

Report of the Portfolio Committee on Mineral Resources and Energy on the Oversight visit to Jagersfontein, Free State Province, Dated 23 September 2022

1. INTRODUCTION

The Portfolio Committee on Mineral Resources and Energy (hereafter, “the Committee”) undertook an oversight visit on 16 September 2022 to the Free State Province, in Jagersfontein. The Jagersfontein town is located in Kopanong Local Municipality, within the District of Xhariep in the Free State province.

On 11 September 2022, a tailings dam in the Jagersfontein mining area in Free State burst, causing a mudslide and flooding in several areas in the town of Jagersfontein. Tailings are the waste products from mining – mining waste. Depending on the type of mining, tailings can be liquid, solid or a bit of both. Many substances found in tailings are lethal, others are radioactive. Tailings dams are constructed to contain and store tailings of mines.

The tailings dam burst occurred in an old mine, previously owned by De Beers and deproclaimed as a mine in 1972. Post 1972, what was left was the tailings which remained stored in the tailings dam. A number of transactions occurred on the tailings dumps. These transactions occurred outside the control of the Department of Mineral Resources and Energy (henceforth “the DMRE”). This is because in 2007, the former owners of the Jagersfontein Diamond Mine had taken the DMRE to court, arguing that the Mineral and Petroleum Resources Development Act (MPRDA) of 2002 did not empower the DMRE to regulate tailings.

The court ruled in favour of De Beers, as it held that tailings dumps were movables and thus ownership belonged to those who removed the minerals as they had occurred naturally in or on the earth. Furthermore, the MPRDA could not control tailings dumps created before the act came into effect. Moreover, according to the High Court of South Africa, when the mine was deproclaimed as a mine in 1972, De Beers had full knowledge of the fact that the tailings dumps contained diamondiferous material which could, when economic circumstances were conducive again, be the subject of further mining operations.

It is against this background that the Committee conducted an urgent visit to Jagersfontein. In as much as the fact that the Court had ruled that the tailings dam could not be regulated by the MPRDA, or the mine had been deproclaimed, the fact that the tragedy occurred in an old mine, and as a result of mining related activities, warranted the attention of Parliament through this Committee, amongst others.

This report provides a detailed synopsis of the Committees oversight visit.

2. COMPOSITION OF DELEGATION

2.1 Members of Parliament

| Name of Member | Political Party |
|-------------------|---------------------------------|
| Hon. S Luzipo | African National Congress (ANC) |
| Hon. MG Mahlaule | African National Congress (ANC) |
| Hon. H Bilankulu | African National Congress (ANC) |
| Hon. S Kula | African National Congress (ANC) |
| Hon. VT Malinga | African National Congress (ANC) |
| Hon. M Wolmarans | African National Congress (ANC) |
| Hon. T Langa | Economic Freedom Fighters (EFF) |
| Hon. Prof Msimang | Inkatha Freedom Party (IFP) |

2.2 Parliamentary Staff

| Name | Designation |
|--------------|---------------------|
| Ms. A Boss | Committee Secretary |
| Mr. S Maboda | Content Advisor |

| | |
|----------------|---------------------|
| Ms. V Makubalo | Committee Assistant |
| Ms. S Govender | Communications |

3. REPORT ON THE OVERSIGHT VISIT

During the oversight visit, the Committee was briefed by the Kopanong Local Municipality and the DMRE. The Committee also had engagements with the affected communities, including organised labour. A summary of the abovementioned briefing and engagements is discussed below.

3.1 Kopanong Local Municipality and the DMRE

The Xhariep District Mayor, Councillor Irene Mehlokhulu welcomed the delegation from Parliament.

The Mayor of Kopanong Local Municipality, Councillor, Xolani Tseletsele, informed the Committee about the devastating mudslide incident that occurred on 11 September 2022 in the town of Jagersfontein, as a result of a tailing dam infrastructure failure which had a devastating impact on the already vulnerable community.

The Mayor reminded the Committee about the tragedy, explaining that it happened on 11 September 2022 in the early hours of the morning, when the Jagersfontein Development Mine tailing dam wall infrastructure failed, resulting in a sludge flooding in the areas of Jagersfontein, a small town situated about 110km south of Bloemfontein in Free State Province. He stated that the town covers an area of 45 square kilometres and has a population of around 5 729. According to the Mayor, two Jagersfontein townships mainly affected by the tragedy and left destitute were the Ipopeng and Charleville townships. The impact of the incident is visible as one enters the Jagersfontein area.

