manifests through growing illegal economies, social instability, proliferation of weapons, cross-border smuggling, human trafficking, child labour, abuse of women and children brought on by illegal mining activities. Furthermore, these activities also threaten operational mines, and this risk factor deters investment and the economic outlook of the mining industry.

¹⁰ As found in the Mineral and Petroleum Resource Development Act 28 of 2002 and based on a broad profile of the mining industry and illegal mining activities these also include the Critical Infrastructure Protection Act 8 of 2019; Defence Act 42 of 2002; Immigration Act 13 of 2002; and the National Strategic Intelligence Act 39 of 1994.

¹¹ *National Development Plan 2030* op cit note 6 at 11.

¹² *Ibid.* at 24. David Mandaha 'Modernising mining through partnerships and transformation' CSIR 18 September 2018, available at <https://www.csir.co.za/modernising-mining-through-partnerships-and-transformation>, accessed on 31 August 2020.

environments; (v) infrastructure development financed by tariffs, public-private partnerships, taxes, and loans.¹³ In addition, the minerals and metals cluster¹⁴ was identified as one of the strategic clusters that would contribute to fulfilling the NDP vision and the aforementioned critical actions.¹⁵

However, the mining industry is plagued with problems that pose risks to and threaten the fulfilment of the aims of the NDP.¹⁶ One of these issues is illegal mining activities. As the NDP is South Africa's strategic plan and bears the country's interests and future values, these risks and threats are effectively national security concerns. According to Akinsulore, Ekemanah and Akinsulore, '[g]enerally speaking, national security refers to a package of values that are deemed worthy of protection.'¹⁷ Therefore, national security refers to safeguarding the interests and functions of the state from any threats carrying the risk to impede the functioning of the state.¹⁸ Hence, this research examines how illegal mining activities are a significant and direct threat to fulfilling the objectives outlined by the NDP and thus are a national security issue that requires coordinated attention from all relevant stakeholders.

The MPRDA prohibits mining activities without permission granted according to its provisions of granting permits and rights.¹⁹ Contraventions of these provisions constitute criminal law offences prosecutable by the South African Police Services (SAPS) and the National Prosecuting Authority (NPA).²⁰ Nonetheless, thousands of people in South Africa are reportedly involved, directly and indirectly, in activities that are in contravention of the provisions of the MPRDA with their engagement in illegal mining activities.²¹

¹³ *National Development Plan 2030* op cit note 6 at 34.

¹⁴ The NDP defines the minerals and metals cluster as encompassing 'all mining and quarrying activities, supplier industries to the mining sector, and downstream beneficiation of the minerals that are mined.' See *National Development Plan* op cit note 6 at 146. However, this research paper uses the term 'mining industry' in accordance with the definitions of 'mines', 'mining', 'mining area', and 'mining operations' as offered by s1 of the MPRDA.

¹⁵ *Ibid* at 146-7.

¹⁶ See for example Johnson op cit note 8; Minerals Council South Africa op cit note 5; South African Human Rights Commission *Report of the SAHRC Investigative Hearing: Issues and Challenges in relation to Unregulated Artisanal Underground and Surface Mining Activities in South Africa* (2015); and Minerals Council South Africa 'Illegal mining' available at <https://www.mineralscouncil.org.za/work/illegal-mining>, accessed on 30 September 2020.

¹⁷ Adedoyin Akinsulore, Alexander Ekemanah and Ogechukwu Akinsulore 'The implications of illegal mining for Nigeria's national security' (2018) 1 *Benson Idahosa University Journal of Private and Property Law* 1 at 127.

¹⁸ Barry Buzan 'New Patterns of Global Security in the Twenty-first Century' (1991) 67 *International Affairs* 3 at 432.

¹⁹ Section 5A of the MPRDA.

²⁰ Generally these cases are prosecuted for contravention of the Precious Metals Act 37 of 2005, the Criminal Procedure Act 51 of 1977, and the Migration Act. For an example, see *Chaba and Others v S* (A190/2017) [2019] ZAFSHC 108; [2019] 3 All SA 103 (FB) (22 March 2019).

²¹ South African Human Rights Commission op cit note 16 at 25. Section 98 of the MPRDA.

Research and reports by the Minerals Council South Africa, the Department of Mineral Resources and Energy (DMRE), and the Directorate for Priority Crime Investigation (DPCI) indicate that there are increasing recorded incidents of contraventions of the MPRDA in the form of illegal mining.²² The South African Human Rights Commission (SAHRC) argues that '[t]he prevalence of "illegal mining" has been part of the South African mining landscape for many years and it has become a flourishing business, one that appears almost impossible to contain.'²³ According to the DPCI, illegal mining incidents target gold mines in Gauteng, KwaZulu Natal and Free State, diamond mining in the Northern Cape, and chrome mines in Limpopo.²⁴ In addition, illegal miners target abandoned shafts, improperly closed mines, and even occur in areas with holders of valid mining rights.²⁵

Following the 2008 global commodities prices slump, which culminated in significant job losses in the South African mining industry in 2012, reports indicate that the number of abandoned and derelict mines also increased.²⁶ In 2008, the Auditor General identified and listed 5 906 abandoned mines; and since 2011, the state has not issued closure certificates under the Minerals Act²⁷ or the MPRDA.²⁸ Therefore, mines abandoned after 2008 would have added to the stock of 5 906 mines abandoned by previous right holders or mines that were improperly closed due to legislative gaps before 2002.²⁹ This left 'DMR with the responsibility for security and maintenance of 6,000 "derelict and ownerless" mines.'³⁰ Some of these mines still have mineral reserves³¹ but with inadequate security resources

²² Minerals Council South Africa op cit note 5 at 54. Parliamentary Monitoring Group op cit note 8. Department of Mineral Resources *Briefing to the joint portfolio committees of mineral resources and police on measures implemented to combat illegal mining* (2017) available at <https://pmg.org.za/committee-meeting/24894/> accessed on 26 January 2021.

²³ South African Human Rights Commission op cit note 16 at 11. Note that the SAHRC uses 'illegal mining' as synonymous to 'unregulated artisanal mining (AM)', 'informal mining', 'unlawful mining', and 'Zama-zama activities'.

²⁴ Parliamentary Monitoring Group op cit note 8.

²⁵ Hogan Lovells 'Dealing with illegal miners' available at <https://www.hoganlovells.com/en/publications/dealing-with-illegal-miners>, accessed on 19 October 2020 at 2.

²⁶ Mark Olalde 'What's left in the wake of South Africa's abandoned gold mines' *GreenBiz* online 15 January 2016, available at <https://www.greenbiz.com/article/whats-left-wake-south-africas-abandoned-gold-mines>, accessed 09 August 2021.

²⁷ Minerals Act 50 of 1991.

²⁸ E S van Druten and M C Bekker 'Towards an inclusive model to address unsuccessful mine closures in South Africa' (2017) 117 *The Journal of the Southern African Institute of Mining and Metallurgy* at 485.

²⁹ Johnson op cit note 8. Ricardo J. Caballero, Emmanuel Farhi and Pierre-Olivier Gourinchas *Financial Crash, Commodity Prices and Global Imbalances* (2008) at 7. Olalde op cit note 26. MPRDA.

³⁰ Johnson op cit note 8.

³¹ A mineral reserve is defined as 'that portion of an identified resource from which a useable mineral or energy commodity can be economically and legally extracted at the time of determination'. See Pietro Guj et al *Transfer Pricing in Mining with a Focus on Africa: A Reference Guide for Practitioners* (2017) at 98.

provided by right holders and with little effort being made to secure or limit access to existing shafts, as some right holders contemplate a profitable time to resume business.³²

Government reports and academic research have previously indicated that unemployed community members and retrenched mine employees would engage in illegal mining for survival by accessing inadequately sealed shafts and abandoned mining areas.³³ Although historically, illegal mining activities were linked to socio-economic conditions in and around old mining towns, this research focuses on later trends that have emerged, demonstrating a shift in the character of illegal mining activities in South Africa.³⁴ Recent reports indicate that illegal mining and organised crime have become intricately linked in South Africa.³⁵ For example, the DMRE reported that '[n]ational and international organised crime syndicates targeting the mining sector [are] highly organised, dangerous, well financed and complex.'³⁶ These globally connected criminal syndicates heavily arm illegal miners with explosives and weapons that they use when trespassing on operating mines and for setting ambushes for State and private security personnel and rival groups.³⁷ This perspective moves these activities from the simplified realm of 'unregulated artisanal mining', 'informal mining' or 'unlawful mining' for survival to where it is illegal mining – a lucrative enterprise for organised crime groups.³⁸

Against this background, the increasing reports of illegal mining activities can no longer be purely explained as a result of unemployment and poverty.³⁹ Current research must factor in the possible failure of critical law enforcement agencies such as the SAPS, the South African National Defence Force (SANDF), the Department of Home Affairs (DHA), and the National Intelligence Structures to combat this transnational organised crime.⁴⁰ According to the DPCI, illegal mining in South Africa has been linked to 'human smuggling and trafficking; illegal weapons and explosives; tax evasion; money

³² See Johnson op cit note 8 and Olalde op cit note 26.

³³ Parliamentary Monitoring Group op cit note 8. Kgothatso Nhlengetwa and Kim A A Hein 'Zama-Zama mining in the Durban Deep/Roodepoort area of Johannesburg, South Africa: An invasive or alternative livelihood?' (2015) 2 *The Extractive Industries and Society* 1 at 3. Robert Thornton 'Zamazama, "illegal" artisanal miners, misrepresented by the South African Press and Government' (2014) 1 *The Extractive Industries and Society* at 127.

³⁴ Naomi Tite and Richard Chelin 'South Africa's illegal-mining conundrum' *Enact* 26 June 2019, available at <https://enactafrica.org/enact-observer/south-africas-illegal-mining-conundrum>, accessed on 30 September 2020.

³⁵ Ibid.

³⁶ Department of Mineral Resources op cit note 22 at 5.

³⁷ Minerals Council South Africa op cit note 16.

³⁸ Tite and Chelin op cit note 34.

³⁹ Minerals Council South Africa op cit note 16. South African Human Rights Commission op cit note 16.

⁴⁰ Ibid.

laundering; corruption and gang-related activities.⁴¹ These negative social and economic impacts pose a risk to the sustainability and meaningful future contribution of the mining industry in South Africa that is in line with the aims of the NDP.⁴²

Mining companies spend an estimated R300 million an annum on securing mines from access by illegal miners in what can only be attributed to 'negligence and lack of effective regulations or laws to protect the exploration of minerals' by the State.⁴³ In 2017, a mining company expressed that 'illegal gold mining had reached such a scale that it would not be inappropriate to bring in the South African National Defence Force (SANDF) to quell the scourge.'⁴⁴ These rising security concerns posed by illegal mining activities showcase that the current mineral resources legislative framework does not provide for a 'security team' to protect South Africa's mineral resources, and this is a role delegated to the private sector.⁴⁵ The calls for SANDF intervention and the cost further accumulated by mining companies highlight the severity of the impact of illegal mining activities on operational, abandoned and closed mines.

This research examines the impact of illegal mining activities in South Africa and how these activities threaten South Africa's national planning strategies, thus making them a national security threat. This research further examines whether the prevalence of illegal mining activities is indicative of the government's failure to protect the country's mineral resources.⁴⁶ Akinsulore, Ekemenah and Akinsulore argue that if such a failure is identified, it can be interpreted to be due to an 'absence of any national security policy on the protection of identified mineral resources or there is a neglect of whatever exists as a policy on mineral resources protection.'⁴⁷ Therefore, from a national security perspective, this is a cooperation issue between DMRE and other stakeholders to inform national security policies on emerging threats in the mining industry.⁴⁸ From a legislative framework perspective, there are flaws in the current mineral resources security legislative framework regarding

⁴¹ Tite and Chelin op cit note 34.

⁴² Minerals Council South Africa op cit note 16; South African Human Rights Commission op cit note 16.

⁴³ Akinsulore, Ekemenah and Akinsulore op cit note 17 at 126. See also Martin Creamer 'New intelligence firm has wherewithal to probe illegal mining scourge – Njenje' *Creamer Media's Mining Weekly* available at <https://www.miningweekly.com/article/new-intelligence-firm-has-wherewithal-to-probe-illegal-mining-scourge-njenje-2014-03-06>, accessed on 15 October 2020.

⁴⁴ Creamer ibid.

⁴⁵ Akinsulore, Ekemenah and Akinsulore op cit note 17 at 126.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid at 144.

the protection of mineral resources and properties of the State.⁴⁹ This research aims to examine both interpretations above and analyse their implications for the mining industry's future.

3. Research Questions

Government reports indicate that widespread illegal mining activities in South Africa negatively impact the country's economy, government revenue, social stability, and territorial integrity.⁵⁰ Illegal mining activities further facilitate weapons proliferation, cross-border organised crime, and human rights abuses.⁵¹ The current legislative framework is inadequate and concerned stakeholders are ill-equipped to address illegal mining activities. As a result, any existing measures by private and public stakeholders have been reactionary. These measures only speak to the manifestation of illegal mining activities while completely ignoring the underlying causes of this subculture of the mining industry.

This research establishes that one of the main underlying causes of illegal mining activities in South Africa is the lack of security for mining areas. Policymakers have failed to address adequately the security of mines post-mine closure or abandonment. There are no policies that provide for the security of mining areas with known viable mineral reserves under the custody of the State. The continued increase in illegal mining activities in different provinces now includes mining mineral resources outside gold such as diamond, chrome, and uranium.⁵² In addition, the escalation to disrupting business in operating mines emphasises that current government measures have failed. The SAHRC, in an official investigation into unregulated artisanal mining activities, found that the government has been 'too focused on eliminating informal mining rather than working towards solutions.'⁵³ This research attributes these failures to the decisions of policymakers and that there is a need to explicitly make a provision in legislation for the responsibility of the securing of mines.

Considering the background above, this research will answer the following questions:

1. According to extant legislation, which stakeholders are statutorily mandated to protect South Africa's mineral resources from illegal mining activities?
2. What risks and threats do illegal mining activities pose to South Africa's national interests, and what is their impact on national security?

⁴⁹ Ibid.

⁵⁰ Parliamentary Monitoring Group op cit note 8.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Johnson op cit note 8.

3. How engaged is the DMRE, in carrying out the custodianship duties of mineral resources on behalf of the State, in the architecture of the country's national security strategy?
4. Based on institutional research, has the DMRE and the MPRDA influenced and informed security policies and strategic plans to manage emerging threats in the mining sector from a strategic perspective?

Through these questions, this research examines whether the current legislative framework regulating access to South Africa's mineral resources provides for the mandate to protect South Africa's mineral resources from illegal mining activities. This paper further analyses whether institutions entrusted with administering custodianship of South Africa's mineral resources are explicitly or implicitly mandated to secure such minerals and the implication of such policy options for the future of the mining industry. Ultimately, this short dissertation seeks to determine whether the State has partially outsourced its custodianship role to private mining companies by relying on rights holders to secure all known viable mineral reserves from illegal mining. To conclude this research, proposals for policy reforms are suggested to cure legislative gaps in the MPRDA, to combat illegal mining, and towards formulating a future path for South Africa's mining industry.

4. Research Methodology

The research for this dissertation is a doctrinal analysis, considering both primary sources, such as statutes, policy documents and court judgments; and secondary sources in the form of prior research, published in academic journals, and books. There is limited academic research on the organised crime elements of illegal mining in South Africa, which is distinctly different from artisanal mining. Therefore, this dissertation additionally relies on "grey" literature such as government reports, research reports commissioned by media houses, news articles and commentary from operators in the mining industry for specific information purposes and context. These reports offer information on noteworthy incidents of illegal mining as recorded by industry operators, and detail current developments on illegal mining related matters from government and private stakeholders. The analysis provided in this paper gives due consideration to the veracity and the potential bias of the above-mentioned commissioned reports.

5. Research Outline

This dissertation is divided into five chapters. The current chapter provides a broad background on the strategic outlook of the mining industry as South Africa heads towards its 2030 developmental objectives, as pronounced in the NDP. It further introduces the impact of illegal mining activities on the mining industry and positions these activities as threats to the government's planning strategic outlook

and their impact on the country, thus evoking the need for these activities to be considered national security threats. Finally, this chapter also introduces the research questions, the research hypothesis, and the significance of this research nine years before the NDP deadlines for the government.

Chapter two examines a statutory legal framework that is relevant to providing security for South Africa's mineral resources as they lie on the surface or the subsurface of the earth. This chapter parses where the mandate to secure South African mines, specifically post-mine closure or abandonment, from illegal mining activities lies and considers the legislation that guide this mandate.

Chapter three contextualises why illegal mining activities require urgent national policy attention by discussing of South Africa's national interests. This chapter provides the nexus between national security and inclusive economic development strategies as established in the NDP. This chapter further outlines the role of the security sector and the sector's theoretical mandate to strategically combat developmental threats emanating from the mining industry.

Chapter four critically examines the government's strategic and implementation policy documents as they relate and apply to South Africa's mining industry. This chapter addresses how policy gaps and failures regarding the security of South Africa's mineral resources from illegal mining activities have adversely impacted the government's strategic policy outlook regarding inclusive economic development and poverty alleviation by 2030. This chapter analyses the impact of inconsistent policy strategies, policy formulation and implementation plans by the government in what Netshitenzhe refers to as a lack of deliberate strategy and proper stewardship over South Africa's mineral resources.⁵⁴

Chapter five summarises the findings of this research paper regarding the current circumstances that plague the mining industry and how these have encouraged the spread of illegal mining activities from gold mines to other minerals and more provinces across South Africa. This chapter further puts forth recommendations for developing an urgent security strategy to combat illegal mining activities and ultimately bring stability to the mining industry. Suggestions are also made to develop national legislation to secure known viable mineral reserves and develop appropriate security measures for closed and abandoned mines. This longer-term strategy would maximise the benefit of South Africans

⁵⁴ Netshitenzhe op cit note 6. It is important to emphasise that S3 of the MPRDA states that the State is the custodian of South Africa's minerals for the present and future benefit of South Africans.

from the country's mineral resources wealth and uplift rural communities as envisioned in the Constitution,⁵⁵ the MPRDA, and the NDP.

⁵⁵ Constitution of the Republic of South Africa, 1996.

Chapter 2: Statutory Framework for the Security of Mineral Resources in South Africa

1. Introduction

The South African mining industry is regarded as the cornerstone of the country's economy.¹ Since its inception, the mining industry rapidly transformed the country from a 'pastoral economy into an industrial one', establishing economic hubs that still stand as centres of economic activity to this day.² With nine years remaining to meet South Africa's 2030 developmental milestones, the mining industry is still regarded as essential to encouraging inclusive economic growth, eliminating poverty and reducing inequality.³ However, the industry's contribution to South Africa's Gross Domestic Product (GDP), employment levels and the attraction of foreign investments has significantly declined since 2008.⁴

According to the Medium Term Strategic Framework 2019-2024 (the MTSF), South Africa loses an estimated 10 per cent of its GDP annually to the 'illicit economy'.⁵ This illicit economy includes, *inter alia*, the illegal mining of gold which costs the country between R6 billion to R7 billion per annum in lost revenue.⁶ High unemployment, elements of transnational organised crime and weak law enforcement have contributed to the scale of illegal mining activities, manifesting in ownerless, derelict and even still operating mines.⁷ The South African Human Rights Commission (SAHRC) estimates that at least 30 000 people are involved in illegal mining in South Africa, the vast majority of which are illegal immigrants.⁸ Furthermore, the Mineral Resource Council's profile of the 'illegal mining market' is that it is

¹ Department of Minerals and Energy 'White paper: A Minerals and Mining Policy for South Africa' (October 1998) available at https://www.gov.za/sites/default/files/gcis_document/201409/whitepaperminingmineralspolicy2.pdf accessed on 23 July 2021.

² John Kane-Berman 'The impact of mining on the South African economy and living standards' *PoliticsWeb* 10 February 2018 available at <https://fse.org.za/index.php/2018/02/10/the-impact-of-mining-on-the-south-african-economy-and-living-standards/>, accessed on 30 September 2020.

³ Department of Planning, Monitoring and Evaluation *Medium Term Strategic Framework 2019–2024* (2019) available at https://www.dpme.gov.za/keyfocusareas/outcomesSite/MTSF_2019_2024/2019-2024%20MTSF%20Comprehensive%20Document.pdf accessed on 23 July 2021.

⁴ Nombulelo Gumata and Eliphaz Ndou *Accelerated Land Reform, Mining, Growth, Unemployment and Inequality in South Africa* (2019) at 234, 238 and 269. Ivo Vegter 'South Africa needs urgent policy reform to save its embattled mining industry' *Daily Maverick* 26 March 2019 available at <https://www.dailymaverick.co.za/opinionista/2019-03-26-south-africa-needs-urgent-policy-reform-to-save-its-embattled-mining-industry/> accessed on 30 September 2020.

