



Media statement by the Bench Marks Foundation

Call to protect communities from corporate predators

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FOR IMMEDIATE RELEASE

The Bench Marks Foundation (BMF) has called for the Constitution to be amended to protect customary communities from predatory actions by corporations.

This is one of the organisation's recommendations in its latest Policy Gap report, published this week, entitled "Life before and during mining". The report is a study of the community of Magobading, a rural village in the Limpopo Province, and the effects of its relocation in 2002 as a result of mining activity by Anglo Platinum.

The BMF says that the so-called property clause in South Africa's Constitution refers largely to private property and lacks any detail relating to the expropriation of communal property.

It adds that the Constitution is also lacking in that it determines compensation in terms of "market value".

The report adds: "Currently there is no comprehensive national resettlement and compensation policy in South Africa. South African law enshrines expropriation and market-based compensation for land."

However, the Policy Gap study contends that its research shows that "it is entirely inadequate to depend on the market as a mechanism to compensate communities for the loss of their land".

"It is interesting to note that there is not a single instance in which the state has found in favour of any community opposed to relocation. This implies that in every instance the state considers the interests of the mining company as coinciding with the 'public interest'," the report says.

This is in spite of the clause in the Constitution which reads: "The public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources", and "Property is not limited to land".

BMF accuses Anglo Platinum of failing in terms of market related compensation for the expropriation and relocation of the Magobading community: "The standard practice by mining companies is to send in property evaluators to determine the value of the land and other property of the communities to be relocated. The property evaluators use standard urban and suburban criteria for the evaluation of communal property. Such criteria are entirely irrelevant.

"The members of the community are also not informed as to the value of the mineral resource under their land, which is the reason for the intended expropriation (ie the mining of the mineral). Surely, such a valuable resource as platinum group metals, for example, would greatly increase the value of the land if strict market principles were applied, and the affected community should be compensated accordingly?" the report says.

A further concern raised in the Policy Gap report relates to the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002) (MPRDA).

Bench Marks says that there are separate national laws to which all citizens, including corporate ones in industries other than mining, are subject. However, the MPRDA itself deals with aspects of pollution or environmental degradation in relation to mining.

“Bench Marks is concerned about the inclusion of a separate regime for the mining industry with regard to water, environment and waste. The BMF is concerned that the core business of the Department of Mineral Resources is the promotion of mining. Given the massive impact of mining on waste production, water use and pollution, air pollution and environmental destruction, the MPRDA in fact elevates the Department of Minerals above other departments, and mining legislation above all other legislation and possibly even above the Constitution,” according to the study.

“The Act and its complementary regulations also makes provision for, inter alia, prospecting, reconnaissance and retention rights, mining rights and permits, rehabilitation, closure, pollution control, waste management and restricted areas.”

The BMF notes that the Act is under review and that proposed amendments are being discussed in a national public consultation process.

“Previous amendments included clauses through which the issuing of water use licences and approval of environmental impact assessments for mining reverts to the Minister of Mineral Resources, while the appeal against the issuing of such licences are with the Ministers of Environmental Affairs and Water and Sanitation.

“The Bench Marks Foundation recommends that licencing and approvals remain with the relevant line function departments.

“Given the seriousness of climate change and global warming, and South Africa’s soil and water challenges, it was inappropriate for the government to succumb to pressures from the mining industry to speed up environmental permissions and the issuing of water licences,” the report says.

Other legislative recommendations in the report include:

- That mining be included in the Waste Management Act;
- That all mining operations be made subject to the Disaster Management Act with immediate effect; and
- That the three legislative vehicles dealing with the relocation of graves be replaced with a single Act that consolidates all issues regarding the burial of human remains and the relocation of graves, paying due attention to the culture, heritage and traditions associated with the burial of human remains or with the relocation of graves.

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Bench Marks Foundation is an independent non-governmental organisation mandated by churches to monitor the practices of multi-national corporations to

- ensure they respect human rights;
- protect the environment;
- ensure that profit-making is not done at the expense of other interest groups; and
- ensure that those most negatively impacted upon are heard, protected and accommodated within the business plans of the corporations.

The Foundation was launched in 2001 by the Rt Rev Dr Jo Seoka who chairs the organisation and by member churches of the South African Council of Churches (SACC).

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