The Mayor informed the Committee that the townships were full of mudslides as early as 6h20 in the morning. Emergency Medical Services (EMS) and the South African Police Service (SAPS) were called to the site. The community was alerted to evacuate the area. Unfortunately, some of the houses located at the first two streets of the townships were swept away. Sadly, it was reported that one (1) fatality was recorded and the body was recovered by the SAPS Search and Rescue Team on 12 September 2022. This body was confirmed to be of a 70-year-old man from Itumeleng location. There was one (1) person recorded missing, a 50-year-old lady, from Charlesville township.

In terms of household impact, the Mayor reported that fifteen (15) houses were fully demolished in Charlesville township. About 399 people were affected and the owners of the tailings dam arranged accommodation and food for the affected families as follows: Sandstone Estate (186), President Hotel (53), and those with relatives (160). The total number of learners relocated to Bloemfontein was seventy-seven (77).

Moreover, the Mayor reported that other forms of support had been provided to the victims, for instance, the office of the Premier provided Aid that included 200 food parcels, 200 dignity packs and blankets, the Mayor of Letsemeng Local Municipality provided 300 hygiene packages. Furthermore, various Non-Governmental Organisations (NGOs) were onsite to provide support. The Mayor indicated that the details on the NGOs providing donations still required verification.

The Jagersfontein Development, owner of the tailings dam, offered an amount of R20 million for immediate needs of the affected communities, excluding restoration of the area.

In terms of health impact, it was reported that seventy-four (74) people were admitted at Diamante hospital for observation and were discharged, two (2) were still admitted at Diamante, one pregnant lady and one male with a fracture. Five (5) were admitted at Albert Nzula, one (1) at Bloemfontein Pelonomi hospital, one (1) admitted at Medi Clinic, one (1) girl who fell that was taken to hospital and released again last night (15 September 2022), was again admitted by Dr Lion at National Hospital. The doctor wanted her to spend the night for observations as she had pains after she had been discharged.

In terms of infrastructure damage, the main Eskom substation was directly in the path of the mudslide, the substation was totally submerged in the sludge resulting in electricity failure in the affected area.

The Wastewater Treatment Works (WWTW) Sanitation plant was totally covered by sludge, as a result water was contaminated. The ablution was severely affected by the impact of the sludge blocking the sewer system, resulting in a backflow of human waste. The Jagersfontein water treatment plant electrical infrastructure was affected, however electricity was being restored. The R702 and R704 provincial roads were inundated and inaccessible.

The Mayor stated that this incident is a serious challenge for the municipality. He stated that the municipality was unable to manage the magnitude of the incident. To make things worse, there was not enough dedicated disaster management focal persons at District Level, no disaster management centre (cannot coordinate disasters), no fire services (search and rescue), no disaster management budget (unable to mitigate). He further stated that due to the magnitude of the incident and the ongoing assessment from the provincial sector departments, and aid agencies, the cost implication could not be determined.

During the discussions, the Mayor conceded that the disaster occurred as result of negligence, emphasising that it was man-made. Signals were there that the dam would burst at some point. He said the dam had always been leaking, something the employees of the company confirmed as well to the Committee. However, the company ignored the signals.

The Mayor alleged that the facility is run by a criminal syndicate, whose interest is on making profit at all cost. In agreement with the general observation by the Committee Members that the Jagersfontein town is barren, as though it was not a mining town, the Mayor stated that the company has no social responsibility plan in place. The only thing that is in place is the Community Trust, but the community trust is led by the same owners, thus the community is not really benefitting. The Trust funds the students from the areas to do hospitality courses in a college that is allegedly owned by the same company owners/directors. The Mayor concluded that the circulation of money is amongst the owners/directors of the company, not to the benefit of the community.

The Mayor also confirmed a query from the Committee regarding a Class Action that was initiated by unidentified people against the Jagersfontein Developments. The Mayor indicated that he was aware of this, however, he did not have sufficient information to divulge on this on that day.