⁵ *Medium Term Strategic Framework 2019–2024* op cit note 3 at 49.

⁶ Cecilia Johnson 'Lethal toll of informal gold mining' *GroundUp* 17 August 2016, available at <https://www.groundup.org.za/article/lethal-toll-informal-gold-mining/>, accessed on 09 January 2021; Kane-Berman op cit note 2.

⁷ Kane-Berman op cit note 2.

⁸ South African Human Rights Commission *Report of the SAHRC Investigative Hearing: Issues and Challenges in relation to Unregulated Artisanal Underground and Surface Mining Activities in South Africa* (2015) at 25.

'a well-managed 5-tier syndicate system' that has physical labourers, recruiters and enforcers, regional bulk buyers, national distributors and international receivers.⁹

The magnitude of illegal mining activities as a growing and dangerous component of international organised crime requires the focused attention of the State. According to a United Nations Interregional Crime and Justice Research Institute (UNICRI) report, 'illicit trafficking in precious metals thrives due to the exploitation of loopholes in national and international legislation.'¹⁰ Therefore, this chapter will analyse how the Mineral and Petroleum Resources Development Act (MPRDA),¹¹ Critical Infrastructure Protection Act (CIP Act),¹² Immigration Act,¹³ Defence Act,¹⁴ and the National Strategic Intelligence Act (NSI Act)¹⁵ regulate access to and protection of, South Africa's mineral resources from illegal mining activities.

2. Mineral and Petroleum Resources Development Act

According to the MPRDA, mineral resources found within the South African territory are the common heritage of all South Africans.¹⁶ Therefore, the State is the custodian of such resources for the benefit of all the people of South Africa.¹⁷ Through the Minister of Mineral Resources and Energy (the Minister), the State may grant, suspend and cancel any permits and rights related to reconnaissance, prospecting, mining and exploration of South Africa's mineral resources.¹⁸ The MPRDA further affirms that the State is obligated to 'protect the environment for the benefit of present and future generations', ensuring 'sustainable development of mineral and petroleum resources' to encourage 'economic and social development'.¹⁹ This assertion by the MPRDA gives life and meaning to section 24 of the Constitution.²⁰ Section 24 introduces environmental rights and the obligation for the government to develop legislation that protects the environment for the benefit of present and future generations.²¹ This legislation must ensure that the development and use of South Africa's natural resources is done in an ecologically sustainable manner while promoting economic and social development.²² The MPRDA

⁹ Minerals Council South Africa 'Illegal mining' available at <https://www.mineralscouncil.org.za/work/illegal-mining>, accessed on 30 September 2020.

¹⁰ United Nations Interregional Crime and Justice Research Institute (UNICRI) *Technical Report: Strengthening the Security and Integrity of the Precious Metals Supply Chain* (2016) at 9.

¹¹ Mineral and Petroleum Resources Development Act 28 of 2002.

¹² Critical Infrastructure Protection Act 8 of 2019.

¹³ Immigration Act 13 of 2002.

¹⁴ Defence Act 42 of 2002.

¹⁵ National Strategic Intelligence Act 39 of 1994, as amended by the General Intelligence Laws Amendment Act 11 of 2013 (GILAA).

¹⁶ Section 3 of the MPRDA op cit note 11.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Preamble to MPRDA op cit note 11.

²⁰ Constitution of the Republic of South Africa, 1996.

²¹ Ibid at section 24(b).

²² Ibid at section 24(b)(iii).

also emphasises the need to 'promote local and rural development and the social upliftment of communities affected by mining.'²³

The provisions of the MPRDA mentioned above broadly outline the State's duty as protector of South Africa's mineral resources. The MPRDA states that no person may engage in reconnaissance operations, prospect for, or mine for any minerals on any area without the prescribed permits or rights granted by the State.²⁴ The following discussion will set out how the MPRDA regulates access to South Africa's mineral resources through each stage of the mining life cycle.

2.1 Reconnaissance

Reconnaissance pertains to operations carried out to search for a mineral resource by 'geological, geophysical and photo-geological surveys, which includes any remote sensing techniques but does not include prospecting operations save for the acquisition and processing of new seismic data.'²⁵ These operations cannot commence without a reconnaissance permit, which is valid for one year.²⁶ After written notification and consultation with the landowner or lawful occupier, the permit entitles its holder 'to enter the land concerned for the purposes of conducting reconnaissance operations.'²⁷ However, this permit does not entitle the holder to 'conduct any prospecting or mining operations for any mineral in the land in question.'²⁸

The MPRDA does not indicate any security measures for land or an area that may have geological formations that could be valuable mineral resources. Instead, according to section 15(1), the Act obliges a reconnaissance permit holder to give a landowner and lawful occupier written notice. The landowner and lawful occupier must then study and ensure that the permit holder indeed can conduct reconnaissance operations. This implicit obligation may further imply that the landowner and/or lawful occupier bear the expectation to monitor that the permit holder only conducts the activities enlisted in the permit granted. Additionally, the MPRDA also trusts that the permit holder will abide by the permit or face the consequences of committing an illegal act.²⁹

²³ Preamble to the MPRDA op cit note 11.

²⁴ Ibid at section 5A.

²⁵ Ibid at section 1 and Lili Nupen, Nicole Limberis-Ritchie and Chantal Murdock 'South Africa: Mining Laws and Regulations 2021' available at <https://iclg.com/practice-areas/mining-laws-and-regulations/south-africa>, accessed on 3 February 2021.

²⁶ Ibid.

²⁷ Section 15(1) of the MPRDA op cit note 11.

²⁸ Ibid at section 15(2)(a).

²⁹ Ibid at section 5A.

2.2 Prospecting

Prospecting refers to the intentional searching for any mineral resource by methods that disturb the surface and subsurface of the earth to establish the existence of any mineral resource and determine its economic value.³⁰ The holder of a prospecting right has the 'exclusive right to remove and dispose of any mineral to which such right relates and which is found during the course of prospecting.'³¹ In addition, the prospecting right holder must 'comply with the terms and conditions of the prospecting right, relevant provisions of this Act and any other relevant law'.³² The holder of a prospecting right may only remove and dispose of any mineral resource found in the course of prospecting operations, only for the use and in quantities required to conduct tests, identify and analyse such mineral.³³ Should a right holder wish to remove or dispose of bulk samples, the Minister's written permission must be sought.³⁴

Holders of prospecting rights or reconnaissance permissions are required to 'keep proper records, at the registered office or place of business of the holder, of reconnaissance or prospecting operations and the results.'³⁵ They must also 'submit progress reports and data, in the prescribed manner and at the prescribed intervals, to the Regional Manager regarding the prospecting operations.'³⁶ The Regional Manager will then submit these progress reports to the Council for Geoscience.³⁷ From there, the Council for Geoscience will advise the Minister on all prospecting information submitted to it by the Regional Manager.³⁸ These records may not be disposed of or destroyed unless it is with written directions from the 'relevant Regional Manager in consultation with the Council for Geoscience.'³⁹

During the prospecting stage, the MPRDA requires that the prospecting right holder secures records and results of reconnaissance or prospecting operations at their registered place of business.⁴⁰ This requirement creates an explicit duty for information security. At this stage of the mining cycle, there are still no provisions for the physical security of the land in question. However, an argument can be made that the requirement for information security will translate to the physical security of the land concerned, as the prospecting right holder is likely to take steps to physically protect their site of operations. Effectively, access and protection of South Africa's mineral resources are guaranteed by security measures implemented by the right holder at their site of operations and business offices. In addition,

³⁰ Ibid at section 1.

³¹ Ibid at section 19(1)(b).

³² Ibid at section 19(2)(c) – (d).

³³ Ibid at section 20(1).

³⁴ Ibid at section 20(2).

³⁵ Ibid at section 21(1)(a).

³⁶ Ibid at section 21(1)(b).

³⁷ Ibid at section 21(1A).

³⁸ Ibid at section 21(1B).

³⁹ Ibid at section 21(2).

⁴⁰ Ibid at section 21(1)(a).

the legislation relies on the office of the Regional Manager, Council for Geoscience and DMRE offices to implement sufficient information security measures.

2.3 Mining

Mining relates to operations commenced to win off a mineral in or under the earth in an authorised area.⁴¹ Before mining operations can commence, 'an applicant must obtain a mining right or mining permit in terms of the MPRDA, as well as an environmental authorisation in terms of NEMA [the National Environmental Management Act].'⁴² The mining right holder must commence mining operations within one year of the right becoming effective, complying with the MPRDA and other relevant legislation and the terms and conditions of the mining right.⁴³

Information and data gathered in the reconnaissance, prospecting and mining stages may be disclosed to achieve objectives of the MPRDA⁴⁴ and to give the right of access to information.⁴⁵ This information may also be disclosed if it is already publicly available or if the relevant right or permit has lapsed, has been cancelled, or the area is abandoned or relinquished.⁴⁶ This provision also applies to reconnaissance and prospecting data, information or reports kept by the Council for Geoscience.⁴⁷ The only limitation the MPRDA provides to limit access is that the information or data must be supplied in confidence by the supplier of the information or data, and they must indicate so when submitting it to the Regional Manager.⁴⁸ Furthermore, the MPRDA also states that the State and its employees are not liable for 'the *bona fide* or inadvertent release of information or data submitted in terms of this Act.'⁴⁹

The State, as custodian of mineral resources, once again only assumes a limited duty for information security. Upon the expiration of allocated permits, rights or abandonment or relinquishing of land, which may still have proven and viable mineral reserves, that information and data is accessible to the public. Although there may be a screening process of who has applied for access to records and reports kept by the State, it is alarming that the MPRDA in section 30(4)(a) absolves the State from the responsibility of exercising the strictest controls of such vital data. Furthermore, during the mining stage, the physical security of mineral resources is delegated to the mining right holders to protect their operations, installations, and infrastructure as the MPRDA remains silent on the security of minerals rich land or mining area.

⁴¹ Ibid at section 1.

⁴² Nupen, Limberis-Ritchie and Murdock op cit note 25 and National Environmental Management Act 107 of 1998.

⁴³ Section 25(2)(b) of the MPRDA op cit note 11.

⁴⁴ Ibid at section 30(1)(a) and (b).

⁴⁵ Section 32 of the Constitution.

⁴⁶ Section 30(1)(c) and (d) of the MPRDA op cit note 11.

⁴⁷ Ibid at section 30(5) of the MPRDA.

⁴⁸ Ibid at section 30(2)-(3).

⁴⁹ Ibid at section 30(4)(a).

2.4 Closure

A right holder may abandon a right wholly or in part; however, abandonment does not remove the obligation of the right holder to apply for a closure certificate as required by the MPRDA.⁵⁰ The holder of a right or permit remains responsible for compliance with the environmental authorisation conditions, management, and sustainable closure until the Minister issues a closure certificate in terms of the MPRDA.⁵¹ The holder of a prospecting right and mining right must apply for a closure certificate when the right in question lapses, is abandoned or cancelled, upon cessation of prospecting or mining operations.⁵² The prospecting right and mining right holder must also apply for a closure certificate when they relinquish any portion of the prospecting land or upon completion of the prescribed closing plan to which such right relates.⁵³

An application for a closure certificate must be lodged with the concerned Regional Manager within 180 days of the 'occurrence of the lapsing, abandonment, cancellation, cessation, relinquishment or completion.'⁵⁴ It must be accompanied by 'the required information, programmes, plans and reports prescribed in terms of this Act and the National Environmental Management Act, 1998.'⁵⁵ According to the MPRDA, the closure certificate and funds will then be issued to the mining right holder or permit as prescribed in section 41 of NEMA.⁵⁶ From thereon, the right holder must 'plan for, manage and implement such procedures and such requirements on mine closure as may be prescribed.'⁵⁷ A closure certificate will not be issued unless the Council for Geoscience confirms that 'complete and correct prospecting reports' have been submitted.⁵⁸

According to the MPRDA, when a prospecting right, mining right, or mining permit lapses, cancelled or is abandoned or when any prospecting or mining operation ceases, the right or permit holder may not demolish or remove a specific building structure or object.⁵⁹ This refers to a building structure or object that cannot be removed or demolished according to any law, is identified by the Minister, or the holder and the owner or lawful occupier of the land have agreed on with the Minister's consent.⁶⁰ Structures that may not be demolished or removed include structures that are older than 60 years,⁶¹ underground

⁵⁰ Ibid at section 43 and Nupen, Limberis-Ritchie and Murdock op cit note 25.

⁵¹ Ibid at section 43(1).

⁵² Ibid at section 43(3)(a) and (b).

⁵³ Ibid at section 43(3)(c) and (d).

⁵⁴ Ibid at section 43(4).

⁵⁵ Ibid.

⁵⁶ Ibid at section 43(6).

⁵⁷ Ibid at section 43(7).

⁵⁸ Ibid at section 43(13) and 21(1).

⁵⁹ Ibid at section 44.

⁶⁰ Ibid.

⁶¹ Section 34 of the National Heritage Act 25 of 1999.

infrastructure and sealed off underground workings.⁶² While these may be efforts to preserve such installations for future use by communities or the State, illegal mining activities take advantage of the existence of these building structures or objects, thus undermining government and mining companies (the right holder) closure efforts.⁶³ Furthermore, the MPRDA makes no provision for the security of these building structures or objects; as such, the onus is on a mining company to return and reseal shaft entrances tempered with by illegal miners.⁶⁴

Should the mining area concerned be abandoned, the right holder is deceased, or the juristic person ceased to exist and cannot be traced, in the case of any environmental, health and safety concerns, the Minister may instruct a Regional Manager to mitigate such issues.⁶⁵ Furthermore, the MPRDA states that any person who wishes to use surface land which may be contrary to the Act or may impede the Act must seek the approval of the Minister.⁶⁶ Should allegations that a person intends to use surface land 'in any way that could result in the mining of mineral resources being detrimentally affected' arise, the Minister may call for an investigation.⁶⁷ In the course of this investigation, the Regional Manager must serve written notice to the person concerned to notify them of allegations against them and the Minister's intentions to 'issue a directive to take corrective measures'.⁶⁸ The Regional Manager must also set out 'measures to be taken in order to rectify the matter'.⁶⁹ In these scenarios, the MPRDA creates a duty for the Regional Manager to monitor and be aware of activities in operational and abandoned mining areas in their jurisdiction.

Illegal mining activities continue to thrive in old and abandoned mines; these activities affect the environment, health, and safety of the communities around these mining areas.⁷⁰ However, according to the MPRDA's mine closure framework, either the offices of the Regional Managers do not have the capacity expected of them to monitor old mining areas in their jurisdictions, or the duties of the Regional Managers do not include detecting and preventing illegal mining activities. If both these scenarios are considered, the MPRDA has arguably failed to sufficiently address strict access to South Africa's mineral resources from illegal mining activities.

⁶² Chamber of Mines South Africa and Coaltech Research Association *Guidelines for the Rehabilitation of Mined Land* (2007) at 89.

⁶³ Minerals Council South Africa op cit note 9.

⁶⁴ There are reports that in the East Rand one mining company has had to reseal numerous shaft entrances on four to five occasions as illegal miners would reopen the cement slabs, see Minerals Council South Africa op cit note 9.

⁶⁵ Section 46 of the MPRDA op cit note 11.

⁶⁶ Ibid at section S53(1).

⁶⁷ Ibid at section 53(3).

⁶⁸ Ibid at section 53(4)(a).

⁶⁹ Ibid at section 53(4)(b).

⁷⁰ South African Human Rights Commission op cit note 8 at 6.

3. The Critical Infrastructure Protection Act

The CIP Act is administered under the authority of the South African Police Service's (SAPS) National Commissioner. This Act recognises that specific infrastructure within the territory of South Africa is 'essential for public safety, national security and the continuous provision of basic public services.'⁷¹ Therefore, there must be measures to protect and secure such critical infrastructure where it is identified.⁷² The CIP Act considers infrastructure 'critical infrastructure' if the magnitude of any 'loss, damage, disruption or immobilisation of such infrastructure may severely prejudice the functioning or stability of the Republic, the public interest with regard to safety and the maintenance of law and order and national security.'⁷³

Reflecting on government development policies as stated in the MTSF and the National Development Plan (NDP) as they relate to the mining industry, 'derelict and ownerless' mines arguably meet this minimum criterion of critical national assets as outlined by the CIP Act. Furthermore, the impact of illegal mining activities on the economy, the environment, national security, and communities' safety around mining areas adds credence to this argument.⁷⁴

Post-mine closure or abandonment, the State, through the Department of Mineral Resources and Energy (DMRE), is responsible for the security and maintenance of such mines.⁷⁵ Hence, as the administrator of this Act, the National Commissioner must declare government infrastructure⁷⁶ as critical infrastructure. This declaration ensures that the National Commissioner deploys resources to secure such critical infrastructure against threats.⁷⁷ Furthermore, unlike the MPRDA, the CIP Act makes explicit provisions for different kinds of security measures. These include information and physical security of critical infrastructure and personnel security at a critical infrastructure.⁷⁸

The CIP Act acknowledges that there must be cooperation between the government and the private sector in protecting critical infrastructure in the country's interests.⁷⁹ Hence, the National Commissioner must encourage 'shared responsibility between various role-players in order to provide for an

⁷¹ Preamble to the CIP Act op cit note 12.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Johnson op cit note 6.

⁷⁵ Ibid.

⁷⁶ Section 1 of the CIP Act defines 'Government infrastructure' as infrastructure controlled, owned, occupied, or possessed by a government department in the national sphere and in respect of whose operation or administration that department is responsible.

⁷⁷ According to Section 1 of the CIP Act, a threat 'includes any action or omission of a criminal, terrorist or accidental nature which may potentially cause damage, harm or loss to critical infrastructure or interfere with the ability or availability of critical infrastructure to deliver basic public services, and may involve any natural hazard which is likely to increase the vulnerability of critical infrastructure to such action or omission.'

⁷⁸ Sections 1 of the CIP Act op cit note 12.

⁷⁹ Preamble to the CIP Act op cit note 12.

appropriate multi-disciplinary approach to deal with critical infrastructure protection'.⁸⁰ Furthermore, cooperation and shared responsibility towards the security of critical infrastructure also lead to enhanced capacity of role players, thus better mitigating security risks.⁸¹

The last known public list of what was then referred to as 'National Key Points' made no mention of South African mineral reserves as critical infrastructure nor any entity responsible for their protection or regulating access to them.⁸² The CIP Act contemplates that its Critical Infrastructure Council may be out of depth in terms of declarations of critical infrastructure, especially in complex industries; thus, an external party may be appointed or may approach the Council.⁸³ However, the DMRE has arguably not made attempts to approach the Critical Infrastructure Council, nor has the Critical Infrastructure Council to date considered mines and mineral reserves as critical infrastructure. Even though one can conceivably read section 16(2) of the CIP Act to encompass mines since they are of 'significant economic, public, social or strategic importance', there have been no indications that mines and mineral reserves had been added to the list of critical infrastructures in South Africa. Yet illegal mining activities affect the country's ability to maintain law and order, and illegal mining activities severely impact the environment, health, and safety of the public.⁸⁴

The protection of South Africa's mineral resources as government infrastructure speaks directly to the custodianship role of the State. Yet, securing access to these mineral resources as a function delegated to DMRE has not been fully realised if elements of illicit economies continue to steal South Africa's minerals from the surface and subsurface of the earth. Akinsulore, Ekemenah and Akinsulore argue that the absence of special resources to protect mineral resources 'as a "national asset" speaks of the low esteem protection of solid minerals is given as a national security priority'.⁸⁵ The DMRE and the MPRDA have failed to identify the need to allocate resources and capacity for the security of mines, post-mine closure or abandonment, and to have protected access to South Africa's known viable mineral reserves. Should the DMRE successfully advocate for the protection of mineral resources as critical national assets according to the CIP Act, this would ensure the mining industry's continued meaningful development as envisioned by the MTSF and the NDP.

⁸⁰ Ibid at section 2(f).

⁸¹ Ibid at section 2(g).

⁸² Phillip De Wet and Chantelle Benjamin 'National key points: The list you weren't meant to see' *Mail & Guardian* 22 January 2015 available at <https://mg.co.za/article/2015-01-22-national-key-points-the-list-you-werent-meant-to-see/>, accessed on 15 February 2021.

⁸³ Section 4(4)(a) of the CIP Act op cit note 12.

⁸⁴ Ibid at section 16(a) - (c) lays out the requirements for infrastructure to be declared critical infrastructure.

⁸⁵ Adedoyin Akinsulore, Alexander Ekemenah and Ogechukwu Akinsulore 'The implications of illegal mining for Nigeria's national security' (2018) 1 (1) *Benson Idahosa University Journal of Private and Property Law* at 126.

