



28 July 2017

The Chairperson

HE Kgalema Motlanthe

High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change

Parliament of South Africa

Cape Town, 8000

By email: ztshongweni@parliament.gov.za

Dear His Excellency Motlanthe

CHAMBER OF MINES: RESPONSES TO THE ISSUES RAISED BY THE HLP

1. Mining on communal land with traditional leaders/traditional councils

(i) *Overview of the legislative framework guiding access to communal land for mining;*

Mining on communal land is guided by some of the following legislation, among others: the Constitution, the Protection of Informal Land Rights Act, Communal Property Associations Act, the recently introduced Community Property Bill, the Mineral and Petroleum Resources Development Act, Agricultural Land Act and the Property Valuation Act.

(ii) *The role played by the Chamber of Mines and its members to negotiate and conclude mining deals on communal land with traditional councils, or traditional leaders;*

The Chamber has no role in this regard. The transactions are concluded by the companies themselves. However, our understanding is that companies are required, or at least face strong recommendations, by the DMR to do their community BEE transactions with the traditional authorities where they exist. We are conscious that the legitimacy of traditional leaders is disputed by some community members in some jurisdictions, and that this can be the source of negative relationships between mines and adjacent communities.



There have also been cases where the proceeds of these transactions have been mismanaged. None of this is satisfactory for the mines and the companies that own them. We are aware that this issue was raised in the SAHRC hearings on the mining industry last year. We are looking forward to their and your views on how this situation can be addressed.

(iii) *Legality of the mining deals (authorisations) on communal land;*

We are aware that some cases have been brought by certain parties challenging the legality of some of these transactions. However, we are unaware of any adverse finding as yet. In our view these challenges, in any event, are as much questions of social legitimacy as legal ones.

(iv) *The role of traditional leaders or councils as institutions with or without the legal authority to bind community members, especially in respect of their land rights.*

This issue is addressed in our responses above.

2. Rentals and Royalties

(i) *Overview of policy framework guiding rentals on communal land and distribution of royalties;*
These are matters determined historically or more recently in terms of contract and law, the latter administered by the National Treasury.

(ii) *Mechanisms put in place, and steps taken, by the Chamber to ensure that royalties and rental reach the people whose land rights are negatively and directly affected by mining on communal Land;*

The Chamber has no specific role in this regard. As mentioned above, we do believe that a number of unsatisfactory situations have arisen in this regard.

(iii) *Any suggestions for policy/legislative amendments.*

On the legal side, much of this falls into the area of traditional law which has been an extremely complex issue to resolve over the last 23 years (and before). It is a difficult area for the mining industry to intervene in. However, the industry's interest is in greater stability and a reduction of social conflict both within those communities and between disaffected members of those communities and the mines. That would need to include acceptance of greater accountability by traditional leaders.

3. Surface Rights

- (i) *Current practice of mining companies in relation to securing the surface rights of people living in communal areas before surface rights agreements are signed, and prospecting and mineral rights applications are made. Further reflect on the current practice of obtaining the consent of rights holders before such agreements and applications are finalised. This applies both in respect of IPILRA and the international principle of 'prior informed consent';*

South Africa's minerals belong to the people as a whole, rather than to those on (or beneath) whose land they are located. This does complicate the FPIC principle which, though it is nowadays spoken of extensively, was developed in international law to protect indigenous peoples. Probably the most useful guidelines to which most modern mining companies adhere are the Land Acquisition and Involuntary Resettlement Standards of the International Finance Corporation

http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES

These hold, in brief, that people affected should not have their livelihoods and living conditions adversely affected by any land acquisitions. This is for us a useful and appropriate benchmark to follow.

- (ii) *Reflect on the current legal framework, whether it is sufficiently clear and robust to ensure that rural people are not inadvertently dispossessed of informal land rights. The changes which the Chamber might like to see.*

Please see (i) above

4. Transparency and accountability

- (i) *What steps does the Council advise its members to take in respect of ensuring that directly affected rights holders are able to hold leaders to account and obtain accurate financial records?*

The Chamber introduced last year a Membership Compact, which is a mandatory code of conduct to which members are required to subscribe <http://www.chamberofmines.org.za/component/jdownloads/send/25-downloads/273-chamber-of-mines-of-south-africa-membership-compact>. It requires, among other things, that members implement effective and transparent engagement, communication and independently verified reporting arrangements with their stakeholders.

5. Authorization of mining on communal land and the status of Traditional Councils as per the Traditional Leadership and Governance Framework Act of 2003

- (i) *Legality of the agreements entered into with Traditional Councils whose legal status is precarious, especially the Traditional Councils that are reportedly failed to comply with the composition requirements set out in the Traditional Leadership and Governance Framework Act of 2003.*

This question has been addressed above in section 1.

6. Other issues that are not specifically land related include the following:

- (i) *Social and labour plans: the status quo on SLPs. Do mining companies publicly make SLPs available to the community members who are meant to benefit?*

Some companies do and some do not. The Chamber's position is to strongly encourage members to make authorised SLPs and the annual SLP compliance reports available to the public. We would not be averse to this becoming a requirement of law, with the responsibility either on licence holders or the DMR.

- (ii) *Do Members of the Chamber routinely publicise the terms of agreements signed with traditional leaders and councils?*

This is not something we monitor closely. But we would think that relevant such agreements should be known to stakeholders.

- (iii) *Do Members of the Chamber publicise the amounts paid over to rural groups in respect of royalties, leases and other forms of revenue.*

Some Chamber members do so. A number of companies report in terms of the Extractive Industries Transparency Initiative <https://eiti.org/>. This would include payments to all levels of

government. We would commend membership and adherence not only to companies but to the South African government too.

7. **Illegal Mining**

The Chamber believes illegal mining is a significant challenge affecting communities, the fiscus and the environment. The Chamber and its members are continuously responding to this challenge by working collaboratively with various law enforcement and government departments, including the Department of Justice, Police and National Intelligence, as well as the international agencies that are acting against the distributors of these illegal products. The Department of Mineral Resources (DMR) is also involved and the industry is represented through its own Standing Committee on Security (SCOS).

We hope our responses above will assist in addressing the questions raised by the HLP however, the Chamber is available to provide further information as required.

Yours sincerely



TEBELLO CHABANA
Senior Executive: Public Affairs & Transformation