3.2. The DMRE

The DMRE briefed the Committee, emphasising that, as a result of the 2007 Court judgement, the Department had no jurisdiction on the Jagersfontein Diamond Mine or the tailings dam "processing facility". De Beers, was the holder of the Old Order Prospecting Right, it had until April 2005 to convert the Old Order Right, in line with the MPRDA which came into effect in 2004. De Beers failed or declined to convert the Older Order Right. The Old Order Right lapsed in terms of the transitional requirements as espoused in the MPRDA. Consequently, Ataquia Mining applied for a prospecting right for the tailings dam, which was granted by the Department in 2006. Immediately, De Beers took the Department to the Court, arguing that the tailings belonged to them, and therefore the Department had no authority in granting the rights to Ataquia Mining. As explained earlier, the Court ruled in favour of De Beers, maintaining that the tailings dams are a property of De Beers, and that tailings were not regulated under the MPRDA. According to the Department, this implied that only the Department of Water and Sanitation had jurisdiction through the issuing of the water licence, as well as the Department of Labour and Employment which accounts for employee employer relations.

The Department agreed that, ideally, it should have appealed the above court judgement, however, noted that it is too late to appeal at this stage.

It is important to note that tailings dams were regulated under the Minerals Act No. 50 of 1991, thus one could argue that there was short sight when the MPRDA was being developed. The Department stated that, efforts had been made to amend the MPRDA to include the regulation of tailings. However, the process remained incomplete.

The Mineral Resources and Development Amendment Bill was passed by the National Assembly (NA) for transmission into the National Council of Provinces (NCOP) for concurrence on 12 March 2014. On 26 March 2014, the Bill was passed by the NCOP and sent to the President for assent. On 18 January 2015, the Bill was returned to Parliament by former President, Mr. Jacob Zuma for reconsideration.

On 01 November 2016, the Bill was passed by NA for transmission into the NCOP. Due to the end of the Fifth Parliamentary Administration Term, the Bill lapsed. Therefore, the regulation of tailings dams remains unaddressed.

3.3 Engagement with the Community and Organised Labour

Following the above briefings, the Committee met with the affected communities, the employees working for the Jagersfontein Development. Below is a synopsis of the discussions of the two engagements. The engagements were held at Mayibuye Hall, Jagersfontein. The Speaker of the Xhariep District Municipality, Mr. Jerry Moitse facilitated these engagements.

3.3.1 Community Engagement

Over 20 community members shared their lived experiences of the tragedy which had occurred on 11 September 2022. Communities expressed that the incident left them with psychological and emotional trauma. A young man explained how he lost his mother, watching her being swept away by the mudslide, as he was overpowered by the mudslide whilst trying to rescue her. The community members said that the shock and trauma from the incident exacerbated existing health problems. They said that Jagersfontein would never be the same again, even after it has been restored. Moreover, they were worried that the big machines are being used to clean up the area, whilst other people are still missing. The community members pleaded for a need for counselling.

The mudslide did not wipe away just the houses, it wiped away things that people treasured. Subsistence farming was affected as well, as the mudslide swept through where people had farms.

Photo 1: Community Meeting



3.3.2 Organised Labour

At the same community engagement, the organised labour was present and was requested to share its lived experiences of the incident, including the working relations between themselves and the employer.

The workers explained that there are over 150 people working in the tailings dam. Most of the workers started to work for the company between 2010 and 2011. They described the working conditions as

appalling, they do not receive any normal benefits that employees are supposed to receive. They stated that they are subjected to racism in the company.

The workers further submitted that the management of the tailings dam (processing facility) was aware of the leakages of the dam way before this disaster. A gentleman who works in these processing facilities, Mr. Phoofole, stated that four hours before the dam burst, management was informed on this disaster that was waiting to happen. However, management ignored this and casually responded that such a thing would never happen. Had management responded on this, communities would have been warned and be evacuated on time.

It was stated by the workers that, in 2021, the Department of Water and Sanitation (DWS) ordered the owners of the facility to close it due to non-compliance, such as water levels that were too high. After six months the decision was reversed and the dam was declared safe. On what basis it was declared safe is not clear. Other issues of non-compliance by the company included wanting to dump tailings generated into an old mine pit, which the Jagersfontein community regard as a heritage. Dumping into the pit would have also resulted in underground water pollution. Given the fact that inspections were not done properly, it is likely that this practice would have continued illegally. This brings one to a point raised by the workers that, mining is happening illegally adjacent to the tailings dam. They were adamant that, the holes made had nothing to do with the dams, but the actual mining of the diamonds. If this is true, then it would equate to illegal mining, as a mining right would be a requirement for such an activity.