4. Immigration Act

The Immigration Act regulates the admission⁸⁶ of foreign nationals into South Africa. In doing so, the Act must put in place systems that ensure 'security considerations are fully satisfied, and the State retains control on the immigration of foreigners to the Republic.'⁸⁷ There must also be mechanisms in place for interdepartmental coordination to enrich immigration control, ensuring that South African borders are not porous and border monitoring can effectively detect, reduce, and deter illegal migration.⁸⁸

The Department of Home Affairs (DHA), in administering this Act, must detect and deport illegal foreign nationals; it must work with other government departments to implement the Act and ensure that admission to South Africa is only through ports of entry.⁸⁹ DHA, therefore, has to inspect workplaces in a prescribed manner to detect illegal foreign nationals.⁹⁰ DHA must also liaise with SAPS to identify if any individuals arrested, detained or convicted were admitted into South Africa in terms of the Immigration Act.⁹¹ They must also train SAPS members on how to detect illegal foreign nationals and report them to DHA.⁹²

The Immigration Act requires DHA to monitor illegal foreign nationals and deport them from the country; therefore, the DHA's investigative unit must be trained to detect illegal foreign nationals and monitor compliance with terms and conditions of permits.⁹³ Without a warrant, an immigration officer may arrest an illegal foreign national, have them deported or keep them in the custody of DHA pending deportation, a warrant or for their protection.⁹⁴

In the 'illegal mining market' hierarchy, there are what have come to be known as *Zama-zamas* in South Africa.⁹⁵ These are individual criminal miners who are 'generally recruited by "Level 2s" in their home countries and often only learn the job is illegal when they arrive in South Africa.'⁹⁶ According to 2019 reports, 70 per cent 'of all arrested illegal miners are undocumented foreign nationals and

⁸⁶ Section 1 of the Immigration Act op cit note 13 states that "Admission" means entering the Republic at a port of entry on the basis of the authority to do so validly granted by this Act or by an immigration officer in terms of this Act' see Migration Act S1.

⁸⁷ Preamble to the Immigration Act op cit note 13.

⁸⁸ Ibid.

⁸⁹ Ibid at section 2(1)(c) and (h).

⁹⁰ Ibid at section 2(2)(a).

⁹¹ Ibid at section 2(2)(c)(i).

⁹² Ibid at section 2(2)(c)(ii).

⁹³ Ibid at section 2(2)(i)(j).

⁹⁴ Ibid at section 34(1).

⁹⁵ Minerals Council South Africa op cit note 9.

⁹⁶ Alan Martin 'Uncovered: The dark world of the Zama Zamas' (2019) Issue 8 *Enact* at 5, available at <https://enact-africa.s3.amazonaws.com/site/uploads/2019-04-23-zama-zama-policy-brief%20022.pdf>, accessed on 26 July 2021.

predominantly from Lesotho.⁹⁷ Furthermore, illegal mining activities in South Africa have been linked to human smuggling and trafficking, child labour, and abuse of women.⁹⁸

The Immigration Act acknowledges that South African borders may be porous; therefore, the DHA must have resources to detect the presence of illegal foreign nationals within South African borders.⁹⁹ This duty extends to DHA personnel monitoring workplaces to detect illegal miners; however, since illegal mining sites are not considered conventional 'workplaces' by the Immigration Act, they fall out of their mandate. Nonetheless, the Immigration Act still creates an essential duty for the DHA to detect illegal foreign nationals and consequently detect illegal mining activities. This makes the DHA an important stakeholder in the State's custodianship role of protecting and securing access to South Africa's mineral resources. Arguably, the DHA has failed to fulfil this mandate. Articles report how illegal miners boast that 'tomorrow we will be back' soon after police raids and arrests at illegal mining sites.¹⁰⁰ Also, according to Martin, 'as soon as some miners are arrested and deported, others arrive to take their place.'¹⁰¹ Thus, the DHA's duty to circumvent illegal mining activities by detecting and deporting illegal foreign nationals also falls short.

5. Defence Act

The Directorate for Priority Crime Investigation (DPCI) in 2017 informed the South African Parliament that illegal mining activities are impacting the country's territorial integrity as they manifestly disregard the authority of the State.¹⁰² The Constitution entrusts the defence of South Africa's territorial integrity to the South African Defence Force (SANDF).¹⁰³ The Defence Act states, '[t]he primary object of the Defence Force is to defend and protect the Republic, its people and its territorial integrity.'¹⁰⁴ Furthermore, '[t]he Defence Force must have a primarily defensive orientation and posture.'¹⁰⁵ This Act further adds that a military police official may 'at any time and in any place' perform police functions, including preventing and combating crime and maintaining law and order.¹⁰⁶ In case of any civilian

⁹⁷ Minerals Council South Africa *Illegal mining: fact sheet* (2019). Mbekezeli Comfort Mkhize 'New interventions and sustainable solutions: Reappraising illegal artisanal mining in South Africa' (2017) 61 *SA Crime Quarterly* at 71.

⁹⁸ Naomi Tite and Richard Chelin 'South Africa's illegal-mining conundrum' *Enact Observer* 26 June 2019, available at <https://enactafrica.org/enact-observer/south-africas-illegal-mining-conundrum>, accessed on 30 September 2020.

⁹⁹ Preamble on the Immigration Act op cit note 13.

¹⁰⁰ Martin op cit note 96 at 2.

¹⁰¹ *Ibid* at 6.

¹⁰² Parliamentary Monitoring Group 'Illegal Mining: Hawks & Department of Mineral Resources briefing' *PMG* 25 August 2017, available at <https://pmg.org.za/committee-meeting/24894/>, accessed on 30 September 2020.

¹⁰³ Section 200(2) of the Constitution.

¹⁰⁴ Section 2(b) of the Defence Act op cit note 14.

¹⁰⁵ *Ibid* at section 2(d).

¹⁰⁶ *Ibid* at section 31(1)(a) and (c).

arrest, the civilian must be handed over to the SAPS without delay.¹⁰⁷ As outlined above, the Immigration Act states that SAPS officials are trained to detect illegal foreign nationals, and once detected, they must be handed over to the DHA.

Furthermore, the Defence Act states that the Intelligence Division must cooperate with other intelligence services created by statute.¹⁰⁸ According to section 34, the Intelligence Division¹⁰⁹ must gather, correlate, evaluate, and use strategic intelligence to ensure national security and assist in developing and implementing a defence policy and strategy.¹¹⁰ The functions mentioned in this section create a duty on the SANDF to work with other stakeholders and monitor issues that pose risks and threats to South Africa's national security. This creates a duty to be cognisant of illegal mining activities and how they directly impact the mandate of the SANDF as it relates to ensuring the country's territorial integrity and the defence of the Republic. The resources of the SANDF, properly deployed, can capacitate the fight against illegal mining activities by standing in defence of the Republic as mandated in section 2(d) instead of the current reactionary posture of entities currently fighting the proliferation of illegal mining activities.¹¹¹

6. National Strategic Intelligence Act

Above, it has been argued that mining and mineral resources are of national interest for the country's development. Based on an interpretation of the term 'national security' under the Defence Act, illegal mining activities pose a national security threat due to the risks they have introduced in the mining industry and the South African territory.¹¹² The NSI Act defines national security as the 'protection of the people of the Republic and the territorial integrity of the Republic.'¹¹³ Accordingly, the Republic and its people must be protected against threats of sabotage, violence that threatens South Africa's constitutional order, and acts that undermine the capacity of the State to carry out its responsibilities.¹¹⁴

The NSI Act mandates the National Intelligence Structures to counter sabotage against strategic installations or resources of the Republic.¹¹⁵ Furthermore, it states that there must be measures deployed to 'counter any threat or potential threat to national security.'¹¹⁶ This means that the National Intelligence Structures must advise any government department of any 'threat or potential threat to the

¹⁰⁷ Ibid at section 31(6)(a).

¹⁰⁸ Ibid at section 35.

¹⁰⁹ Subject to the NSI Act op cit note 15.

¹¹⁰ Section 34 of the Defence Act op cit note 14.

¹¹¹ Minerals Council South Africa op cit note 9.

¹¹² See section 2(b), chapter 6 of the Defence Act op cit note 14.

¹¹³ Section 1 of the NSI Act op cit note 15.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

national security and stability of the Republic which falls within the functions of a department of State' and intelligence on how to neutralise such threats.¹¹⁷

The DPCI told Parliament that illegal mining activities were 'linked to human smuggling and trafficking, illegal weapons and explosives; tax evasion and money laundering; corruption and gang-related activities'.¹¹⁸ The manifestation and impact of illegal mining activities related to the mandate created by the NSI Act, which means National Intelligence Structures need to be important role players and advise DMRE on how to neutralise illegal mining activities as threats to South Africa.¹¹⁹ Illegal mining activities are potentially detrimental to national stability, as already witnessed by threats made to legally operating mining companies and the rival turf wars at the illegal mining sites.¹²⁰ The DPCI also highlighted how illegal mining activities are potential threats to constitutional order, safety and the well-being of South Africans, especially those in and around mining areas.¹²¹

According to the NSI Act, the State Security Agency (SSA) must gather, correlate, evaluate and analyse domestic and counter-intelligence to 'identify any threat or potential threat to national security'.¹²² The SSA must, where necessary; supply intelligence gathered on any threat to the SAPS so there may be an investigation.¹²³ In addition, the Agency SSA shall gather intelligence and supply intelligence relating to any threat to a department of the State for the fulfilment of its departmental functions.¹²⁴

All the pieces of legislation discussed above mandate constant monitoring of any risks and threats to the Republic and advise relevant stakeholders. The NSI Act creates a duty to inform all stakeholders of threats that may hinder their mandate. For DMRE, this mandate is regulating access to South Africa's mineral resources on behalf of the State. Illegal mining activities undermine this function. To exacerbate matters, the National Intelligence Structures, as identified by the NSI Act, have also been reported as having failed in their roles. For example, the DPCI reported that all projects to combat illegal mining are based on the 2009/2010 National Intelligence Estimates.¹²⁵ Furthermore, the government had not developed a comprehensive National security Policy (NSP) after numerous drafts and drafting processes.¹²⁶ This means, for years, the State's duty to protect South Africa's mineral resources has

¹¹⁷ Ibid.

¹¹⁸ Tite and Chelin op cit note 98.

¹¹⁹ Section 1 of the NSI Act op cit note 15.

¹²⁰ Minerals Council South Africa op cit note 9; Martin op cit note 96 at 3 and 5.

¹²¹ Parliamentary Monitoring Group op cit note 100.

¹²² Section 2(1)(a)(i) of the NSI Act as amended by section 2 of the GLAA op cit note 15.

¹²³ Section 2(b)(iii) of the NSI Act op cit note 15.

¹²⁴ Ibid at section 2(1)(b) as amended by s 2(c)(ivA) of the GLAA op cit note 15.

¹²⁵ Parliamentary Monitoring Group op cit note 102.

¹²⁶ Gavin Cawthra *National Security and The Right to Information: The Case of South Africa* (2013) at 6. Chapter 3 will provide an explanation of the NSP and its role.

never been effectively coordinated, mostly leaving individual departments and private sector stakeholders to formulate measures to combat illegal mining in silos.¹²⁷

It is, therefore, understandable why there has been little impact on curbing illegal mining activities. Stakeholders are still basing their projects and strategies to combat illegal mining activities on intelligence from decade-old information, whereas crime syndicates constantly adapt their operations.¹²⁸

7. Conclusion

This chapter examined how extant law regulated access to South Africa's mineral resources to protect them from illegal mining activities. The discussion above indicates that there is a workable framework in place; however, it has failed to adapt to emerging issues; hence illegal mining activities continue to thrive.¹²⁹

In recent years, illegal mining not only impacted derelict mines it has also brazenly evolved to clandestine operations on operating mines.¹³⁰ The Minerals Resources Council has submitted that '[n]o single stakeholder can address the challenge of illegal mining and collaboration is key.'¹³¹ The current statutory framework also emphasises cooperation amongst stakeholders. However, it falls short because the MPRDA is silent on the issue of security of mines and mineral resources before they are removed from the earth. Scholars posit that there must be 'statutory established government institutions, department or agencies created for this critical and strategic task' of protecting South Africa's mineral resources.¹³² While it can be argued that these institutions already exist in South Africa, the MPRDA and DMRE have failed to provide the statutory anchor needed for this framework.

This chapter has highlighted that the MPRDA fails to protect access to South Africa's mineral resources beyond the duty to grant rights and permits. The Act creates an implicit duty on the right or permit holder to provide for the physical security of a mining area or an area where there will potentially be mining activities with known mineral reserves. However, the fact that the MPRDA requires some efforts to secure and keep confidential operational reports and results indicates that there is an understanding by policymakers for the need to protect the minerals that still lie on the surface or subsurface of the earth.

¹²⁷ See discussion on Chapter 3 of the dysfunction of the security sector. Involving failures of policy and strategy policy formulation, the absence of a key government cabinet structure, which culminated inefficient security measures to combat illegal mining activities.

¹²⁸ Johnson op cit note 6.

¹²⁹ Akinsulore, Ekemenah and Akinsulore op cit note 85 at 144.

¹³⁰ Minerals Council South Africa op cit note 9.

¹³¹ Ibid.

¹³² Akinsulore, Ekemenah and Akinsulore op cit note 85 at 126.

Chapter 3: The Security of South Africa's Mineral Resources within the National Security Context

1. Introduction

The mention of 'national security' elicits confusion, differing views and strong opinions.¹ Security is an 'essentially contested concept' among international relations scholars due to the continuously changing global and domestic environments.² Generally, it is understood that sovereign states have interests they deem essential, and they deploy their resources accordingly to protect those interests from any threats.³ Thus, the essence of every state is the provision of security.⁴ Chuter succinctly states, '[t]he assumption behind the concept of national security is that the nation is sufficiently homogeneous and united that its citizens have common interests to be protected, and common objectives to be pursued.'⁵

In terms of South Africa's strategic development document, the National Development Plan (NDP), the government identified the mining industry as an essential component for achieving numerous development milestones by 2030.⁶ This assertion places the stability and effective performance of the mining industry as one of South Africa's national interests to achieve the aims of the NDP. Furthermore, the status of the NDP provides an important nexus between economic growth and security, as interconnected concepts associated with ensuring domestic stability to encourage investment and rapid economic development.⁷

However, in the Medium-Term Strategic Framework 2019-2024 (the MTSF), the South African government acknowledges that government economic development planning is impacted by the illicit

¹ Toyin C. Adetiba 'Regional and Economic Security: A Driver for South African National Security?' (2017)6 *Journal of African Union Studies (JoAUS)* at 203 and 205. Christi van der Westhuizen 'South Africa and national security' (2013) 42(2) *Index on Censorship* at 62. Dietrich Jung 'Security: Some Critical Observations about Concepts and Policies' in Gavin Cawthra(ed) *African Security Governance: Emerging Issues* (2009) at 8.

² Barry Buzan *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era* 2 ed (1991) at 6. Adetiba op cit note 1 at 203.

³ International Working Group of National Security Global (IWGNSG) *Policy Brief No.3: Policy Process* (2011) at 2. Adetiba op cit note 1 at 204 and 213. Peter Daniels 'National Security Strategy Development: South Africa Case Study' (2019) *Africa Center for Strategic Studies Working Paper* (Preliminary Draft) at 5-6 available at <https://africacenter.org/wp-content/uploads/2019/04/2019-04-NSSD-Case-Study-South-Africa-Defense-Policy-Review.pdf> accessed on 16 February 2021. Geneva Centre for the Democratic Control of Armed Forces (DCAF) 'National Security Policy' (2005) *Backgrounder: Security Sector Governance and Reform* available at [https://issat.dcaf.ch/download/17202/201862/bg_national-security%20\(1\).pdf](https://issat.dcaf.ch/download/17202/201862/bg_national-security%20(1).pdf), accessed on 16 February 2021 at 1.

⁴ Ibid.

⁵ David Chuter 'From threats to tasks: Making and implementing National Security Policy' (2007) 5 *Journal of Security Sector Management* 2 at 10.

⁶ The *National Development Plan 2030: Our future – make it work (Executive summary)* (2012) at 34.

⁷ Adetiba op cit note 1 at 201.

economy, which includes, amongst other things, illegal mining of gold.⁸ This disruption to government planning and the fulfilment of its development mandate represents a threat that ought to be securitised based on the risk it poses to a referent object⁹ and the potential impact to the referent object should the threat manifest.¹⁰ Securitising illegal mining activities means that the state objectively positions itself to preserve internal security while planning for the development of the state.¹¹

The legislative framework, discussed in the previous chapter, encourages collaboration amongst government stakeholders and stakeholders outside government.¹² However, the Department of Mineral Resources and Energy (DMRE) and the Mineral and Petroleum Resource Development (MPRDA) have failed to facilitate this collaboration amongst stakeholders amidst illegal mining activities spreading and establishing strongholds in old and abandoned mining areas.¹³ Addressing illegal mining is complicated; these activities extend beyond small criminal elements of trespassing into organised and systematic criminality.¹⁴ Therefore, in the short-medium term, the security sector should develop policies and implementation strategies to address illegal mining activities in consultation with the DMRE as an important stakeholder. A cohesive approach from the security sector could be a more efficient alternative to amending the legislative framework discussed in the previous chapter. Security policies are dynamic as they are designed to address 'emerging threats from the strategic environment.'¹⁵ Also, illegal mining activities are a continuously evolving threat, credence to the security sector being better placed to address them.

This chapter shall establish that the security of South Africa's mineral resources is in South Africa's national interests, and illegal mining activities are national security threats as they directly impact

⁸ Department of Planning, Monitoring and Evaluation *Medium Term Strategic Framework 2019–2024* (2019) at 49, available at https://www.dpme.gov.za/keyfocusareas/outcomesSite/MTSF_2019_2024/2019-2024%20MTSF%20Comprehensive%20Document.pdf accessed on 16 February 2021.

⁹ In this case, this is the securitisation of the impact of illegal mining activities on the state delivering on the NDP goals.

¹⁰ For a discussion on the securitisation of threats see Catherine Charrett 'A Critical Application of Securitization Theory: Overcoming the Normative Dilemma of Writing Security' (2009) *International Catalan Institute for Peace* at 13-4 and Jung op cit note 1 at 8.

¹¹ Adetiba op cit note 1 at 203.

¹² See Preamble to Critical Infrastructure Protection Act 8 of 2019. Section 2 of the Immigration Act 13 of 2002. Section 31 of the Defence Act 44 of 2002. Section 2 of the National Strategic Intelligence Act 39 of 1994, as amended by the General Intelligence Laws Amendment Act 11 of 2013 (GILAA).

¹³ For example, in the Durban Deep and Roodepoort area of Johannesburg. See Kgothatso Nhlengetwa and Kim A A Hein 'Zama-Zama mining in the Durban Deep/Roodepoort area of Johannesburg, South Africa: An invasive or alternative livelihood?' (2015) 2 *The Extractive Industries and Society* 1 at 3.

¹⁴ Naomi Tite and Richard Chelin 'South Africa's illegal-mining conundrum' *Enact* 26 June 2019, available at <https://enactafrica.org/enact-observer/south-africas-illegal-mining-conundrum>, accessed on 30 September 2020. Department of Mineral Resources *Briefing to the joint portfolio committees of mineral resources and police on measures implemented to combat illegal mining* (2017) available at <https://pmg.org.za/committee-meeting/24894/>, accessed on 26 January 2021 at 5.

¹⁵ See Adedoyin Akinsulore, Alexander Ekemenah and Ogechukwu Akinsulore 'The implications of illegal mining for Nigeria's national security' (2018) 1 *Benson Idahosa University Journal of Private and Property Law* 1 at 126.

government policy planning. It will first define national security and then explain the development of a National Security Policy (NSP) and National Security Strategy (NSS). Finally, it will contextualise the national security threats posed by organised crime-driven illegal mining activities to South Africa's economy and territorial integrity.

2. Understanding National Security

In international relations studies, the end of the Cold War drastically transformed global security relations.¹⁶ In addition to this worldwide phenomenon, South Africa also underwent a unique transition soon after, which ushered in the end of the apartheid regime.¹⁷ The following discussion will explain national security from the different schools of international relations and South Africa's approach to national security post-1994.

