

Submissions on the Mineral and Petroleum Resources Development Bill B15D – 2013

Introduction

1. The Mining and Environmental Justice Community Network of South Africa (“MEJCON-SA”) is a network of communities, community based organisations and community members whose environmental and human rights are affected, directly or indirectly, by mining and mining-related activities.
2. MEJCON-SA’s objectives are to:
 - a. Promote and defend the environmental and human rights of communities both directly and indirectly affected by mining; and to ensure the sustainable use of mineral resources;
 - b. Train, develop and capacitate community members;
 - c. Access information including information about mining, law, rights, processes and impacts and to share and distribute that information amongst affected communities;
 - d. Support and assist community champions, community organisations and the members of both directly and indirectly affected communities; and
 - e. Engage all relevant roleplayers including government at local, provincial and national level, industry, civil society organisations, non-governmental organisations, traditional authorities and the institutions created in terms of chapter 9 of the Constitution of the Republic of South Africa, 108 of 1996.
3. In recent times the narrative that mining is done in the national interest has been pushed to suppress and undermine the rights of communities living near mining operations. The gist of this narrative is that one community should not be allowed to determine when and how mining occurs in their communities because mining is meant to benefit South Africa as a whole and not just one community. We hereby make these submissions to disrupt this narrative. Communities living near mining operations bear the brunt of the environmental and socio-economic impacts. Mining can pollute the air, water and soil and it is communities living near mining operations that have their health compromised, lose their livelihoods and enjoyment of the right to an environment that is not harmful to health or wellbeing as guaranteed by the Constitution. We make these submission so that the MPRDA can be amended in a way that enables communities living near



mining operations can be able to defend and protect their rights to a healthy environment, to culture and to benefit from their own land. In this regard we submit the following points:

Free, Prior and Informed Consent

4. The MPRDA does not make provision for free, prior and informed consent (FPIC). In terms of the MPRDA, mining companies are merely required to consult with host communities when they lodge applications for rights in terms of the Act. In our experience, consultation processes are no more than box-ticking exercises for the mining companies and that any substantive issues raised by communities do not have any bearing on the ultimate development programmes implemented by mining companies and overseen by government. We therefore submit that the Bill cannot effectively promote equality if the FPIC of host communities are not required for mining.
5. Under colonialism and apartheid, the vast majority of South Africans could not be owners of land. Although historically disadvantaged South Africans (HDSAs) are now entitled to own land, they do not automatically own the minerals attached to the land in terms of the MPRDA. Mining companies that apply for mining and prospecting rights in respect of land owned and legally occupied by HDSAs are merely required to consult with HDSA owners and occupiers. This has effectively meant that HDSAs have no real bargaining power with mining companies over the conditions of mining on their land. In the past, when only white South Africans were entitled to own land, ownership of land included ownership of all mineral resources on such land. Land owners therefore had a privileged bargaining position to negotiate benefits such as rental, royalties and shareholding with mining companies applying for rights in respect of such land. As HDSAs could not own land, they never enjoyed the privilege of such a strong bargaining position vis-à-vis mining companies.
6. In order to be able to transform the mining industry and promote equality. We submit that the MPRDA must amended to include FPIC if any serious progress is to be made towards redressing past discrimination and power imbalances and to promote equality in the mining sector. We therefore suggest that the MPRDA is amended to include reference to FPIC in relation to engagement by mining companies with HDSAs.

Previously disadvantaged communities and women

7. The Bill in its current form seeks to amend Section 2(d) of the Act by removing the phrase "*including women and communities*" from the objective that states: substantially and meaningfully expand opportunities for



historically disadvantaged [**persons, including women and communities**] South Africans, to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources;

8. It is unclear why the Bill seeks to remove the emphasis on women and communities in this provision as both of these groups remain vulnerable to the impacts of mining but still receive little benefit from the extraction of mineral resources.
9. The conditions of women and communities have, if anything, deteriorated in the years since the Amendment Act was published. Mining companies have been known to enter into private deals with traditional authorities, not only denying communities their rights to be consulted and compensated, but ignoring customary law and creating devastating social rifts in rural communities. A number of mining companies have been found to be operating illegally, without water use licences and in non-compliance with their social and labour plans. Large mining companies increasingly are selling old mines to smaller, less well-resourced mining companies that have, in a number of instances, gone into liquidation leaving workers and communities with no recourse. The legacy of acid mine drainage and other environmental impacts of mining are felt most keenly by the most marginalised communities who rely directly on natural resources to survive. Communities living next to mining suffer ill health effects and lose access to agricultural land and sites of customary significance. These communities, however, do not enjoy or share in the wealth generated by the mining.
10. Women remain inadequately represented amongst the ranks of owners and senior managers in the mining sector. Jobs and skills development associated with mining are predominantly available to men. Women employees, who do work in the mines, report being harassed and abused and little is done to secure their safety. Women in rural communities – who depend on food gardens and take water directly from rivers and streams – risk exposing themselves and their children to the pollution and waste that mining produces. Mining industrialises rural landscapes, and women are at the greatest risk from the impact of mining activities on the environment. It is presumably for these reasons that the Act originally identified the need to create opportunities for women in particular as an objective. Given that the circumstances of women, particularly rural women, have not improved since 2002, the removal of the words “including women” proposed in the Bill is inexplicable.
11. It is submitted that the objectives of the Act should still emphasise the need to secure opportunities and benefits for those whose lives are most radically affected by mining, namely women and communities. It is