Mr. Phoofole also confirmed that, no routine inspections were conducted in the facilities. He recalled that in 2017, Mr. Pule Nyaqela, DMRE Inspector, was on the site to do inspections. While on the site, he was called by the former Director General (DG) of the Department, Mr. Mokoena to leave the site. This could be due to the fact that the DMRE argues that it has no jurisdiction in this matter. Furthermore, workers are confused as to who the owner of the tailings dam is. They argue that there are too many people involved.

3.4 Sites visit

The Committee was taken on a site visit, to get a sense of how it all started and the actual impact thereof. It was explained that, in front of where the dam burst, there was an existing natural water dam. The existence of the natural dam possibly made this worse, it could have increased the pressure of the mudslide. Pictures below show the devastating effects of the disaster of 11 September 2022.



4. COMMITTEE OBSERVATIONS

This section provides a synopsis of the key issues observed by the Committee, particularly emanating from the presentations, discussions, and the walkabouts in Jagersfontein.

- The Committee was saddened by the amount of damage caused by the incident, which seemingly was caused by negligence.
- It was noted with concern that the Department of Water and Sanitation declared the dam safe, and ordered it to be reopened, and few months later the disaster occurs, and that with no explanation on why it was closed.
- The Committee observed with concern that the Department of Mineral Resources and Energy did not appeal the 2007 judgement which prohibited it from regulating tailing dams.
- The Committee noted that the court ruling in favour of De Beers left doubt on status of legislation in respect of tailings dams. At the same time triggered the importance of the DMRE to bring in legislation to Parliament that would accommodate tailing dams.
- The Committee observed that the company did not have good relations with the Community, the Municipality, and Labour (including recognition of rights of workers).
- The Committee was concerned that there was no Disaster Management Centre, which the community had requested 10 years ago.
- The Committee welcomed the support provided by the various NGOs to the affected communities, and the critical role played by the Mine Rescue Services.
- The R20 million contribution by the Jagersfontein Development for immediate relief was noted with concern.
- The Committee welcomed the pledge made by the Minerals Council South Africa to raise a Jagersfontein Relief Fund to the tune of R50 million.
- The Committee observed that, the communities had emotional and psychological trauma as a result of the incident. However, the Committee was concerned that six days after the incident, counselling and psychological support had not been provided.
- Linked to the above, the Committee noted with concern that the Department of Social Development did not immediately visit the area to provide counselling services to the affected communities.
- The Committee observed the need for other committees, relevant to the occurrence that they pay a special visit to the area
- The Committee noted a Class Action that was being considered by the community and other interested parties.

NB: Subsequent to the visit, the Committee learnt that one of the employees who spoke about the employer during engagements with the Committee, had been charged for divulging company information.

5. COMMITTEE RECOMMENDATIONS

The Portfolio Committees, having conducted the oversight visit, recommend that:

- The Department of Mineral Resources and Energy urgently reviews the MPRDA in order to include the regulation of tailings dam/mine dumps.
- A full investigation of the cause of the incident, including investigations on the Directors of the company be conducted.
- The Department of Water and Sanitation to explain and make available the compliance report that it supposedly issued when it declared the dam safe in 2021.
- The following Committees amongst others engage with the Jagersfontein Community: Environment, Forestry and Fisheries, Health, Social Development, Employment and Labour and Home Affairs.
- The company (owners of the tailing dam) should take full responsibility in ensuring the restoration of the area.
- The Committee, within six months' time, do a follow up visit, to assess progress on reconstruction.
- A broader investigation by the Portfolio Committee on Water and Sanitation, in collaboration with relevant departments/entities, on the status of tailing dams in South

Africa should be conducted, and report findings to the National Assembly as a matter of urgency.

- The Portfolio Committee on Social Development, should ensure that the Department of Social Development provides urgent psychological support to the affected communities.
- Government should conduct an investigation on the impact of the incident beyond Jagersfontein.
- The DMRE to conduct investigation on possible illegal mining happening around the processing facility.
- A joint meeting be held with Mintek and the Council for Geoscience to brief the Committee/s on the problems of tailings dam generally.
- The Portfolio Committee on Water and Sanitation to invite the Department of Water and Sanitation to account on the closure and the reopening of the dam.
- Informed by the court judgement, the DMRE table a legislation to Parliament that would address tailings dam.
- The Committee or Parliament must do everything possible to protect those who give evidence to it, in order for it to execute its mandate effectively.

Report to be considered.