2.1 The Traditionalist and Wideners Debate

Buzan, a leading scholar of international security studies, maintains that the state is the referent object of national security.¹⁸ This classical approach to security studies focuses on threats to the state from foreign actors.¹⁹ In this context, the state refers to the 'idea of the state, the physical base of the state and the institutional expression of the state'.²⁰ According to Stone, this conceptualisation speaks to different components of the state which face security challenges.²¹ These different components are, in essence, interlinked and understanding how they interrelate gives insight into understanding national security dynamics.²²

Traditionalists are proponents of a narrow, singular sector analysis of national security, while wideners advocate for a multi-sectoral approach to national security analysis.²³ Traditionalists understand security to be the protection of the physical integrity of the state from foreign invasion.²⁴ This meant that security

¹⁶ Barry Buzan 'New Patterns of Global Security in the Twenty-First Century' (1991) 67 *International Affairs* 3 at 432-3.

¹⁷ Global Investment and Business Centre *Recent economic and political developments yearbook: strategic information and development* (2018) at 119. Adetiba op cit note 1 at 201. See also Renske Doorenspleet 'The Structural Context of Recent Transitions to Democracy' (2004) 43 *European Journal of Political Research* 3 at 309, 320 and 330 for an analysis of democratic transitions and the global structural factors that influence them specifically after the Cold War.

¹⁸ Marianne Stone 'Security according to Buzan: a comprehensive security analysis' 2009 *Security Discussion Papers Series* 1 at 4.

¹⁹ Jung op cit note 1 at 7.

²⁰ Stone op cit note 18.

²¹ Ibid.

²² Ibid.

²³ Mantas Pupinis 'Critique of the chapter National Insecurity: Threats and Vulnerabilities from Barry Buzan's "People, States and Fear"' (2011) 1 *International Security Studies* at 1.

²⁴ Chuter op cit note 5 at 2.

was understood in terms of military capabilities and the use of force.²⁵ On the other hand, wideners suggested that this form of analysis was obsolete for modern states; states had to broaden their security analysis to at least four additional sectors: political, societal, economic and environmental.²⁶ Moreover, the significant rising impact of economic instability, environmental issues, and domestic instability rooted in identity politics and rising transnational crimes meant that strict understanding of national security in terms of military threats no longer served the referent object.²⁷ Modern states face threats that emanate within their territories, and these pose risks as significant as military conflicts between states.²⁸

Both schools of thought diverge, further, on the objectivity of interests and threats. For traditionalists, assessment of threats is objective, whereas wideners believe that threats are 'socially constructed by discursive actions.'²⁹ If we apply the wideners approach to establishing modern national security concerns, interests and threats will be determined according to political or civil discourse amongst the elite who influence policymakers; thus, anything can be classified as a national security threat.³⁰ This means the discourse of securitisation, a 'speech act' by politicians and political heads, influences the formation of security policy objectives, thus setting aside such constructs above typical political utterances.³¹

However, Pupinis argues that Buzan resolved the problem of over securitisation posed by constructivism by establishing that a threat becomes a national security threat based on the type of threat, how the state perceives such a threat, and the intensity of the threat.³² Simply put, security is about the survival of the state and everything that affects 'conditions of existence.'³³ However, contention relating to when something deserves to be classified a 'security' issue and surpasses the everyday 'uncertainties of life' will always remain, and should, to keep in check the influence of the elite and balance the powers of policymakers.³⁴

²⁵ Pupinis op cit note 23.

²⁶ Ibid.

²⁷ Ibid at 1-2. Jung op cit note 1 at 8.

²⁸ Jung op cit note 1 at 9.

²⁹ Pupinis op cit note 23 at 1-2.

³⁰ Ibid at 3.

³¹ Jung op cit note 1 at 8.

³² Pupinis op cit note 23 at 4.

³³ Buzan op cit note 2 at 432-3.

³⁴ Ibid at 433.

2.2 South Africa's Approach to National Security

During the transition into a democratic dispensation in 1994, South Africa had to repurpose its security and defence policies.³⁵ During the Cold War, South Africa's security policy was based on defending the Republic against the threat from the Soviet Union and preserving the apartheid system.³⁶ However, post-1989 security was no longer centred on military threats, but it emphasised a holistic approach to safeguarding the survival of the state from internal and external threats.³⁷ Hence, the new democratic government 'initiated broad political, social, economic, and military reform' to repurpose South Africa's security policies and transform the security sector.³⁸

The Constitution of the Republic of South Africa,³⁹ in s 198, unambiguously states that national security must reflect the resolve of South Africans to live in peace and harmony, and that national security is subject to the authority of Parliament and the national executive.⁴⁰ This highlights that national security must be pursued for the benefit of individuals and the nation from internal and external threats that may impact the quality of life and stability of South Africa and that national security is subject to the law.⁴¹ Furthermore, the White Paper on Defence states that 'it will seek national security primarily through efforts to meet the political, economic, social and cultural rights and needs of South Africa's people.'⁴² Therefore, South Africa's approach to national security embraces that security is made up of different interlinked components, and threats to any of these components will impact the survival of the State.

Establishing the state's national interests priorities means that the security sector can manage or eliminate any threats deemed significant to the state's survival.⁴³ Adetiba argues that South Africa's approach to national security incorporates the state's need for sustained economic growth and development.⁴⁴ In addition, a conducive environment for any economic development policies is one where there is domestic stability.⁴⁵ Therefore, as new security issues continuously emerge and evolve,

³⁵ Global Investment and Business Centre op cit note 17 at 119.

³⁶ Ibid. Adetiba op cit note 1 at 201.

³⁷ Adetiba op cit note 1 at 201.

³⁸ Global Investment and Business Centre op cit note 17 at 119. Gavin Cawthra *National Security and The Right to Information: The Case of South Africa* (2013) at 6. Susanna Bearne et al. 'National Security Decision-Making Structures and Security Sector Reform' 2005 *RAND Corporation* at 12.

³⁹ Constitution of the Republic of South Africa, 1996.

⁴⁰ Section 198 of the Constitution. See also Daniels op cit note 4 at 1-2.

⁴¹ Ibid.

⁴² Chapter 1 para 11.1 of the White Paper on National Defence for the Republic of South Africa, 1996.

⁴³ Adetiba op cit note 1 at 199.

⁴⁴ Ibid at 201.

⁴⁵ Ibid.

the state's security policy instruments must inform state institutions to evolve and adapt at a similar pace to avoid instability and expose the state to conditions of insecurity.⁴⁶

3. National Security Policy

A National Security Policy (NSP)⁴⁷ is an integrated policy document that provides a framework that describes how a country secures the state and its people.⁴⁸ It is a government-wide and coordinated policy through which a country defines and pursues its security-related objectives.⁴⁹ The 'NSP has a present and future role, outlining the core interests of the nation and setting guidelines for addressing current and prospective threats and opportunities.⁵⁰ While the country's strategic objectives inform the NSP, not all these objectives have a security component; thus, the NSP will sift through them to identify the mandate of the security sector.⁵¹ Furthermore, internal security is obtained through the implementation of an NSP.⁵² The NSP framework protects constitutional order, public safety and security, and extends to protecting the lives and health of citizens and protecting national property from illegal actions.⁵³

3.1 The Role of the National Security Policy

The important role of the NSP is to 'integrate and coordinate the contributions of national security actors in response to the interests and threats deemed most important.'⁵⁴ Unfortunately, South Africa's NSP is a classified 'Top Secret' document and is not available for public consumption.⁵⁵ Consequently, the following section will be a theoretical discussion of the role of an NSP.

3.1.1 Addressing All Threats in a Comprehensive Manner

According to the Geneva Centre for the Democratic Control of Armed Forces (DCAF), an NSP will ensure that a government 'addresses all threats in a comprehensive manner'.⁵⁶ However, for the NSP to be a comprehensive framework, there must be a thorough understanding and evaluation of an

⁴⁶ Ibid at 202.

⁴⁷ In many jurisdictions national security policy and national security strategy are often used interchangeably, for the purposes of this paper these terms will be dealt with differently as some scholars argue that there are fundamental differences between them.

⁴⁸ DCAF op cit note 4 at 1.

⁴⁹ Chuter op cit note 5 at 1. See also Africa Center for Strategic Studies *National Security Strategy Development in Africa: Toolkit for Drafting and Consultation* (2021) at 2.

⁵⁰ DCAF op cit note 4 at 1.

⁵¹ Chuter op cit note 5 at 8.

⁵² Adetiba op cit note 1 at 204.

⁵³ Ibid.

⁵⁴ DCAF op cit note 4 at 1.

⁵⁵ Daniels op cit note 4 at 1.

⁵⁶ DCAF op cit note 4 at 1.

identified threat to national security.⁵⁷ This means that in the drafting of the NSP, there must be extensive consultation and inputs from government departments in the security sector.⁵⁸ This consultative process ensures that policy development will optimise the use of the country's available resources to achieve the government's overall strategic goals.⁵⁹

Therefore, an NSP will 'delineate how the security sector is to be structured to address both external and internal security threats.'⁶⁰ Furthermore, it will determine and prioritise the country's capabilities and capacity.⁶¹ The International Working Group of National Security (IWGNS) states that a good NSP will promote a nation's security interests and should be followed by apparent and impactful implementation.⁶²

3.1.2 Optimising Contributions from All Security Actors

The existence of an NSP necessitates an increased 'effectiveness of the security sector by optimising contributions from all security actors'.⁶³ As the risks and threats faced by the modern state expand, stakeholders of the security sector should adapt their capacity by including more role players to address emerging threats.⁶⁴ This means that stakeholders like DMRE, who were never traditionally part of the security sector, must be stakeholders in drafting an NSP as important custodians of economic policies and key components of South Africa's development according to policy planning.

The NSP ensures that contributions from all these stakeholders are put into perspective and are integrated to holistically understand the country's national security threat perspective and its responses to these threats.⁶⁵ This centralised security policy formulation warrants a shared understanding of the 'core national values and interests and the threat spectrum challenging these values and interests' amongst the stakeholders.⁶⁶ This further translates to assisting different government entities in implementing their specific policies or components of departmental policies, such as the MPRDA's regulation of access to South Africa's mineral resources.

⁵⁷ Ibid. See also Africa Center for Strategic Studies op cit note 49 at 5.

⁵⁸ DCAF op cit note 4 at 1. In South African legislation, the intelligence component of the security sector is required to inform all government department of any threats and how to address them see Section 2(1) (b)(ivA) of the NSI Act as amended by s 2(c) of the GLAA of 2013.

⁵⁹ Chuter op cit note 5 at 11. International Working Group of National Security op cit note 3 at 2.

⁶⁰ Peter Albrecht and Karen Barnes 'National Security Policy-Making and Gender' 2008 *Democratic Control of Armed Forces* at 2.

⁶¹ Ibid.

⁶² International Working Group of National Security op cit note 3 at 2.

⁶³ DCAF op cit note 4 at 1.

⁶⁴ Pupinis op cit note 25 at 1-2 and Jung op cit note 1 at 8.

⁶⁵ Albrecht and Barnes op cit note 60 at 1.

⁶⁶ DCAF op cit note 4 at 2.

3.1.3 Guiding Policy Implementation

The issue of collaboration is critical in addressing national security threats and their risks. Hence, according to the DCAF, an NSP will help guide the operationalisation of policies.⁶⁷ An NSP will coordinate government actions and security sector instruments to achieve the government's overall goals optimally.⁶⁸ A coordinated policy approach limits synergy issues in governments and resolves problems of duplication and waste of resources by the state.⁶⁹ As a short-term and forward-looking strategic policy document, a well-drafted NSP ensures that the deployment of the state's available resources is maximised to ensure national security and pursue the country's interests.⁷⁰ Additionally, the security sector is a resource available to the state to support policy implementation in other parts of government.⁷¹ This emphasises the dynamic nature of the security sector in adapting to the needs of the state as they emerge.

3.2 South Africa's National Security Policy

Against the above background on the approaches to national security and the development of a security policy, the state must develop its NSP as best as possible with the resources and capacity at its disposal.⁷² The NSP in South Africa is drafted by the National Security Council (NSC), a Cabinet subcommittee chaired by the President.⁷³ The NSC makes 'high-impact' security decisions to integrate and coordinate the security sector's response to threats that threaten domestic stability like poverty, hunger, corruption and economic crimes.⁷⁴ However, this structure was rendered dysfunctional⁷⁵ during President Jacob Zuma's administration. President Cyril Ramaphosa later relaunched it in 2019 on the recommendations of the High-Level Review Panel Report into the State Security Agency (the Review Panel).⁷⁶ The Review Panel's report states, '[t]his Cabinet structure will hopefully clarify and formalise South Africa's strategic and security interests in a policy format.'⁷⁷ Furthermore, it will encourage better coordination of the security-related functions of the state.⁷⁸

⁶⁷ Ibid at 1.

⁶⁸ International Working Group of National Security op cit note 3 at 2.

⁶⁹ Ibid at 6.

⁷⁰ Ibid at 2. See also Africa Center for Strategic Studies op cit note 49 at 4.

⁷¹ International Working Group of National Security op cit note 3 at 3.

⁷² Chuter op cit note 5 at 11.

⁷³ Ibid at 1.

⁷⁴ Bearne et al op cit note 38 at 10.

⁷⁵ This is attributed to infrequent meetings and decision making residing within the Office of the President and not the NSC. See Bearne et al op cit note 38 at 11.

⁷⁶ High Level Review Panel *Report on the State Security Agency* (2018) at 3. See also Proc R10 GG 43083 of 10 March 2020.

⁷⁷ Daniels op cit note 4 at 13.

⁷⁸ Ibid at 1.

In the absence (and in the South African case, the secrecy) of an NSP, a country's national security approach can be determined by reading its defence policy and white papers on national defence.⁷⁹ Defence policies, in most cases, implicitly indicate a country's understanding of national security, the country's interests and what interests the country will be pursuing.⁸⁰ As indicated above, the White Paper on Defence states that South Africa's national security is realised through 'political, economic, social and cultural rights and needs of South Africa's people'.⁸¹ According to Cawthra, we are forced to rely on implicit references in the Defence policy and the Constitution because South Africa had not formulated a coherent and comprehensive NSP document despite numerous attempts.⁸² Additionally, in light of the August 2012 Marikana tragedy, Cawthra argues that a national security approach that will unite government, unions, the private sector and civil society is an urgent necessity for South Africa.⁸³

4. National Security Strategy

According to Daniels, an NSP 'guides the national security strategy'.⁸⁴ Like the NSP, South Africa's National Security Strategy (NSS) is classified as 'Top Secret'. The last NSS was approved by Cabinet on 4 December 2013.⁸⁵ The Review Panel has recommended an urgent development of a new NSS.⁸⁶ The NSS should provide for an 'overriding basis for redefining and refining the concepts, values, policies, practices and architecture involved in South Africa's approach to security'.⁸⁷ The Review Panel also criticised the 2013 NSS for being a 'business plan' and that it was too 'time-bound to the period in which it was written'.⁸⁸ Furthermore, its proposals on the national security architecture were vague and broad.⁸⁹ This reveals an important issue concerning illegal mining: all current government operational measures are outdated and not informed by any current security sector strategic inputs. Therefore, it comes as no surprise that in 2017 members of the security sector admitted that existing projects to combat illegal mining were based on the 2009/2010 National Intelligence Estimates.⁹⁰

⁷⁹ Alan G Stolberg 'How Nation-States Craft National Security Strategy Documents' (2012) *Strategic Studies Institute Monogram* at 99. See also Daniels op cit note 4 at 1.

⁸⁰ Daniels op cit note 4 at 1.

⁸¹ Chapter 2 para 1 of the National Defence White Paper op cit note 42.

⁸² Cawthra op cit note 38 at 6.

⁸³ *Ibid.*

⁸⁴ Daniels op cit note 4 at 13.

⁸⁵ See Report on the State Security Agency op cit note 76 at 20.

⁸⁶ *Ibid* at 4. See also Daniels op cit note 4 at 8.

⁸⁷ Report on the State Security Agency op cit note 76 at 3.

⁸⁸ *Ibid* at 26.

⁸⁹ *Ibid.* Daniels op cit note 4 at 8.

⁹⁰ Parliamentary Monitoring Group (PMG) 'Illegal Mining: Hawks & Department of Mineral Resources briefing' 25 August 2017 *Parliamentary Monitoring Group*, available at <https://pmg.org.za/committee-meeting/24894/>, accessed on 30 September 2020. National Intelligence Estimates are informed and developed according to a NSS and provide a threat overview for the current period on a yearly basis. See section 4(2)(c) of the National Strategic Intelligence Act 39 of 1994.

South Africa was without an NSS at the upsurge of illegal mining activities, and the NSC was inactive.⁹¹ The development of sectoral strategies was thus severely hindered as different sectors had to 'rely on implicit deductions from the Constitution and other legislative directives to assist them with drafting their sectoral policies.'⁹² The perspectives provided by the NSP and NSS are important because they formulate assessments from a strategic level, and these are later operationalised for implementation.⁹³

In essence, the government's response to national security threats should culminate in the development of the NSS, which operationalises security sector national security policies.⁹⁴ The Review Panel emphasised that a 'credible NSS is a crucial policy tool that sets the broad context in which the security sector functions on behalf of the nation.'⁹⁵ The NSS informs white papers and policy documents of the security departments and other organs of the state.⁹⁶

5. Illegal Mining within the National Security Context in South Africa

The mining industry can generate much-needed revenue for development and infrastructure for developing countries. Although the mining industry does not contribute to the South African economy as significantly as it did in the 1970s, its unearthed mineral resource reserves still hold great potential for development and economic benefit.⁹⁷ Hence Chuter argues that seeking the security of national resources has an 'obvious security component'.⁹⁸ Moreover, the current threats linked to illicit economies faced by South Africa's mining industry need comprehensive security solutions.⁹⁹

In March 2009, 20 illegal miners were found dead underground at Consort mine in Barberton.¹⁰⁰ Also, in 2009, 91 illegal miners died at a disused section of Harmony's Eland shaft in Welkom from smoke inhalation due to an underground fire.¹⁰¹ However, the scale of illegal mining activities in South Africa became known to the public in August 2010, when a private mining security company operations led to

⁹¹ See Paul Stewart, Andries Bezuidenhout and Christine Bischoff 'Safety and health before and after Marikana: subcontracting, illegal mining and trade union rivalry in the South African mining industry' (2020) 47 *Review of African Political Economy* 163 at 36. Bearné et al op cit note 38 at 11. Proc R10 GG 43083 op cit note 76.

⁹² Daniels op cit note 4 at 8.

⁹³ Chuter op cit note 5 at 1.

⁹⁴ Adetiba op cit note 1 at 200.

⁹⁵ Daniels op cit note 4 at 9. See also Report on the State Security Agency op cit note 76 at 25.

⁹⁶ Ibid.

⁹⁷ The *National Development Plan 2030: Our future – make it work* (2012) at 146.

⁹⁸ Chuter op cit note 5 at 9.

⁹⁹ Asmag 'Going deeper: Security of mines' available at <https://www.asmag.com/showpost/7964.aspx>, accessed on 30 September 2020.

¹⁰⁰ Stewart, Bezuidenhout and Bischoff op cit note 91.

¹⁰¹ Ibid. See also Cecilia Johnson 'Lethal toll of informal gold mining' *GroundUp* 17 August 2016, available at <https://www.groundup.org.za/article/lethal-toll-informal-gold-mining/>, accessed on 09 January 2021.

the death of 20 illegal miners at the Aurora mine.¹⁰² The then Minister of Mineral Resources, Susan Shabangu, admitted that '[c]onfrontations between illegal miners and the police and security personnel are becoming more frequent'.¹⁰³ Furthermore, illegal mining activities were breeding other forms of criminality, including human smuggling, human trafficking, prostitution and child labour.¹⁰⁴

Significantly, then President Jacob Zuma in 2010 assured investors in London that the South African government was 'taking this [illegal mining] matter seriously'.¹⁰⁵ In addressing the seriousness of these activities, by the end of 2010, illegal mining was classified as an organised crime.¹⁰⁶ This classification extended to all components of illegal mining activities in South Africa, which included human security¹⁰⁷ concerns based on the profile of the organised crime syndicates and the broader conceptualisation of national security in South Africa. However, this also led to public debates about who should take responsibility for illegal mining activities.¹⁰⁸ The following discussion will give an overview profile of illegal mining activities in South Africa. Furthermore, it will highlight the significance of current policy failures as they relate to the security of South Africa's mineral resources framework and the significant role the security sector policy framework can play.

5.1 The Root of Illegal Mining and Zama-zamas

Rising operational risks and costs and falling global commodity prices have put mining companies' profit margins under pressure.¹⁰⁹ These factors have also contributed to the stock of approximately 6 000 derelict and ownerless mines under the custody of the state.¹¹⁰ In most of these cases, there was no proper closure of shafts, access portals and ventilation shafts.¹¹¹ In addition, the government did not have available funds to address South Africa's legacy of unrehabilitated mines that were closed or abandoned before the promulgation of the MPRDA.¹¹² Furthermore, slime dams, waste and tailing

¹⁰² Ibid at 35.