accordingly submitted that the words “women” and “communities” must remain in the Act.

Documents and notices

12. Under the current Act, notices to communities, I&APs and landowners are often given in highly technical language, in writing and (more often than not) in English. The notification that a mining licence has been granted that the Regional Manager is obligated to give I&APs in terms of Section 10(1)(a) of the Act; the notification that an applicant for a prospecting right must give to the land owners in terms of Section 16(4)(b) of the Act; and the peremptory notification that an applicant for a mining right must give I&APs in terms of Section 22(4)(b) of the Act are examples of such notices.
13. If communities are to be properly engaged in public participation and consultation, documents and notices will have to be more accessible. MEJCON-SA proposes that the Bill be supplemented with a clause that prescribes that documents and notices are translated into the primary language spoken in the community that is affected by mining and in language that is easily understood by a lay reader. The risks associated with the proposed mining activity, and in particular the effect that mining may have on the immediate environmental and social well-being of a community, must, at the very least, be set out in clear, precise and accessible language (and not be hidden in tables or scientific jargon).
14. Once licences and authorisations have been awarded, copies of those documents must be made public and must be provided to affected communities. It is essential that communities have access to environmental authorisations, environmental management plans and prospecting or mining licences, rights or permits. These documents must be provided to affected communities and I&APs, along with the record of decision, within 30 days of the decision being taken and, in addition, such documents must be made available to communities and other affected parties on request at any stage after the decision has been taken and without requiring a request in terms of PAIA.
15. The disclosure of environmental authorisation, licences, plans and permits to communities enables communities to know their rights and to assist the DMR in the monitoring of compliance with those authorisations. This is in the interests of both the DMR and the communities who are affected by mining.



Community benefits and benefit sharing

16. While the Act identifies the creation of opportunities and the sharing in the benefits of the nation's mineral wealth as its goals, its primary mechanisms for achieving this is through taxation, social and labour plans and beneficiation. Taxation and beneficiation produce few direct benefits for communities directly affected by mining activities.
17. Social and labour plans, when they are complied with, confer limited benefits on communities and do so in a problematic manner. Social and labour plans are not based on proper assessments of community needs or circumstances and, on the whole, are focused on the life of the mine rather than sustainable and long-term community upliftment and empowerment. These plans are designed around mining company profit projections and the amount companies are willing to invest in community upliftment. They do not reflect the impact of the mining on communities or the costs of mining for those communities.
18. It is accordingly submitted that where mining takes place on community owned or occupied land (which it is argued should only happen with the consent of the community), the community should be entitled to participate in the benefits of mining and the decisions taken in regard to the mining as shareholders. Community shareholding in companies engaging in mining on communally owned or occupied land should be a compulsory requirement for a company to be awarded a mining licence. The extent of such shareholding should be determined taking into account the nature and extent of the operations, and through negotiations between the community and the applicant.
19. Alternatively or in addition to the submission made above, the Bill should provide that a certain percentage of the royalties collected by the State from mines mining on land owned or occupied by a community is earmarked for the upliftment and benefit of the relevant affected community. The funds so obtained should be reinvested in the community by payment into a trust fund, which is administered by community representatives and has the object of benefiting the relevant affected community.

Land Claims and Mining Rights

20. The Bill fails to address the problematic interaction between the MPRDA and the Restitution of Land Rights Act, 22 of 1994 and it is submitted that this must be rectified. While a significant number of land claims remain unresolved, mining licences are issued without regard for the contested nature of the land ownership and



without adequately consulting all interested and affected communities and claimants.

21. It is accordingly submitted that land claims must be resolved, either through the processes set out in the Restitution of Land Rights Act or through agreement between all the parties and the applicants before any mining can commence.

Thank you.

