



Bench Marks Foundation NPC

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Mr. Mpumelelo Frederick Gona
Chairperson of Committee
Portfolio Committee on Mineral Resources
Parliament Street
Parliament
Cape Town 8000

28 February 2013

Dear Mr Gona,

The Bench Marks Foundation kindly requests a meeting with the Portfolio Committee on Mineral Resources to discuss our recommendations for the Minerals and Petroleum Resources Development Amendment Bill.

The Bench Marks Foundation made a number of relevant recommendations for the amendment of the MPRDA in its Policy Gap 6 report published on the 14th of August 2012. The Foundation further called for that the current review of the MPRDA Amendment Bill, the draft Mineral and Petroleum Resources Royalty Bill and the Mining Charter must be inclusive and take submissions from civil society groups, including affected communities. The Foundation is therefore concerned that the process that was followed for the MPRDA Amendment Bill, in fact resulted in the exclusion of proper public consultation and participation.

The Department of Mineral Resources gazetted the Draft Mineral and Petroleum Resources Development Amendment Bill, 2012 on 27 December 2012. To read the Bill, it is necessary to also read the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) and the Mineral and Petroleum Resources Development Amendment Act, 2008 (Act 49 of 2008). The deadline for public submissions was set for the 8th of February 2013. This means that the Bill was tabled in a period in which most civil society and community-based organisations were on leave, severely limiting the space for meaningful participation and input.

The Bench Marks Foundation did however share the Policy Gap 6 report and extracts with the key recommendations to the Presidency, the Parliament, the Department of Mineral Resources and a number of other relevant departments after the report was published in August 2012. The Foundation is therefore disappointed that none of our recommendations are contained in the proposed amendments to the legislation.

The Foundation would in the following like to bring some of the key recommendations to the attention of the Portfolio Committee on Mineral Resources for its consideration when processing the Amendment Bill.

Affected communities:

Affected communities bear the brunt of the burden of the negative impacts of mining on community life and the environment, yet have very limited influence in the decisions that affect them directly. The amendment of the MPRDA must ensure that local mining communities are included and given representation in all decision-making processes that affect their lives. This must include giving affected communities representation in the process of crafting the Social and Labour Plans governing the operations of mining companies in their area. Further the universally agreed principle of Free, Prior and Informed Consent (FPIC) must be included in the MPRDA as a fundamental guiding principle for all mining operations in South Africa. Given the lifespan of mining and its different phases, it is not sufficient to employ this principle before mining commences, but rather it must be continuous free, prior and informed consent at all stages of the operation from green fields through to completion and closure.

Currently, there is no independent redress mechanism or an independent ombudsman that can deal with grievances that local communities have against mining companies. This leaves resource poor communities at a structural disadvantage, and obstructs their access to justice. The amendment of the MPRDA should therefore establish an ombudsman body with strong enforcement powers.

The MPRDA should also be amended to include the option for revenue sharing for affected communities. This is necessary to address the deepening poverty and marginalisation of many local communities, despite the wealth that is extracted from mining in their areas. In this context we also reiterate our call to the government and National Treasury to urgently discuss ways of distributing equitably, on an agreed upon formula /percentage, the taxation revenues/royalties collected from mining companies to meet needs of affected mining communities. These funds must meet the short, medium and long-term needs and aspirations of mining communities. Our concern is further that equitable and sufficient funds are put aside to ensure continuance of community life when mining ends.

Environment

The Bench Marks Foundation supports the submission made by the Centre for Environmental Rights on the amendment of the MPRDA. This includes the recommendation that the responsibility for Environmental Impact Assessments should be moved from the Department of Mineral Resources to the Department of Environmental Affairs.

The Foundation further recommends that there must be a moratorium on new mining until a constructive way has been found to deal with the situation of post-mining communities. The mine owners and shareholders must be held accountable for the environmental degradation that has taken place, including Acid Mine Drainage. The principle of the polluter pays has been severely undermined in the cases where local and national government have had to clean up the environmental damages while no responsibility is taken by those who have profited on the mines.

The onus should further be on the mining corporations to prove that they are conforming to the relevant laws. This would save resources and time for local communities, and it would mean that the offender should provide evidence of being law-abiding, instead of those affected by the company's offences having to prove the company's transgressions.

Conflicts of interest

The MPRDA should also be amended to include tighter conflict of interest legislation, to bar senior politicians and civil servants from serving on the boards of mining companies (or as BEE partners and shareholders).

List of recommendations

Our recommendations can be summed up as follows. The MPRDA must be amended to:

- Give affected communities representation in all decision-making processes that affect their lives.
- Give affected communities representation when the Social and Labour Plans are crafted.
- Introduce continuous Free, Prior and Informed Consent at all stages of mining.
- Include revenue-sharing options for local communities.
- Move the responsibility for Environmental Impact Assessments from the Department of Mineral Resources to the Department of Environmental Affairs.
- Place the onus on the mining corporations to prove that they are conforming to the relevant laws.

The Bench Marks Foundation hopes and trusts that these concerns will be received, considered and acted upon in the spirit with which they are submitted, namely that legislation relating to mining should serve the best interests of the people of South Africa in general and mine workers and mine impacted communities in particular in accordance with the Constitution of the land.

We found our last meeting with the portfolio committee very fruitful, and we hope that the committee will be able to meet with us to discuss these recommendations in more detail.

Best regards,



John Capel,
Executive Director
The Bench Marks Foundation