¹⁰³ Ibid at 36.

¹⁰⁴ Ibid. See also Aphiwe De Klerk 'MPs told how SA "Masterminds" exploit foreigners to mine illegal gold' *Sowetan Live* 28 October 2020 available at <https://www.sowetanlive.co.za/news/south-africa/2020-10-28-mps-told-how-sa-masterminds-exploit-foreigners-to-mine-illegal-gold/>, accessed on 09 April 2021.

¹⁰⁵ Stewart, Bezuidenhout and Bischoff op cit note 91.

¹⁰⁶ Ibid.

¹⁰⁷ Human security relates to the security of the people and the state, and encompasses elements that include poverty, environmental issues, and crime. Furthermore, human security is a national security aspect that appreciates 'macro-economic planning and economic inputs that lead to sustainable development and equitable distribution of income and wealth'. See Mpho G Molomo 'The Link between Sustainable Development and Security in Botswana' in Gavin Cawthra(ed) *African Security Governance Emerging Issues* at 144.

¹⁰⁸ Ibid.

¹⁰⁹ A Lane, J Guzek and W van Antwerpen 'Tough choices facing the South African mining industry' (2015) 115 *The Journal of The Southern African Institute of Mining and Metallurgy* at 473.

¹¹⁰ Ibid. Nhlengetwa and Hein op cit note 13 at 2.

¹¹¹ Ibid at 1.

¹¹² E Swart 'The South African legislative framework for mine closure' (2003) 108 *The Journal of The South African Institute of Mining and Metallurgy* 8 at 489.

dumps were never rehabilitated by previous right holders of these derelict and ownerless mines.¹¹³ Nhlengetwa and Hein state, '[i]n response to depleting gold reserves, large-scale mines reduced their work-forces isolating some mine dependent communities and damaging their economic capability.'¹¹⁴ The dying local economies and rising unemployment were not the promises the discovery of mineral resources held. However, communities and former mineworkers understood the value these resources presented if they mined them themselves. Consequently, the shafts that were not appropriately decommissioned or were abandoned became easy access points for illegal miners who wanted to make money to sustain their livelihoods.¹¹⁵

These small-scale community miners became known as *Zama-zamas*, a term used for 'artisanal' gold miners in South Africa.¹¹⁶ The South African Human Rights Commission (SAHRC) uses *Zama-zama* as a synonym for 'illegal mining', 'unregulated artisanal mining (AM)', 'informal mining', and 'unlawful mining'.¹¹⁷ According to Nhlengetwa and Hein, *Zama-zamas* were part of the communities that they operate in.¹¹⁸ However, as retrenchments in mines increased and economies from neighbouring countries also suffered, the *Zama-zama* labour force attracted legal and illegal immigrants from Zimbabwe, Mozambique and Lesotho.¹¹⁹

Although Nhlengetwa and Hein still present evidence of a link between *Zama-zamas* and unemployment, another element has been introduced in South Africa.¹²⁰ *Zama-zamas* have been identified as part of a significant group of people who comprise an organised alternative gold-trade network that includes trained professionals.¹²¹ The network is involved in the dealing of gold, trade in mercury, suspected money laundering, reported cases of prostitution, and growing levels of violence,¹²² these authors report.

Thornton suggests that categorising illegal mining as a criminal activity by the South African government misrepresents who *Zama-zamas* are.¹²³ Thornton insists that they are 'better described as

¹¹³ Nhlengetwa and Hein op cit note 13 at 1.

¹¹⁴ Ibid.

¹¹⁵ Ibid at 2.

¹¹⁶ Ibid.

¹¹⁷ South African Human Rights Commission *Report of the SAHRC Investigative Hearing: Issues and Challenges in relation to Unregulated Artisanal Underground and Surface Mining Activities in South Africa* (2015) at 25.

¹¹⁸ Nhlengetwa and Hein op cit note 13 at 2.

¹¹⁹ Ibid at 3. See also Johnson op cit note 101.

¹²⁰ Nhlengetwa and Hein op cit note 13 at 3.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Robert Thornton 'Zamazama, "illegal" artisanal miners, misrepresented by the South African Press and Government' (2014) 1 *The Extractive Industries and Society* at 127.

“artisanal” miners and entrepreneurs who create significant numbers of jobs and economic value for many local communities.¹²⁴ However, according to other researchers, the government noticed a new trend of ‘growing gold cartel and illegal trade’ that transcended a local communities’ informal economy.¹²⁵ With no policy and strategic guidance from the security sector, policymakers in the mining industry may have been left unaware of emerging policy gaps that were exploited by organised crime elements. This also meant that private sector stakeholders had to take the lead and respond to incidents and trends of illegal mining as they manifested.

5.2 The Global Syndicates

The scale of illegal mining activities in South Africa is unlike any illegal mining problems faced by other countries.¹²⁶ Recent research reveals that illegal mining in South Africa is run by globally connected criminal syndicates, which is a stark difference from the traditional *Zama-zamas*.¹²⁷ These traditional *Zama-zamas* possessed mining skills and knowledge that was different from industrial miners and exploited gold reserves that the industrial mining companies could not access.¹²⁸ However, according to Stewart, Bezuidenhout and Bischoff, now global criminal syndicates sustain illegal mining in South Africa.¹²⁹ Illegal miners in the country are now heavily armed and are able to set ambushes for police and private security personnel when trespassing into mining areas.¹³⁰

Research by the Institute for Security Studies (ISS) found that illegal mining activities in South Africa operate on a five-tier system.¹³¹ The Chamber of Mines and the ISS had reportedly identified 17 of these syndicates in 2007.¹³² The *Zama-zamas* fall into the ‘first tier’.¹³³ They do the physical labour; they are predominantly illegal immigrants from Zimbabwe, Mozambique and Lesotho with previous mining experience.¹³⁴ Thornton states that in some cases, an identified group of *Zama-zamas* would be family members.¹³⁵ The ‘second tier’ comprises buyers on the surface around the mining areas, and they are also responsible for the recruitment and organising of the ‘first tier’.¹³⁶ They support the ‘first tier’ with food, protection, equipment and even sustenance loans to grant them access to a mine shaft or for

¹²⁴ Ibid.

¹²⁵ Nhlengetwa and Hein op cit note 13 at 1.

¹²⁶ Alan Martin ‘Uncovered: The dark world of the Zama Zamas’ (2019) 8 *Enact Policy Brief* at 2.

¹²⁷ Stewart, Bezuidenhout and Bischoff op cit note 91 at 35.

¹²⁸ Thornton op cit note 123 at 127.

¹²⁹ Stewart, Bezuidenhout and Bischoff op cit note 91 at 35.

¹³⁰ Ibid at 36.

¹³¹ Ibid at 35.

¹³² Ibid.

¹³³ Minerals Council South Africa ‘Illegal mining’ available at <https://www.mineralscouncil.org.za/work/illegal-mining>, accessed on 30 September 2020.

¹³⁴ Ibid. Thornton op cit note 123.

¹³⁵ Ibid.

¹³⁶ Ibid. See also Stewart, Bezuidenhout and Bischoff op cit note 91 at 35.

supplies before going underground for prolonged periods.¹³⁷ They, in some instances, represent leaders of the different *Zama-zama* groups who are the most knowledgeable about mining operations, as they have more experience and expertise.¹³⁸

The 'third tier' comprises regional bulk buyers who are part of the locally organised crime syndicate; they have permits, legally trading as local refineries, in terms of the Precious Metals Act¹³⁹ to trade in precious metals.¹⁴⁰ The 'fourth tier' is national and international distributors that work through front companies or legitimate exporters.¹⁴¹ This tier is the 'local-global' link.¹⁴² The highest tier, the 'fifth tier', comprises international receivers and distributors working through international refineries and intermediary companies.¹⁴³ According to Stewart, Bezuidenhout and Bischoff, the Chamber of Mines and the ISS had identified at least three 'fifth tier' syndicates in 2007.¹⁴⁴

Martin observes that '[t]he higher up the syndicate pyramid, the more sophisticated the criminality.'¹⁴⁵ The higher tiers of these syndicates perpetrate the 'violence, corruption, human smuggling, tax evasion and money laundering.'¹⁴⁶ Although this dissertation focuses on the local issues that fall within the lowest tiers, specifically *Zama-zamas* understanding the full scale of these organised crime syndicates is vital for informing policymaking.

5.3 Impact on Local Communities and the Country

Illegal mining activities represent health and safety risks to illegal miners themselves and the communities around them.¹⁴⁷ Illegal mining operations put under pressure local resources, like water, due to their processing methods.¹⁴⁸ Illegal miners use hazardous refining methods and materials like mercury¹⁴⁹ to extract gold.¹⁵⁰ These extraction methods inadvertently result in the 'pollution of water

¹³⁷ Minerals Council South Africa op cit note 133.

¹³⁸ Ibid.

¹³⁹ Precious Metals Act 37 of 2005.

¹⁴⁰ Minerals Council South Africa op cit note 133. See also Stewart, Bezuidenhout and Bischoff op cit note 91 at 35.

¹⁴¹ Minerals Council South Africa op cit note 133.

¹⁴² Stewart, Bezuidenhout and Bischoff op cit note 91 at 35.

¹⁴³ Minerals Council South Africa op cit note 133.

¹⁴⁴ Stewart, Bezuidenhout and Bischoff op cit note 91 at 35.

¹⁴⁵ Martin op cit note 126 at 5.

¹⁴⁶ Ibid at 3.

¹⁴⁷ Minerals Council South Africa op cit note 133.

¹⁴⁸ Ibid.

¹⁴⁹ A study in Columbia found that mercury contamination in 17 states and 80 municipalities attributed to illegal mining activities. Mercury from waste dumps, overtime, pollutes surrounding soil, groundwater, and streams. See United Nations Interregional Crime and Justice Research Institute (UNICRI) *Strengthening the Security and Integrity of the Precious Metals Supply Chain - Technical Report* (2016) at 37-8.

¹⁵⁰ Minerals Council South Africa op cit note 133. Asmag op cit note 99.

bodies, siltation of rivers, river diversion, mercury and cyanide pollution, destruction of biodiversity.¹⁵¹ Water security is an important component of human and national security.¹⁵² South Africa is a water stressed country, and with the impacts of climate change, the country is experiencing increasing pressure on its current water resources.¹⁵³ Moreover, water security speaks to the two core objectives of the NDP, namely, eliminating poverty and reducing inequality.¹⁵⁴ However, much like how the government has addressed illegal mining activities, the post-1994 government water policies and programmes remain complex, compartmentalised, and continuously failing to adapt to emerging issues and incorporating dynamic stakeholder partnerships.¹⁵⁵

Furthermore, the Minerals Council South Africa asserts that illegal mining activities have destroyed the social fabric of mining communities.¹⁵⁶ Local communities have established secondary informal businesses supplying food, liquor, and sex workers to illegal miners underground at exorbitant prices.¹⁵⁷ It can also be surmised that local communities do not report these illegal miners either out of fear or financial benefits.

5.4 Current Coordinated Measures

The Standing Committee on Security (SCOS) established through the Minerals Council only addressed security issues in operating mines to prevent disruption of mining operations.¹⁵⁸ Then, the National Coordination and Strategic Management Team (NCSMT)¹⁵⁹ was established after illegal mining was identified as a national security threat to coordinate the government's efforts to address illegal mining.¹⁶⁰ However, these measures merely focused on patrols and raids of known *Zama-zama* groups.¹⁶¹ Though arrests from these patrols and raids showed results, they barely address the syndicates that will recruit

¹⁵¹ Mbekezeli Comfort Mkhize 'New interventions and sustainable solutions: Reappraising illegal artisanal mining in South Africa' (2017) 61 *SA Crime Quarterly* at 71.

¹⁵² Maronel Steyn et al "Water Security and South Africa" in Meissner Richard et al (eds) *Understanding water security at local government level in South Africa* (2019) at 3.

¹⁵³ Richard Kwame Adom and Mulala Danny Simatele 'Analysis of public policies and programmes towards water security in post-apartheid South Africa' (2021) 23 *Water Policy* at 503.

¹⁵⁴ P E Molokwane and T T C Dlamini *National Water Security Framework for South Africa: Summary, Principles and Recommendations* (2020) at 11.

¹⁵⁵ Adom and Simatele op cit note 153.

¹⁵⁶ Ibid

¹⁵⁷ Ibid.

¹⁵⁸ Minerals Council South Africa op cit note 133.

¹⁵⁹ The NCSMT replaced the National Precious Metals Forum (NPMF) and its members include the Department of Justice and Constitutional Development (DoJ), the National Prosecuting Authority (NPA), the Department of Mineral Resources and Energy (DMRE), the South African Police Service (SAPS) – Directorate for Priority Crimes and Investigation (DPCI), Visible Policing (VISPOL) and Crime Intelligence (CI), the National Intelligence and Co-ordinating Committee (NICOC) and the State Security Agency (SSA).

¹⁶⁰ Minerals Council South Africa op cit note 133.

¹⁶¹ Nhlengetwa and Hein op cit note 13 at 3.

and replace any arrested and deported illegal miners.¹⁶² These operations also ignore the extensive network supporting and sustaining illegal mining activities that will launder the illicit gold into the legal system.¹⁶³ Furthermore, these 'disruptive operations' to address illegal mining activities are merely punitive and address the surface manifestation of illegal mining operations while overlooking the underlying issues that a security policy needs to be cognisant of.¹⁶⁴

Mkhize argues that all the current interventions are fragmented, parochial and too generalised, thus resulting in violent and deadly operations between the police, private security companies, and the illegal miners.¹⁶⁵ International initiatives also do not address the issue of security of mines and South Africa's mineral reserves.¹⁶⁶ This is where an NSP and NSS would formulate policy and implementation plans that efficiently deploy resources and coordinate efforts of all security stakeholders as envisioned by the legislative framework discussed in the previous chapter. These plans should follow an integrated security approach to ensure that they minimise illegal mining.¹⁶⁷

6. Conclusion

The previous chapter broadly outlined how the security of South Africa's mineral resources from illegal mining activities is a national security concern.¹⁶⁸ Having examined and outlined existing legislative failures in providing the needed security to South Africa's mineral reserves, this chapter explored the potential of addressing illegal mining activities within the national security sector policy complex. It established what national security is, the role of national security policies and strategies, and how South Africa has approached its national interests and national security objectives. It is important to emphasise that national security is the foremost obligation of the state, to secure the state from threats that impact the security of the state and its citizens.¹⁶⁹

As implicitly identified through the White Paper on Defence, South Africa's national security policy is informed by the pursuit of political and social stability, economic development, and fulfilling the needs of the South African people individually and as a nation.¹⁷⁰ As outlined, illegal mining activities present sophisticated levels of criminality that threaten domestic stability, economic strategies, territorial integrity

¹⁶² Martin op cit note 126 at 6.

¹⁶³ Ibid.

¹⁶⁴ Minerals Council South Africa op cit note 133.

¹⁶⁵ Mkhize op cit note 151 at 68.

¹⁶⁶ For instance, South Africa and the Russian Federation have developed a global strategy to address illegal mining through UNICRI and the United Nations Office on Drugs and Crime (UNODC). See Minerals Council South Africa op cit note 133.

¹⁶⁷ Asmag op cit note 99.

¹⁶⁸ Johnson op cit note 101.

¹⁶⁹ Cawthra op cit note 38 at 3.

¹⁷⁰ Chapter 2 para 3 of the White Paper on Defence op cit note 42 and section 198 of the Constitution.

and undermine the authority of the State.¹⁷¹ Addressing the security of South Africa's mineral resources within the security sector can resolve the adaptability issues of legislation and the lengthy legislation drafting process. Also, by their nature, national security policies and strategies are designed and meant to adapt to and respond to emerging threats as they evolve. Therefore, it remains crucial that a coordinated policy informs and maximises resource allocation to achieve the country's development strategy objectives as expressed in the NDP.

¹⁷¹ Parliamentary Monitoring Group op cit note 90.

Chapter 4: Vision 2030 and Beyond

1. Introduction

The mining industry in South Africa has been an essential contributor to South Africa's economic development, transforming the country into one of the most industrialised key economic players in Africa.¹ For over a century, investments in the mining industry have been 'the principal driver of the current infrastructure network, which now underpins jobs in many other sectors.'² In 2014, the Minerals Council of South Africa cited that South Africa's mining industry directly employed 450 000 people, and each employee supported at least nine dependants.³ Hence, at the height of retrenchments in the mining industry, between 2012 and 2015, when 47 000 jobs were shed, 423 000 people were indirectly impacted.⁴ Despite the continuing retrenchments in the industry over the years, the mining industry remains a vital labour absorbing industry that will play a catalyst role in eliminating poverty and inequality in South Africa as the country heads towards its 2030 target of inclusive economic growth.⁵

While South Africa's mineral resource endowments will last the country for decades to come, easily accessible mineral resources are approaching depletion.⁶ The depths of ageing mines are increasing, infrastructure in current mining operations is ageing, and working conditions are getting harsher and more dangerous for miners.⁷ These factors have led to increased production costs, while productivity and profits have been declined.⁸ Furthermore, following the decline in the 2008 global commodities prices, mining right holders have abandoned more mines and mining operations.⁹ Some of these mines still have viable mineral reserves. However, due to the aforementioned economic reasons and historical policy shortcomings, mining right holders have struggled to maintain security measures to limit access to the abandoned mine shafts or pursuing the appropriate closure processes.¹⁰ This climate in the mining industry has led to the intangible growth of illegal artisanal mining - or *Zama-zamas* as they are

¹ *South African Yearbook 2014/15* (2014) at 301.

² *Ibid.*

³ K M Letsoalo 'Multi-stakeholder collaboration to unlock the potential of deep-level mining in South Africa' (2017) 117 *The Journal of the Southern African Institute of Mining and Metallurgy* at 610.

⁴ *Ibid.*

⁵ Council for Scientific and Industrial Research (CSIR) 'Modernising mining through partnerships and transformation' (2018) available at <https://www.csir.co.za/modernising-mining-through-partnerships-and-transformation> accessed on 31 August 2020.

⁶ Letsoalo op cit note 3 at 610.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Ricardo J Caballero, Emmanuel Farhi and Pierre-Olivier Gourinchas 'Financial Crash, Commodity Prices, and Global Imbalances' 2008(2) *Brookings papers on economic activity* at 7. See also Mark Olalde 'What's left in the wake of South Africa's abandoned gold mines' (2016) available at <https://www.greenbiz.com/article/whats-left-wake-south-africas-abandoned-gold-mines> accessed 09 August 2021.

¹⁰ Cecilia Johnson 'Lethal toll of informal gold mining' (2016) *GroundUp* 17 August 2016, available at <https://www.groundup.org.za/article/lethal-toll-informal-gold-mining/> accessed on 09 January 2021. See also Section 43(1) of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA).

known in South Africa - which are mostly retrenched mineworkers and community members who previously relied on the mining economies.¹¹ Growth in artisanal miners is directly linked to problems that large-scale mining companies face and the general economic outlook of the country.¹²

Research presents that the future of South Africa's mining industry can be approached in two ways. Either a sunset industry 'plagued by rising costs, technical difficulties, and political hostility'.¹³ Or as a sunrise industry 'well positioned for a new lease of life despite all the vicissitudes'.¹⁴ The South African government sees the mining industry as the latter, a sunrise industry that strategic economic development policies and government programme planning can rely on to achieve inclusive economic growth.¹⁵ At the 2020 Junior Indaba, Mineral Resources and Energy Minister Gwede Mantashe proclaimed that the future of South Africa's mining industry 'rests with the junior mining sector'.¹⁶ Minister Mantashe further stated that '[a]rtisanal mining would be formalised to create an avenue to mine sterilised deposits'.¹⁷ However, as Netshitenzhe argues, the government has to have a 'deliberate strategy' for the mining industry to be a sunrise industry.¹⁸

This chapter examines South Africa's planning and implementation strategies towards achieving the inclusive economic development objectives set out in the NDP. It further contemplates the possible long-term future of South Africa's mining industry against these government policy documents. This chapter will critically discuss how the abovementioned legislative and national security policy gaps and failures impact the future strategic role of artisanal and small-scale mining (ASM) in South Africa, as expressed in government policy since 1994. The following discussion will unpack ASM and how South African policymakers have approached it. Furthermore, it will examine South Africa's strategic planning and implementation model for the mining industry's future and how rampant illegal mining impacts South Africa meeting its 2030 NDP targets, thus threatening political, economic, and social stability as national security objectives.

¹¹ Bernd Dreschler 'Report on Small-scale Mining and Sustainable Development within the SADC Region' (2001) 84 *Mining, Minerals and Sustainable Development* at 6.

¹² *Ibid.*

¹³ The Federation for Sustainable Environment 'The impact of mining on the South African economy and living standards' available at <http://fse.org.za/index.php/item/593-the-impact-of-mining-on-the-south-african-economy-and-living-standards?tmpl=component&print=1>, accessed 30 September 2020. See also Salimah Valiani (ed) *The Future of Mining in South Africa: Sunset or Sunrise?* (2018) at vii and 3.

¹⁴ *Ibid.*

¹⁵ *The National Development Plan 2030: Our future – make it work* (2012) at chapter 3, chapter 6, and chapter 8.

¹⁶ Mining Journal 'South Africa to prioritise exploration, formalise artisanal mining' available at <https://www.mining-journal.com/politics/news/1398526/south-africa-to-prioritise-exploration-formalise-artisanal-mining>, accessed 30 April 2021.

¹⁷ *Ibid.*

¹⁸ Joel Netshitenzhe 'Towards Mining Vision 2030' in Salimah Valiani (ed) *The Future of Mining in South Africa: Sunset or Sunrise?* (2018) at 27.

2. Overview of Artisanal and Small-Scale Mining

According to the United Nations Interregional Crime and Justice Research Institute (UNICRI), a standard definition and the legal status of the ASM sector differs from jurisdiction to jurisdiction.¹⁹ However, there are general characteristics of ASM; it is 'mining operations which exploit marginal or small deposits, tend to lack capital, are labour intensive and have poor access to markets and support services.'²⁰ Historically, prior to colonialism, artisanal mining activities were supplementary to subsistence farming.²¹ With the advent of colonialism, ASM enterprises in South Africa grew with the discovery of mineral resources, such as copper, diamonds, and gold, in the 1800s.²² Eventually, with the support of the State, the wealth accumulated from these activities attracted large-scale financiers and mining firms 'as part of a broader push to dispossess Africans and create a cheap wage labour system'.²³ Though this hindered the ASM sector, the infrastructure to access geological deposits and harness economic development needed the capital injected by large-scale mining companies.²⁴

Nonetheless, the conversation about the ASM sector contributing to sustainable development and sustaining livelihoods for poverty-stricken rural and urban communities has never ceased.²⁵ Globally, the importance of ASM supporting livelihoods in rural communities has become a recognised and important strategy for impoverished communities who need alternative approaches for subsistence living and poverty alleviation.²⁶ Working alongside the other stakeholders of the donor community in the last two decades, the World Bank has advocated and supported programmes that work towards formalising the ASM sector in Africa to become a 'centrepiece of the continent's development strategy'.²⁷ Yet, according to Hilson, 'ASM's persistent informality has prevented most African countries from realising the subsector's full economic potential.'²⁸ A big drive to formalise the Global South in the 1980s and 1990s sought ways to effectively integrate ASM into the formal national economies.²⁹ This culminated in the development of legislative measures to regulate and formalise ASM, thus marking the end of the criminalisation of this sector. Nonetheless, researchers indicate that these attempts to

¹⁹ United Nations Interregional Crime and Justice Research Institute (UNICRI) *Strengthening the Security and Integrity of the Precious Metals Supply Chain* (2016) at 25.

²⁰ *Ibid.*

²¹ Hibist Kassa 'Formalising artisanal and small-scale mining: Problems, contradictions and possibilities' in Salimah Valiani (ed) *The Future of Mining in South Africa; Sunrise or Sunset?* (2018) at 185.

²² David Perkins *Artisanal and small-scale mining: mapping the South Africa ecosystem* (2019) at 3.

²³ Kassa op cit note 21 at 188.

²⁴ *Ibid.*

²⁵ Dreschler op cit note 11 at 8.

²⁶ Kassa op cit note 21 at 179.

²⁷ Gavin Hilson 'The African Mining Vision: a manifesto for more inclusive extractive industry-led development?' (2020) 41 *Canadian Journal of Development Studies* 3 at 425.

²⁸ *Ibid.*

²⁹ Kassa op cit note 21 at 179.

regulate and formalise the ASM sector have largely failed.³⁰ ASM continues to primarily be viewed as a criminal economic activity, with some governments in African countries deploying military personnel to enforce moratoriums on the sector.³¹

The struggle to formalise the ASM sector does not deviate from ASM being recognised as an essential sector and requiring solutions to attain the benefits it can offer to communities 'as a potent force in socio-economic development'.³² With governments of the African continent proactively seeking to determine the future trajectory of their mineral resource endowments through Article 7 of the 1997 Southern African Development Community (SADC) Protocol on Mining the 2002 Yaounde Vision, and the Africa Mining Vision (AMV), there is a joint call to integrate the ASM sector into existing mining frameworks.³³

3. South Africa's Approach to Artisanal and Small-Scale Mining

In South Africa, the entrance of large-scale mining operations meant that the ASM sector went largely ignored until 1994.³⁴ Fortunately, after 1994, policy reforms supported the entry of historically disadvantaged South Africans into the mining industry, and ASM was identified as one of the sectors that would be encouraged for this objective.³⁵ The Reconstruction and Development Programme (RDP) recognised the potential of the ASM sector to broaden access to the mining industry by historically disenfranchised South Africans.³⁶ Sentiments of the RDP were further reiterated by the White Paper on Minerals and Mining Policy for South Africa,³⁷ putting forward that ASM would ensure 'optimal exploitation of small mineral deposits' and contribute to the economy.³⁸ However, the government had to provide financial and technical aid, access to mineral rights, and establish protocols for the protection of the environment, health and safety, and standards for related working conditions.³⁹

³⁰ Ibid.

³¹ Ibid at 180.

³² South African Human Rights Commission (SAHRC) *Report of the SAHRC Investigative Hearing: Issues and Challenges in relation to Unregulated Artisanal Underground and Surface Mining Activities in South Africa* (2015) at 22.

³³ Perkins op cit note 22 at 1.

³⁴ Ibid at 3.

³⁵ Kassa op cit note 21 at 194.

³⁶ P F Ledwaba 'The status of artisanal and small-scale mining sector in South Africa: tracking progress' (2017) 117 *The Journal of the Southern African Institute of Mining and Metallurgy* at 33.

³⁷ The *White Paper on Minerals and Mining Policy for South Africa*, October 1998.

³⁸ Chapter 1.4.2 of the *White Paper on Minerals and Mining Policy for South Africa* cited by Perkins op cit note 22 at 3.

³⁹ Chapter 1.4.2 of the *White Paper on Minerals and Mining Policy for South Africa* op cit note 38 at 7. See also Ledwaba op cit note 36 at 34.

Perkins argues that the Mineral and Petroleum Resources Development Act (MPRDA) does not 'explicitly recognise ASM as a subset of the mining sector' even though it makes provision for mining permits to enable small-scale mining operations.⁴⁰ This legislative shortfall means that artisanal miners, *Zama-zamas*, continues to operate outside the legal and regulatory framework and are thus deemed as illegal miners.⁴¹ In the early 2000s, researchers estimated that there were between 8 000 and 30 000 illegal artisanal miners in South Africa.⁴² The number of these miners continues to grow due to 'mine closures and retrenchments, endemic high unemployment rates, wealth disparities and barriers to entry to legal, formal mining'.⁴³ Additionally, research indicates that some artisanal gold miners can access deposits that 'run along underground mine shafts below 4 kilometres.'⁴⁴ This is in contrast to large-scale mining companies currently, who do not consider these deposits economically viable due to the depth of the geological locations that render them dangerous for their employees to access.⁴⁵

It is of major concern that illegal artisanal mining has significantly grown and spread across all nine provinces of South Africa, mostly around 'rural areas with known mineral availability'.⁴⁶ Research indicates that these areas are visibly poverty-stricken regions⁴⁷ with high unemployment levels.⁴⁸ Although this exhibits that there are opportunities for ASM in South Africa, these miners continue to operate outside the legal framework, thus exposing them to criminal syndicates for permission to operate in certain areas and creating value chains of illicit economies⁴⁹ in the communities.⁵⁰ As Molomo argued, national security can no longer be pursued through military might alone but also through 'macro-economic planning and economic inputs that lead to sustainable development' to alleviate poverty and secure livelihoods.⁵¹

⁴⁰ Perkins op cit note 22 at 3. See also Naomi Tite and Richard Chelin 'Mining and extractives /South Africa's illegal-mining conundrum' *Enact* 26 June 2019 available at <https://enactafrica.org/enact-observer/south-africas-illegal-mining-conundrum> accessed 30 September 2020.

⁴¹ Perkins op cit note 22 at 4. See also Kgothatso Nhlengetwa and Kim A A Hein 'Zama-Zama mining in the Durban Deep/Roodepoort area of Johannesburg, South Africa: An invasive or alternative livelihood?' (2015) 2 *The Extractive Industries and Society* 1 at 2.

⁴² M Hoadley and D Limpitlaw 'The artisanal and small scale mining sector & sustainable livelihoods' 2004 *Mintek Small Scale Mining Conference* at 1. See also South African Human Rights Commission (SAHRC) *Report* op cit note 31 at 25. These numbers are difficult to confirm due to the illegal nature of these activities, therefore research tends to rely on reported incidents of deaths for accurate information. See Johnson op cit note 10.

⁴³ Perkins op cit note 22 at 3.

⁴⁴ Kassa op cit note 21 at 195.

⁴⁵ SANews 'NDP to drive radical economic transformation in mining' available at <https://www.sanews.gov.za/south-africa/ndp-drive-radical-economic-transformation-mining>, accessed on 5 May 2021.

⁴⁶ Ledwaba op cit note 36 at 34.

⁴⁷ For example, the Northern Cape, North West, Limpopo, and Eastern Cape provinces.

⁴⁸ Ledwaba op cit note 36 at 35.

⁴⁹ See UNICRI op cit note 19 at 25.

⁵⁰ Ledwaba op cit note 36 at 35.

⁵¹ Mpho G Molomo 'The Link between Sustainable Development and Security in Botswana' in Gavin Cawthra (ed) *African Security Governance Emerging Issues* at 144.

South Africa's struggles with taking advantage of the benefits of the ASM sector are not unique, and many jurisdictions face the same obstacles with regulating and legislating the sector.⁵² There are concerns that formalising the ASM sector would encourage 'illegal immigration, or exacerbate uncontrolled and opportunistic mining with a concomitant increase in the number of deaths, or enhance cartel business opportunism', threatening traditional business operations.⁵³ However, considering the nature of illegal mining activities that have taken place in South Africa, policymakers have to take a firmer legislative position on how to address illegal mining to secure South Africa's territorial integrity and enforce the authority of the state.

4. Strategic and Implementation Model for the Future of Mining in South Africa

As a member of the African Union, South Africa participated in discussions of the continent crafting the future of exploitation and benefiting from its mineral resources, which led to the development of the AMV. The AMV offers a broad developmental policy framework for mineral extractions in Africa that individual countries can use as a mechanism to align and reform their mineral resources policies.⁵⁴ South Africa's strategic policies align with the AMV as they recognise that the mining industry is vital in achieving future economic development objectives.⁵⁵ Furthermore, the ASM sector is a crucial component towards achieving inclusive economic growth and poverty alleviation; this was reflected in the NDP, the Mining Phakisa initiative, Mining Vision 2030, and the Mining Charter.⁵⁶ The following assessment will interrogate South Africa's strategic planning and implementation policy model relating to the mining industry in meeting the country's national interests, specifically to eliminate poverty and reduce inequality by 2030.

Netshitenzhe states that a 'deliberate strategy' is essential in modelling implementation policy and planning, and proposes that this framework for South Africa must 'encompass post-mining activities and informal mining'.⁵⁷ Moreover, scholars argue that 'the curse' is not natural resources but rather 'bad stewardship of resources'.⁵⁸ Therefore, a thorough analysis of these components in planning policies is crucial in identifying risks for implementing policies that pose national security threats to deter the state from performing its duties. These components of stewardship over South Africa's mineral resources and

⁵² Kassa op cit note 21 at 194.

⁵³ Nhlengetwa and Hein op cit note 42 at 3.

⁵⁴ Hilson op cit note 27 at 417.

⁵⁵ The *National Development Plan 2030: Our future – make it work* (2012); Department of Planning, Monitoring and Evaluation *Medium-Term Strategic Framework 2019-2024* (2019); Department of Mineral Resources and Energy *Strategic Plan 2020-2025* (2019).

⁵⁶ Netshitenzhe op cit note 18 at 57.

⁵⁷ Ibid at 27. See also Valiani op cit note 13 at 4.

⁵⁸ Ibid at 3.

'deliberate strategy' by the government will be evaluated through the stated policy within the NDP, the Medium-Term Strategic Framework 2019-2024 (the MTSF), and the Department of Mineral Resources and Energy (DMRE)'s Strategic Plan 2020-2025.

4.1 The National Development Plan

The need for social and economic transformation in South Africa culminated in the adoption of the NDP in 2012 as a roadmap towards inclusive economic growth to eliminate poverty and reduce inequality by 2030.⁵⁹ The NDP's central goals are to 'expand employment and entrepreneurial opportunities on the back of a growing, more inclusive economy.'⁶⁰ The document identifies the agriculture, mining, manufacturing and services industries as drivers to achieving these goals.⁶¹ The NDP further identifies ten critical actions to achieve its strategic goals. The actions relevant to the mining industry are (i) raising employment and investment; (ii) boosting investment in labour-intensive areas; (iii) economic growth through competitive exports; (iv) improving community environments; (v) infrastructure development financed by tariffs, public-private partnerships, taxes, and loans.⁶² These components speak to the national security desire for economic and social development and stability.

Given the historical role of the mining industry in South Africa and the country's mineral resource endowments, government policy planning cannot ignore the mining industry's role in economic development strategies.⁶³ For example, the NDP states that the country will 'need to intensify stimulation of local and foreign markets, as well as strengthen conditions to promote labour-absorbing activities.'⁶⁴ The mining industry in South Africa is, in fact, such a labour absorbing industry, although it is currently in distress and is shedding jobs, facing higher production costs, and struggling to attract new investments.⁶⁵ Like other government policy documents, the NDP does not fully acknowledge this reality and its impact on the industry and the economy in general. Instead, current government policies broadly categorise South Africa's mining industry as facing 'challenges' without unpacking the industry's role within the last decade on political, social, economic and economic stability.⁶⁶

⁵⁹ The Presidency *South Africa's Implementation of the 2030 Agenda for Sustainable Development: Voluntary National Review (VNR) Report 2019* (2019) at 23. Netshitenzhe op cit note 18 at 17. CSIR op cit note 5.

⁶⁰ The *National Development Plan* op cit note 54 at 124.

⁶¹ Ibid.

⁶² Ibid at 34.

⁶³ Netshitenzhe op cit note 18 at 18.

⁶⁴ *National Development Plan* op cit note 13 at 124.

⁶⁵ Minerals Council South Africa *Facts and figures pocketbook 2019* (2019) at 11-2. The *Strategic Plan 2020-2025* op cit note 55 at 7 and 11. Norman Mbazima 'Reviving a Declining Mining Industry' (2020) at 1, available at <https://media.africaportal.org/documents/viewpoints-reviving-a-declining-mining-industry-norman-mbazima.pdf> accessed on 15 August 2021.

⁶⁶ The *Strategic Plan 2020-2025* op cit note 55 at 41.

Further, the NDP and other existing policies do not mention the need to secure South Africa's mineral resources for future exploitation. Yet, by 2012, the government was already aware of the rising reports of illegal mining. This vague assessment denotes that government planning relies on old strategies, for example, contemplating policy adjustments to create certainty to attract foreign investment and depending on large-scale mining operations to remedy and address the 'challenges' faced by the mining industry.⁶⁷ Furthermore, the NDP's failure to identify and articulate the government's strategic role for the mining industry means the document does not provide a thorough analysis of underlying structural factors that existed in South Africa, which is supposedly a core objective of this strategic document.⁶⁸

Nonetheless, Chapter Three of the NDP on 'Economy and Employment' envisions that by 2030, the unemployment rate will go down to 6 per cent, which will require that 11 million new job opportunities be created.⁶⁹ Eleven million new job opportunities will translate to 40 per cent of adults in rural areas being employed, a significant increase from the 29 per cent that existed in 2012.⁷⁰ Furthermore, it states that '[p]ublic employment programmes should reach 1 million by 2015 and 2 million people by 2030.'⁷¹ Regarding the mining industry, the document states that policy proposals should encourage benefit from the country's mineral resources – by providing certainty over mining rights, increasing infrastructure and recognising that South Africa's mineral resources are non-renewable.⁷²

Chapter Six on 'Inclusive Rural Economy' recommends creating '[a]n additional 643 000 direct jobs and 326 000 indirect jobs in the agriculture, agro-processing and related sectors by 2030.'⁷³ This will be achieved through 'a review of land tenure, service to small and micro farmers, a review of mining industry commitments to social investment, and tourism investments'.⁷⁴ The document proposes research and development that will support lengthening the lifespan of South African mines to grow investments, outputs, exports and increase employment in the mining industry.⁷⁵ This chapter also emphasises that mining workers are better paid than agricultural workers; hence, non-agricultural

⁶⁷ Ibid at 115.

⁶⁸ *Voluntary National Review (VNR) Report* op cit note 59 at 23.

⁶⁹ The *National Development Plan 2030: Our future – make it work (Executive summary)* (2012) at 54. The unemployment rate in South Africa has steadily increased over the years, making this target less and less plausible. Economic pressures and the impact of the Covid-19 pandemic further left official the unemployment rate at 34.9 per cent in the third quarter of 2021. See Department of Statistics South Africa *Quarterly employment statistics (QES)* (2021) and Department of Statistics South Africa 'Quarterly Labour Force Survey (QLFS) – Q3:2021' available at <http://www.statssa.gov.za/?p=14957>, accessed on 20 December 2021.

⁷⁰ Ibid.

⁷¹ Ibid. It must be noted, however, that none of these programmes have spread to the mining industry.

⁷² Ibid.

⁷³ *National Development Plan* op cit note 55 at 147.

⁷⁴ Ibid at 68.

⁷⁵ *National Development Plan* op cit note 55 at 147.

activities should be developed to benefit of rural development.⁷⁶ It further states that '[t]here is an opportunity to influence the role of mining in rural development through the Mining Charter.'⁷⁷ However, while focusing on the need and research for futuristic extractive methods for optimal exploitation of all finite mineral resources, this ignores the impact of illegal mining activities that have been prevalent in the country since the early 2000s on the country's mineral reserves.⁷⁸ This chapter also ignores the need to encourage the participation of local communities in mining as part of the government's rural economic development landscape beyond possible means offered by the Mining Charter.⁷⁹ Furthermore, there is no instruction on how a Mining Charter should be aligned to these rural development goals.

The last chapter that directly mentions the mining industry's role is Chapter Eight on 'Transforming Human Settlement and the National Space Economy.' This chapter states that there has been disproportionate development of small towns and rural areas, directly resulting from structural changes in agriculture and mining.⁸⁰ Others developed drastically as economic activities increased due to agricultural projects and mining operations in the areas, and others stagnated or declined, mirroring the life cycle of the agricultural and mining operations.⁸¹

The adoption of the NDP in 2012 highlighted the need for South Africa's mining industry to reinvigorate itself as a key historical contributor to the country's economic development and an important role player for the future.⁸² However, the document failed to address rural communities directly involved in mining operations outside of large-scale mining companies. As a result, the NDP missed the opportunity to propose strategic solutions to issues that have plagued the mining industry, such as the low investment rates, abandonment of mining operations, retrenchments, and growth of illegal mining activities. These are issues that impact domestic stability and have national security implications when they go unchecked and are not given policy attention. Considering the shortcoming in the MPRDA, the NDP should have specified the need to integrate ASM into South Africa's extraction landscape as proposed in the White Paper on Minerals and Mining Policy for South Africa of 1998, thus providing policy alignment for the ASM sector.

⁷⁶ Ibid at 228.

⁷⁷ Ibid.

⁷⁸ N Singh 'Weathering the 'perfect storm' facing the mining sector' (2017) 117 *The Journal of the Southern African Institute of Mining and Metallurgy* at 228. See also Paul Stewart, Andris Bezuidenhout and Christine Bischoff 'Safety and health before and after Marikana: subcontracting, illegal mining and trade union rivalry in the South African mining industry' (2020) 47 *163 Review of African Political Economy* 163 at 35.

⁷⁹ *National Development Plan* op cit note 55 at 147. See also Mbekezeli Comfort Mkhize 'New interventions and sustainable solutions: Reappraising illegal artisanal mining in South Africa' (2017) 61 *SA Crime Quarterly* at 73 for a discussion on proactive rural interventions.

⁸⁰ *National Development Plan* op cit note 55 at 262.

⁸¹ Ibid.

⁸² A S Macfarlane 'Presidential Address: Towards the future: African Mining Vision, Mining Phakisa and the SAIMM' (2018) 118 *The Journal of the Southern African Institute of Mining and Metallurgy* at 899.

4.2 Medium – Term Strategic Framework 2019 - 2024

The Medium-Term Strategic Framework (MTSF) is South Africa's five-year implementation plan for the NDP. The latest 2019-2024 version contains the sixth government administration's framework to address poverty, inequality and high unemployment rates through economic growth and job creation.⁸³ The specific mention of these elements in the policy document indicates that they are South Africa's national interests' priorities. The MTSF acknowledges that the 'most pressing problem facing South Africa today is the absence of faster and sustained inclusive growth' as the country urgently needs to implement initiatives to address unemployment and livelihood insecurities.⁸⁴ President Cyril Ramaphosa emphasised the mining industry's role as a key driver for the future growth of the South African economy through maximising the exploration, production, and beneficiation potential of the industry.⁸⁵ President Ramaphosa further assured international investors that his administration would adopt practical steps to build an inclusive economy.⁸⁶

With the 2030 NDP target deadlines drawing near, the MTSF seeks measures to fast track delivering on the NDP goals.⁸⁷ For the 2019-2024 five-year implementation plan, the MTSF identifies seven priorities: (i) 'Building a capable, ethical and developmental state'; (ii) 'Economic transformation and job creation'; (iii) 'Education, skills and health'; (iv) 'Consolidating the social wage through reliable and quality basic services'; (v) 'Spatial integration, human settlements and local government'; (vi) 'Social cohesion and safe communities'; and (vii) 'A better Africa and world'.⁸⁸ In line with the discussion of the NDP and its relevance to the mining industry, the following discussion will focus on 'Priority 2: Economic transformation and job creation' and 'Priority 5: Spatial Integration, Human Settlements and Local Government.'

Priority 2, addressing the economy and jobs, once again emphasises the need to drastically reduce unemployment which would require structural reform and targeted interventions.⁸⁹ The document states that '[a]s we navigate an uncertain global environment and local fiscal constraints, we need to rebuild confidence and galvanise investment'.⁹⁰ This led to the launch of Operation Phakisa, which created seven labs in strategic sectors, including mining.⁹¹ The Mining Lab aspired to 'galvanise growth, transformation, investment and employment creation along the entire mining value chain, in relevant

⁸³ The *Medium-Term Strategic Framework 2019-2024* op cit note 55 at 14.

⁸⁴ *Ibid* at 45.

⁸⁵ Perkins op cit note 22 at 1.

⁸⁶ *Ibid*.

⁸⁷ The *Medium-Term Strategic Framework 2019-2024* op cit note 55 at 5.

⁸⁸ *Ibid*.

⁸⁹ *Ibid* at 45.

⁹⁰ *Ibid*.

⁹¹ *Ibid*.

input sectors and in mining related communities'.⁹² Targets of the Mining Lab included attracting investments, creating direct and indirect jobs, reducing turnaround time for rights and permits applications, increasing exploration, and improving access.⁹³ Through these initiatives, the 2019-2024 MTSF hoped to achieve two to three per cent economic growth by 2024.⁹⁴ However, this would require a conducive environment to enable 'national priority sectors to support industrialisation and localisation', which would directly increase exports and employment.⁹⁵ These sectors would, in turn, be able to contribute more to South Africa's Gross Domestic Product (GDP) and exports.⁹⁶ This Priority emphasises the important nexus between economic policies and national security, a significant policy development goal emphasised by the Defence Review of 2012 and security policy guidelines that link economic development to national security goals.⁹⁷

Nonetheless, the recommendations emanating from Operation Phakisa offer hope that there is an understanding of the fundamental issues in the mining industry by stakeholders in the industry and that they are cognisant of the need for new methods to be devised to address the identified challenges. Notably, Operation Phakisa recognises the need for new mining methods and mechanisation of the industry to access new extraction depths.⁹⁸ Additionally, in line with the AMV, Operation Phakisa recognises that unbundling the mining value chain to allow local and community entrants have to be part of the future demographic of the mining industry.⁹⁹ These findings of the Lab highlight the desire to absorb rural communities as important entrants to the mining industry, thus circumventing the uninhibited spread of illegal mining activities that jeopardise the future of the mining industry.

The MTSF document also concedes that '[e]nsuring inclusive growth will also require addressing the vast amounts of money South Africa loses to the illicit economy each year – estimated at 10 percent of GDP.'¹⁰⁰ These illicit economies include the illegal mining of gold, diamonds and progressively spreading to other minerals.¹⁰¹ Through Priority 6 on 'Social Cohesion and safer communities', the MTSF proposes addressing organised crime with law enforcement addressing illegal mining by

⁹² Ibid at 46. This is also in line with the tenets of the AMV which proposed unbundling the 'minerals complex' at all stages of the mining cycle to 'identify entry points for local participation'. See Macfarlane op cit note 83 at 900. Hilson op cit note 26 at 418.

⁹³ The *Medium-Term Strategic Framework 2019-2024* op cit note 55 at 46.

⁹⁴ Ibid at 49.

⁹⁵ Ibid at 55.

⁹⁶ Ibid at 56.

⁹⁷ Gavin Cawthra *National Security and the Right to Information: The Case of South Africa* (2013) at 6. Susanna Bearn et al 'National Security Decision-Making Structures and Security Sector Reform' 2005 *RAND Corporation* at iv.

⁹⁸ Letsoalo op cit note 3 at 612. See also Singh op cit note 79 at 226.

⁹⁹ Macfarlane op cit note 83 at 900. Hilson op cit note 27 at 418.

¹⁰⁰ The *Medium-Term Strategic Framework 2019-2024* op cit note 55 at 49.

¹⁰¹ Ibid.

deploying specialised tactical response teams from a national personnel capacity into the six provinces¹⁰² mostly affected by illegal mining.¹⁰³

Priority 5 acknowledges that if South Africa's natural resources and mineral deposits were to be responsibly used, they could transform South Africa into a diverse and inclusive economy.¹⁰⁴ The document intimates that 'South Africa's rural communities must have better opportunities to participate fully in the economic, social and political life of the country.'¹⁰⁵ It proposes the realisation of rural economies through the agricultural sector and, in certain instances, through the mining, tourism, green economy, agro-processing, and fisheries industries.¹⁰⁶

The policy framework is not without its flaws the most glaring of which is the lack of coherence. It is important that the government, and other relevant stakeholders, develop strategic plans, implementation policies and intervention programmes in a cohesive manner.¹⁰⁷ The NDP and the MTSF address the envisioned future of South Africa by 2030. If one is to consider to the practical steps outlined to ensure an inclusive economy,¹⁰⁸ the overarching strategic policies – including the MTSF, which proclaims its goal of hastening the implementations of the NDP – fall short. The NDP and MTSF 2019-2024 documents carry through the same vagueness in identifying and addressing problems facing the mining sector, particularly illegal mining. This is tantamount to a failure of policy development in determining crucial national security interests and threats associated with them.¹⁰⁹ Further, even though both strategic policies did not have to detail a situational analysis of the mining industry's problems,¹¹⁰ they failed to establish pertinent issues in the mining industry and how they should be addressed. Both documents lazily mention rural development and the mining industry as a possible form of intervention in inclusive growth but never articulate how or propose innovative interventions by the industry.

¹⁰² These include the Free State, Mpumalanga, Gauteng, North West, Limpopo, and the Northern Cape.

¹⁰³ The *Medium-Term Strategic Framework 2019-2024* op cit note 55 at 219.

¹⁰⁴ *Ibid* at 146.

¹⁰⁵ *Ibid*.

¹⁰⁶ *Ibid*.

¹⁰⁷ The *Medium-Term Strategic Framework 2019-2024* op cit note 55 at 14.

¹⁰⁸ Perkins op cit note 22 at 1.

¹⁰⁹ See David Law (ed) 'Security sector governance and reform: National Security Policy' (2005) DCAF *Backgrounder* at 1, available at [https://issat.dcaf.ch/download/17202/201862/bg_national-security%20\(1\).pdf](https://issat.dcaf.ch/download/17202/201862/bg_national-security%20(1).pdf), accessed on 16 February 2021. See also The *Medium-Term Strategic Framework 2019-2024* op cit note 55 at 14.

¹¹⁰ It must be noted that it is the duty for DMRE and the industry to develop their own policies to align themselves with government's broad strategic programme for inclusive economic growth.

4.3 The Impact of Rampant Illegal Mining Activities on Strategic Planning

According to the DMRE, in 2018, South Africa accumulated R45 billion in mining investments, which created 4000 jobs.¹¹¹ Between 2018 and 2020, planned mining projects had an estimated R110 billion in investment value and 32 000 employment opportunities which, according to the DMRE, 'attest to the fact that South Africa is still considered an attractive destination for mining investment'.¹¹² However, the DMRE acknowledges that illegal mining activities 'continue to be challenges, depriving South Africans of their benefits and impacting negatively on the growth of the country'.¹¹³ To combat illicit economies in the mining industry, the Department continues to work with law enforcement agencies and other stakeholders.¹¹⁴ In addition, the DMRE's Strategic Plan for 2020 to 2025 states that the Department will place emphasis on the revitalisation of old mining towns and labour-sending areas.¹¹⁵

The DMRE's Strategic Plan document recognises the impact of rising unemployment upon the growth in illegal mining activities.¹¹⁶ The document indicates that the legislative framework will be reworked to prevent illegal mining.¹¹⁷ According to the DMRE, the scourge of illegal mining will be eradicated by instituting a preventative legislative framework supporting artisanal miners and encouraging small-scale mining.¹¹⁸ Furthermore, the 2020-2025 Strategic Plan proposes that mines 'under care maintenance' should 'not be decommissioned without investigating their viability more extensively' as this will encourage optimal utilisation of South Africa's mineral resources.¹¹⁹ It also incorporates proposals from the MTSF¹²⁰ by acknowledging that non-petroleum amendments in the MPRDA are needed.¹²¹

South Africa is currently experiencing negative economic growth with increasing unemployment levels accompanied by growing poverty and inequality.¹²² Perkins states that it is therefore not surprising that illegal ASM activities have increased 'as more and more South Africans, and probably many undocumented immigrants, have turned to the ASM sector as a source of livelihood'.¹²³ Though it is not clear if the ASM sector does, in fact, provide livelihoods for those who participate in it, it is 'intuitive that

¹¹¹ The *Strategic Plan 2020-2025* op cit note 55 at 10.

¹¹² Ibid.

¹¹³ Ibid at 11.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid at 71.

¹¹⁷ Ibid at 75.

¹¹⁸ Ibid at 111.

¹¹⁹ Ibid at 76.

¹²⁰ These include policy certainty, encouraging investment, small-scale mining, and increased beneficiation.

¹²¹ The *Strategic Plan 2020-2025* op cit note 55 at 115.

¹²² Perkins op cit note 22 at 26. Also see The World Bank *Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities* (2018) at 7, 77 and 103.

¹²³ Ibid.

ASM is an important source of income for many, particularly those in rural areas where non-farm livelihood opportunities are few'.¹²⁴ The South African Human Rights Council (SAHRC) remarked that the negative environmental, social, and health impacts of unregulated ASM activities threatened the right to life and security of those directly impacted by the sector.¹²⁵ However, the SAHRC also criticised the lack of policy for regulating ASM as a missed opportunity to, amongst other things, address organised crime and tax evasion.¹²⁶

The proliferation of illegal mining activities in countries like South Africa impacts the government's ability to attract investments for new operations, possibly in fear of threats to the investor's future operations.¹²⁷ After all, research indicates that '[t]he zama zamas pose severe risks to legitimate mine employees, safety protocols, shaft infrastructure and stability, equipment, and ultimately the business.'¹²⁸ Illegal mining activities thus directly jeopardise the NDP's strategic goals, the implementation interventions outlined in the MTSF and the DMRE's 2020-2025 Strategic Plan for the industry, effectively threatening the government's economic and social national security interests.¹²⁹

Calls to legalise the ASM sector continue amidst hesitation from policymakers. Some stakeholder discussions highlight the risk of legitimising criminal activities by legislating artisanal mining, which, unfortunately, significantly stunts policy development for the mining sector and the economic development of marginal communities.¹³⁰ The Minerals Council of South Africa has thus resorted to arguing for a distinction between "criminal networks" operating in ASM and those operations that are based in communities, understood as informal mining.¹³¹ In this way, illegal mining can be stemmed out without destroying the ASM sector. Unfortunately, according to Netshitenzhe, policymakers and the government have simply relied on indiscriminate law enforcement measures to address illegal mining, thus overlooking underlying issues and the severity of the problem.¹³² It is crucial to assert that a long-term vision for South Africa's mining industry must address drivers of illegal mining 'from the macrosocial to the detailed operational issues.'¹³³

¹²⁴ Ibid.

¹²⁵ South African Human Rights Commission op cit note 32 at 28.

¹²⁶ Ibid.

¹²⁷ See Gavin Hilson et al 'Artisanal and small-scale mining (ASM) in sub-Saharan Africa: Re-conceptualizing formalization and 'illegal' activity' (2017)83 *Geoforum* at 83.

¹²⁸ *South African Yearbook* op cit note 1 at 6.

¹²⁹ Peter Daniels 'National Security Strategy Development: South Africa Case Study' (2019) *Africa Center for Strategic Studies Working Paper* (Preliminary Draft) at 5 available at <https://africacenter.org/wp-content/uploads/2019/04/2019-04-NSSD-Case-Study-South-Africa-Defense-Policy-Review.pdf>, accessed on 16 February 2021.

¹³⁰ Tite and Chelin op cit note 40.

¹³¹ Kassa op cit note 21 at 181. See also South African Human Rights Commission op cit note 32 at 59.

¹³² Netshitenzhe op cit note 18 at 57.

¹³³ Ibid.

5. The Draft Artisanal and Small-Scale Mining Policy 2021

In 2007, the DMRE announced to Parliament that it had a strategy to promote small-scale mining, even though no policy was in place.¹³⁴ Even then, there were already concerns in the policymaking space that the future role of the ASM sector, as envisioned by DMRE,¹³⁵ was not understood the same by all the key stakeholders facilitating the development of the ASM sector and the mining industry overall.¹³⁶ In May 2021, the DMRE published its Draft Policy for regulating the ASM Sector ('Draft Policy' or 'Draft ASM Policy') for public comment.¹³⁷ The introduction of this policy stands to align South Africa's mining industry policy framework to continental and regional policy strategies and also South Africa's policy proposals for inclusive economic development.¹³⁸ More importantly, this ASM policy will address a prominent component of the issues that plague South Africa's mining industry – illegal mining activities. Its overall grounding is unique in how it makes an essential distinction between people genuinely seeking means to sustain their livelihoods through engaging in ASM and illegal mining which exploits the legal framework.¹³⁹

The Draft ASM Policy acknowledged that the government has recognised, since 1994, the need for the ASM sector in South Africa to encourage the participation of Historically Disadvantaged Persons (HDPs).¹⁴⁰ It points out that the development of the 1998 White Paper on Minerals and Mining Policy was an 'intervention' developed by the government to address challenges related to the ASM sector.¹⁴¹ Proposals made in the White Paper were later integrated into the MPRDA under section 27.¹⁴² However, this policy provision did not translate well in practice.¹⁴³ The new Draft Policy reflects that '[t]he industry remains largely informal, despite an increase in the number of section 27 mining permits that have been issued by the Department'.¹⁴⁴ This shortcoming is due to policymakers not distinguishing between artisanal miners from small-scale miners.¹⁴⁵ Furthermore, the Draft Policy observes that the requirements for environmental management and financial provisions for small-scale miners were the same as those of large-scale miners, whereas the two have very different operating models, and

¹³⁴ Parliamentary Monitoring Group (PMG) 'Illegal Mining: Hawks & Department of Mineral Resources briefing' available at <https://pmg.org.za/committee-meeting/24894/>, accessed on 30 September 2020.

¹³⁵ The DMRE envisions it in terms of contributing to poverty elevation and encouraging an inclusive economy.

¹³⁶ Hoadley and Limpitlaw op cit note 42 at 8.

¹³⁷ Draft Artisanal and Small-scale Mining Policy 2021 for Public Comment (GN 258 in GG 44583 of 5 May 2021).

¹³⁸ These encompass the AMV, SADC Protocol, RDP, and 1998 White Paper.

¹³⁹ Chapter VIII of the Draft Artisanal and Small-scale Mining Policy 2021 at 28.

¹⁴⁰ Chapter I (1) *ibid* at 4.

¹⁴¹ *Ibid*.

¹⁴² Section 27 legislates the application for issuing and duration of mining permits.

¹⁴³ Chapter I (1) of the Draft Artisanal and Small-scale Mining Policy 2021 at 4.

¹⁴⁴ *Ibid*.

¹⁴⁵ *Ibid*.

artisanal miners could likely never meet such compliance requirements.¹⁴⁶ According to DMRE, this proposed ASM policy will remedy problems that stakeholders have brought up over the years so that the employment benefits, socio-economic impact and contributions to the GDP of ASM may finally be realised.¹⁴⁷

The DMRE further admits that appeals to legislate and formalise the ASM sector have intensified over the years.¹⁴⁸ Stakeholders have come to understand the potential of the ASM sector, especially regarding improving livelihoods in rural communities.¹⁴⁹ Moreover, formalising the ASM sector would align South Africa's regulatory framework with regional and international mining jurisdictions.¹⁵⁰

Regarding illegal mining, the Draft ASM Policy states that these activities pose a critical challenge for the mining industry.¹⁵¹ The policy estimates that the gold sector loses revenue of over R70 billion a year due to commodity smuggling.¹⁵² Furthermore, communities are 'directly affected by the scourge of illegal mining activities in terms of environmental degradation, health risks, and gang violence emanating from rival illegal miners.'¹⁵³ The Draft Policy also acknowledges the growth of illegal mining activities. The policy outlines the negative social and financial impacts of illegal mining activities on the mining industry, the mining companies and their employees, and the country's overall loss of revenue and investment opportunities.¹⁵⁴ In essence, the policy offers, the extent of these activities risk the sustainability of the mining industry and the future developmental goals of South Africa.¹⁵⁵

The gravity of the issues listed in the Draft Policy speaks to the significant impact of illegal mining activities on South Africa's national interests. Hence, the proposed ASM policy aims to formalise the ASM sector, which will optimise the exploitation of South Africa's mineral resources while contributing to the economy, encouraging inclusive economic participation of rural communities, and eliminating illegal ASM operations.¹⁵⁶

Lastly, the draft ASM policy makes five key policy proposals. It proposes a legal framework that distinguishes illegal mining from ASM, strengthening laws criminalising illegal mining, capacitating the

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid at 5.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² This is also spreading to chrome, coal, and diamond mining. See Chapter VIII of the Draft Artisanal and Small-scale Mining Policy 2021 at 28.

¹⁵³ Chapter VIII of the Draft Artisanal and Small-scale Mining Policy 2021 at 28.

¹⁵⁴ Chapter I (1) *ibid* at 5.

¹⁵⁵ Ibid.

¹⁵⁶ Chapter II (5) of the Draft Artisanal and Small-scale Mining Policy 2021 at 9.

South African Police Service (SAPS)¹⁵⁷ and the prosecuting authority to detect and prosecute illegal mining.¹⁵⁸ Importantly, SAPS is also concurrently amending its legislation, and DMRE expressed that they would be making inputs to integrate and align the government's approach to illegal mining activities.¹⁵⁹

6. Conclusion

The above chapter examined the crucial role of the mining industry in South Africa. Historically, this industry has established South Africa as one of the most industrialised economies in the African continent. However, the industry has also been a source of exploitation and uneven benefit to African communities endowed with finite mineral resources. Consequently, African governments had to reconsider the future of their extractive industries to ensure maximum utilisation and benefit, which led to the development of the AMV. The AMV emphasised the importance of ASM to optimise the exploitation of all finite mineral resources and local entrants in the 'minerals complex'.¹⁶⁰ These were policy sentiments that the South African government has shared since 1994 through the RDP, the White Paper on Minerals and Mining Policy for South Africa, the MPRDA, and the 2021 Draft Artisanal and Small-Scale Mining Policy.

This dissertation posits that the lack of a policy framework to secure South Africa's mineral resources from illegal mining activities jeopardises the country's strategic policy planning, as expressed in the NDP. Thus, the lack of a policy framework poses a threat to the country's national security interests. In addition, it has been emphasised in this chapter that the mining industry is an important component to eliminating poverty and reducing inequality, thus creating an inclusive economy. The NDP and the accompanying implementation plans, the MTSF and the DMRE's strategic plan emphasise the importance of the mining industry in South Africa's economic development planning. The mining industry is the labour-absorbing industry South Africa needs to achieve the employment objectives the NDP has targeted.

The above discussion highlights that after the 1998 White Paper, the government ignored a significant component of the mining industry's extractive parties – the ASM sector. This policy shortcoming has arguably fuelled illegal mining activities in South Africa, as the country's mining industry has been in distress for over a decade – shedding jobs, struggling with high production costs, and struggling to attract investors. Unfortunately, the NDP, the MTSF and the DMRE's Strategic Plan vaguely describe

¹⁵⁷ By establishing a Minerals and Precious Metals Theft Unit (MPMTU) within SAPS (see Chap VIII (11) of GN 258 in GG 44583 of 5 May 2021)

¹⁵⁸ Chapter VIII (11) of GN 258 in GG 44583 of 5 May 2021 at 29.

¹⁵⁹ *Ibid* at 29.

¹⁶⁰ Macfarlane *op cit* note 83 at 900. See also Hilson *op cit* note 26 at 418.

this reality. Furthermore, even though the NDP speaks to the need for inclusive economic development and developing rural economies and local entrepreneurship, the document and accompanying implementation policies largely overlook tangible means to transform and repurpose the mining industry for the future. Thus, if the principles of deliberate planning and succinct stewardship were applied, the government's planning policies fell short. Nonetheless, if properly guided, the proposed Draft ASM Policy could remedy this predicament.

Chapter 5: Conclusion and Recommendations

1. Introduction

The Department of Mineral Resources and Energy (DMRE) administers the State's custodianship role of all mineral resources in South Africa on behalf of the people of South Africa.¹ The DMRE derives and enforces its duties through the primary legislation governing South Africa's mining industry, the Mineral and Petroleum Resources Development Act² (MPRDA). According to the MPRDA, no person may engage in any mining-related activities without the prescribed permits or rights granted by the State through the Minister of Mineral Resources and Energy.³ Engaging in any mining activities without the required permit or right constitutes criminal law offences prosecutable by the State.⁴ The DMRE is also mandated to promote 'transformation, growth and development as well as [ensuring] that all South Africans derive sustainable benefit from the country's mineral wealth.'⁵ The MPRDA further adds that the State must 'promote local and rural development and the social upliftment of communities affected by mining.'⁶ With the current environment of the mining industry discussed in the previous chapter and the above brief discussion on the regulation of South Africa's mining industry, three issues were important in this dissertation. These concerned regulating access to South Africa's mineral resources for the benefit of present and future generations; promoting local and rural development and social upliftment of mining communities; and the impact of illegal access to South Africa's mineral resources on the other two components.

The growth of illegal mining activities in South Africa is attributed to 'a difficult socio-economic climate and limited resources at the disposal of law enforcement agencies such as police, immigration, border controls and prosecuting authorities.'⁷ Current policing initiatives to conduct horseback patrolling and raiding known *Zama-zama* groups are 'punitive and sets the tone for battle.'⁸ Illegal miners, most of whom are undocumented foreign nationals, access abandoned shafts and travel as deep as four kilometres underground, where they live for days and weeks.⁹ These miners would rather stay underground than emerge and be arrested, humiliated, or possibly deported during police raids.¹⁰ Between 8 000 to 30 000 people in South Africa are directly and indirectly

¹ *South African Yearbook 2018/19: Mineral Resources* at 2.

² Mineral and Petroleum Resources Development Act 28 of 2002.

³ Section 5A of the MPRDA.

⁴ Hogan Lovells 'Dealing with illegal miners' available at <https://www.hoganlovells.com/en/publications/dealing-with-illegal-miners>, accessed on 19 October 2020 at 1; MPRDA s98.

⁵ *2018/19 Yearbook* op cit note 1 at 2.

⁶ Preamble to the MPRDA op cit note 2.

⁷ Minerals Council South Africa 'Illegal mining' available at <https://www.mineralscouncil.org.za/work/illegal-mining>, accessed on 30 September 2020.

⁸ Kgothatso Nhlengetwa and Kim A A Hein 'Zama-Zama mining in the Durban Deep/Roodepoort area of Johannesburg, South Africa: An invasive or alternative livelihood?' (2015)2 *The Extractive Industries and Society* at 3.

⁹ Minerals Council South Africa op cit note 7.

¹⁰ Nhlengetwa and Hein op cit note 8 at 3.

engaged in illegal mining activities. With the clandestine nature of these operations, the State is significantly challenged in formulating impactful responses to combat illegal mining.¹¹

According to security experts in the mining industry, the value of the mineral resources *in situ* makes them vulnerable to criminal activities, and they advise that there needs to be protective security protocols at all mining sites.¹² These security experts further add that gold reserves need security protocols that ensure the mineral's safety and protection 'given their immediate worth and life-changing value.'¹³ However, the proposed security protocols are only concerned with securing active mining operations from disruptions by illegal mining activities. As a result, security practices in the mining industry, particularly by the government, have failed to prevent and combat illegal mining activities at derelict and abandoned mines, with known economically viable mineral reserves.¹⁴ This research attributes the root cause of these illegal mining activities, at derelict and abandoned mines, to a policy oversight regarding securing South Africa's mineral resources from illegal access. This chapter will reaffirm the focus of this research, then summarise the findings of this dissertation and offer recommendations that can assist policy development and efficient deployment of resources to combat illegal mining activities in South Africa.

2. Research Focus and Context

This research aimed to examine if explicit legislative provisions providing for the security of South Africa's mineral resources, post-mine closures or abandonment, from illegal mining activities existed. This was to be examined through extant legislation, including the MPRDA, Critical Infrastructure Protection Act (CIP Act), Immigration Act, Defence Act, and the National Strategic Intelligence Act (NSI Act). Due to the prevalence of illegal mining activities, which became a public concern in the late 2000s, examination of these pieces of legislation provided and outlined a legislative framework that can underpin the security of South Africa's mineral resources from illegal access. The basis of this framework was informed by researchers and consultations initiated by the government within the mining industry, which indicated that illegal mining activities had prospered

¹¹ David Perkins *Artisanal and small-scale mining: mapping the South Africa ecosystem* (2019) at xi.

¹² SSG Holdings 'The Importance of Security Services in the Mining Industry' available at <https://ssgsa.co.za/the-importance-of-security-services-in-the-mining-industry/>, accessed on 30 September 2020.

¹³ 'Gold does not need to be extracted, broken down and processed before they're turned into a commodity we buy and sell'. See 'Security in mining, how protected are resources?' *mining.com* 20 June 2016 available at <https://www.mining.com/web/security-in-mining-how-protected-are-resources/>, accessed on 30 September 2020.

¹⁴ P F Ledwaba 'The status of artisanal and small-scale mining sector in South Africa: tracking progress' (2017) 117 *The Journal of the Southern African Institute of Mining and Metallurgy* at 34.

over the years due to critical failures of law enforcement agencies¹⁵ to combat this transnational organised crime.¹⁶

Through doctrinal research, using primary and secondary sources,¹⁷ this dissertation sought to establish if extant law provided for a strict mandate to secure South Africa's mineral resources from illegal mining activities. Secondly, this research further sought to articulate risks posed by illegal mining activities to South Africa's national interests and assess this impact on national security. Thirdly, understand the role of the DMRE in the architecture of South Africa's national security policy and strategy. Lastly, this research sought to study whether the DMRE had provided any strategic insight into the mining industry and security policies to support development policy strategies – like the National Development Plan (NDP).

Through these questions, this research established that the prevalence of illegal mining activities was indicative of the government's failure to regulate access to South Africa's mineral resources for the benefit of present and future generations. It further established that strategic government development policies had had not provided adequately for the development of local mining communities. The failures identified above, this paper strictly attributes them to flaws in the current mineral resources security legislative framework and a lack of cooperation amongst government stakeholders to advise policymakers on emerging policy needs.

3. Findings of the Dissertations

Chapter Two provided an analysis of current legislation examining how the State regulated access to South Africa's mineral resources to protect known mineral reserves from illegal mining activities. This discussion established that, although a workable legislative framework was in place, it had failed to adapt to emerging issues, particularly illegal mining activities in abandoned and closed mining areas. The legislation discussed in this chapter found that there was some understanding by policymakers for the need to secure South Africa's mineral resources from illegal access, as they lie on the surface or subsurface of the earth. This is expressed in the MPRDA's requirement for efforts to secure and maintain the confidentiality of operational reports and results at the different stages of the mining life cycle.¹⁸ However, the MPRDA merely created an implicit duty on the right or permit holder and the landowner or lawful occupier to provide for the physical security of a mining area or an area where there will potentially be mining activities.

¹⁵ Such as the South Africa Police Services (SAPS), the South African National Defence Force (SANDF), the Department of Home Affairs (DHA), and the National Intelligence Structures.

¹⁶ Minerals Council South Africa 'Illegal mining' available at <https://www.mineralscouncil.org.za/work/illegal-mining>, accessed on 30 September 2020. South African Human Rights Commission (SAHRC) Report of the SAHRC Investigative Hearing: Issues and Challenges in relation to Unregulated Artisanal Underground and Surface Mining Activities in South Africa (2015).

¹⁷ Particularly current affairs articles, and inputs and reports from operators in the industry.

¹⁸ Section 21(1)(a) of the MPRDA.

This analysis of the statutory framework also established that government institutions¹⁹ that are implicitly mandated to secure South Africa's mineral resources from illegal mining activities already existed. Legislation governing these government stakeholders emphasises cooperation amongst them to effectively advise the State on emerging risks and threats and address them.²⁰ However, the silence of the MPRDA regarding the physical security of South Africa's confirmed mineral reserves in abandoned and closed mining areas is a significant policy oversight. This policy gap has led to the reliance on punitive measures by the State, such as arrests of illegal miners, to address illegal mining activities. The government entities identified in this chapter, for example, the South African Police Service (SAPS) in administering the CIP Act, lack clear authority to combat illegal mining activities as mandated by respective legislative due to the silence of the MPRDA on the need to provide physical security of mineral reserves.

Chapter Three argued that the security of South Africa's mineral resources is in South Africa's national interests due to the important future developmental role of the country's mining industry. This paper also expressed that illegal mining activities are national security threats. They directly impede South Africa's national interests as expressed in the MPRDA statutory objectives and impact government strategic planning outlined in the NDP. This research paper pointed out that illegal mining activities in South Africa presented sophisticated levels of criminality that threatened domestic stability, economic strategies, territorial integrity and undermined the authority of the State.²¹ South Africa's national security policy is premised on pursuing political and social stability, economic development, and fulfilling the needs of the South African people individually and as a nation.²²

Hence, the discussion in this chapter proposed that the security sector should develop policy and strategies to combat illegal mining activities with inputs and consultation with the DMRE as a vital stakeholder. Furthermore, addressing the security of South Africa's mineral resources from illegal mining activities within the security sector can resolve the adaptability issues of legislation and the legislative drafting process. By their nature, national security policies and strategies are designed and meant to adapt to and respond to emerging threats as they evolve. The National Security Policy and Strategy drafting evoke a vigorous consultative process that puts into perspective and prioritises the country's short-term and long-term needs. Such high-level policy coordination to inform and maximise the allocation of available resources to combat illegal mining so that the mining industry can achieve the country's development strategy objectives as expressed in the NDP is needed.

¹⁹ Such as South African Police Service (SAPS), Department of Home Affairs (DHA), South African National Defence Force (SANDF) and intelligence structures.

²⁰ See Chapter 2: 2.2 to 2.6.

²¹ Parliamentary Monitoring Group 'Illegal Mining: Hawks & Department of Mineral Resources briefing' PMG 25 August 2017, available at <https://pmg.org.za/committee-meeting/24894/>, accessed on 30 September 2020.

²² White Paper on National Defence for the Republic of South Africa, 1996. Section 198 of the Constitution of the Republic of South Africa, 1996.

Chapter Four discussed the current environment of South Africa's mining industry, which is compounded by declining productivity, economic difficulties, and job losses. Research in the industry identified that these factors had significantly contributed to the growth of illegal mining activities over the years. The rise of illegal mining in South Africa has inextricably impacted government strategic planning, thus posing a national security threat. This chapter examined South Africa's planning and implementation strategies towards achieving the inclusive economic development objectives set out in the NDP and the longer-term future of South Africa's mining industry. Furthermore, this chapter exposed that the legislative and national security policy gaps and failures in securing South Africa's mineral resources from illegal mining activities have impacted the future strategic role of the mining industry. This discussion of the strategic role of South Africa's mining industry in achieving the country's expressed developmental goals in the NDP focused on the role of the artisanal and small-scale mining (ASM) sector, which has been an expressed inclusive policy development objective since 1994.

This chapter identified that ASM is an important component of the 'minerals complex' as it optimises the exploitation of all finite mineral resources and encourages local entrants.²³ Thus fulfilling the legislative mandate for the prolonged benefit of present and future South African generations from mineral resources and promoting local development and social upliftment of mining communities. This chapter also acknowledged the significant publication of the 2021 Draft Artisanal and Small-Scale Mining Policy. It proposed that if this draft ASM policy was to be guided appropriately, it could address pertinent socio-economic drivers of illegal mining activities. Furthermore, the ASM draft policy offers an opportunity to align, through national legislation, the government's approach to illegal mining and how to combat these activities.

4. Recommendations

Considering the arguments and findings of this dissertation, two approaches are recommended for addressing illegal mining activities as they manifest in derelict and ownerless mines that have known viable mineral reserves. These recommendations are derived from the research argument posed, which stated that if illegal mining activities continue to thrive, their success should be attributed to flaws in the current mineral resources' security legislative framework or a lack of cooperation amongst stakeholders.²⁴ Thus, the following recommendations propose that illegal mining activities be combated by developing explicit legislative provisions in DMRE legislation. Alternatively, it is recommended that the State should address illegal mining activities

²³ A S Macfarlane 'Presidential Address: Towards the future: African Mining Vision, Mining Phakisa and the SAIMM' (2018) 118 *The Journal of the Southern African Institute of Mining and Metallurgy* at 899-900. Gavin Hilson 'The African Mining Vision: a manifesto for more inclusive extractive industry-led development?' (2020) 41 *Canadian Journal of Development Studies* 3 at 418.

²⁴ Adedoyin Akinsulore, Alexander Ekemenah and Ogechukwu Akinsulore 'The implications of illegal mining for Nigeria's national security' (2018) 1 *Benson Idahosa University Journal of Private and Property Law* 1 at 144.

through the security sector policies and strategies to ensure effective and coordinated implementation of State countermeasures.

4.1 Insertion of Provision for the Physical Security of Mines in National Legislation

Through the Minister of Mineral Resources and Energy, the State must regulate access to South Africa's mineral resources.²⁵ The immediate financial value of some mineral resources in South Africa necessitates physical security measures to deter and prevent unauthorised access.²⁶ National legislation, therefore, needs to provide for the allocation of mandatory capacity that would offer onsite security personnel for the abandoned and ownerless mines that are under the custody of the State. For example, diamond and gold mines in some African jurisdictions and Australia 'have fully armed and trained combat specialists present to deter and cater to potential threats' to the countries' mineral reserves.²⁷ Therefore, South African policymakers need to examine and consider legislating the requirement for onsite security as a tested deterrence and security measure against the unlawful pillaging of natural resources in other jurisdictions. Furthermore, considering that the presence of security personnel will serve as a deterrent, the development of this policy will rid the State of the deadly confrontational atmosphere that exists with current measures between law enforcement and private security personnel against illegal miners. Although this is fully the responsibility of the State, as custodians of South Africa's mineral resources, cooperation and shared responsibility amongst all stakeholders will enhance the industry's capacity to yield better results.²⁸

4.2 Development of the ASM Policy Published in May 2021

As evidenced in countries like Ghana, regulating ASM is a difficult task.²⁹ Therefore, it is recommended that to assist policy development, the government must engage extensively with academic institutions that have studied the ASM sector and reinvigorate the Mining Lab.³⁰ The Mining Lab platform, with demonstrated profound understanding of the current climate of South Africa's mining industry, is an important policy development and implementation tool for the government's strategic goals and policies. South African policymakers erroneously

²⁵ MPRDA S3.

²⁶ 'Security in mining, how protected are resources?' op cit note 13.

²⁷ Ibid.

²⁸ See section 2(g) of the CIP Act on how to approach the security of critical infrastructure.

²⁹ Hibist Kassa 'Formalising artisanal and small-scale mining: Problems, contradictions and possibilities' in Salimah Valiani (ed) *The Future of Mining in South Africa: Sunset or Sunrise?* (2018) at 182.

³⁰ See 4.4.2 for a discussion of the role of Operation Phakisa and the educational inputs of the Mining Lab, the initiative established, regarding the challenges facing the mining industry and possible solutions that can be implemented.

continue to confuse artisanal mining and small-scale mining, addressing them as the same.³¹ The South African Human Rights Commission (SAHRC) pointed out that conflating artisanal and small-scale mining undermined legislative interventions and any interventions to address illegal mining activities.³² Academic inputs and inputs from operators in the mining industry would therefore assist with clarifying critical misconceptions about what artisanal mining is and how it can be effectively integrated into the mineral extractions complex.

4.3 Addressing Illegal Mining as a National Security Priority

Due to the involvement of global criminal syndicates and the transnational crime elements³³ associated with illegal mining activities, it is recommended that the sophisticated strategies of the security sector are better placed to address illegal mining activities as they currently manifest in South Africa. As security experts state, '[t]he collection, analysis, and dissemination of intelligence assists in preventing crimes and makes it easier to identify suspects and working towards a holistic approach in securing our mines across South Africa.'³⁴ Relying on the intelligence structures' tradecraft would make it easy to identify the most vulnerable mining areas, implement targeted responses to combat and prevent illegal mining activities, and identify organisers³⁵ of illegal miners.

Although the National Coordination and Strategic Management Team (NCSMT)³⁶ exists as a multi-stakeholder, coordinated, intelligence-driven structure, it does not address securing abandoned and old mines and safeguarding access to South Africa's mineral reserves. Instead, the focus of the NCSMT is to prevent disruption of business to current mining operations and the sabotage of mining equipment.³⁷ The current disruptive operations, such as raids of known *Zama-zamas* groups and arrests, by stakeholders in the mining industry merely address the manifestation of illegal mining and not underlying causes, including the absence of security strategies for South Africa's mineral reserves.

The security sector is still better placed to adapt to evolving operations of illegal mining syndicates and provide forewarning in instances where current mining operations would be affected. Former National Intelligence Agency (NIA) Director-General Gibson Njenje, while addressing the issue of security of mines, stated that

³¹ South African Human Rights Commission op cit note 16 at 60. Kassa op cit note 28 at 183. Draft Artisanal and Small-scale Mining Policy 2021 for Public Comment (GN 258 in GG 44583 of 5 May 2021).

³² Ibid Kassa at 183.

³³ See Chapter 3: 3.5.1 – 3.5.2.

³⁴ SSG Holdings op cit note 12.

³⁵ See discussion of the '5 tiers' of illegal mining operations in Chapter 3 at 3.5.2.

³⁶ Which is chaired by the National Intelligence Co-ordinating Committee (NICOC), a coordinating body of strategic intelligence from different intelligence structures including the State Security Agency (SSA), SAPS Crime intelligence and Defence Intelligence. See National Strategic Intelligence Act 39 of 1994 Section 4 and the General Intelligence Amendment Act 11 of 2013.

³⁷ Minerals Council South Africa 'Illegal mining' available at <https://www.mineralscouncil.org.za/work/illegal-mining>, accessed on 30 September 2020.

'intelligence solutions provide foresight, early warning and assist in predicting behaviour beforehand.'³⁸ Furthermore, the security sector is better informed to allocate government resources to provide capacity where it is needed the most, thus advancing efficiency.

Through these recommendations, the security sector can bring immediate recourse in addressing illegal mining activities at the lowest two tiers of the illegal mining syndicates and bring about stability in South Africa's mining industry. In the longer term, the government must develop national legislation that explicitly provides for the physical security of known viable mineral reserves and establish appropriate security measures for closed and abandoned mines. Furthermore, a well-constructed ASM policy will maximise the benefit of South Africans from the country's mineral resources wealth and uplift rural communities as envisioned in the MPRDA. This ASM policy stands to encourage inclusive growth as expressed in the NDP and reposition the trajectory of South Africa's mining industry as envisioned by the African Mining Vision (AMV). These recommendations in no way fully address the issues raised and criticised in this short dissertation but merely aim to introduce the potential for further studies on how to ensure the security of South Africa's known mineral reserves in mining areas under the custodianship of the State.

³⁸ Martin Creamer 'New intelligence firm has wherewithal to probe illegal mining scourge – Njenje' available at <https://www.miningweekly.com/article/new-intelligence-firm-has-wherewithal-to-probe-illegal-mining-scourge-njenje-2014-03-06> accessed on 15 October 2020.

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