

New Mining Charter has many shortcomings, especially for communities

FOR IMMEDIATE RELEASE

21 April 2016

Although aimed at reducing the Broad Based Black Economic Empowerment (BBBE) shortcomings of the current Mining Charter, the revised Charter gazetted on 15 April 2016 fails in two vital ways, according to the Bench Marks Foundation.

It does not adequately address the drastic imbalance between local ownership and foreign ownership, and it ignores the negative impact that mining has on the communities.

Having studied the proposal, John Capel, Executive Director of the Bench Marks Foundation, says there are many shortcomings in the revised Charter. These include:

- 1 BBEE ownership which still stands only at 26%. Bench Marks says it is unaware of any other country where local ownership of enterprises is restricted to 26% and foreign ownership by law is 74%. Anglo American will claim to be South African, yet they re-listed on the London Stock Exchange after 1994, effectively making them a British entity. The local ownership percentage should be increased;
- 2 Of the 26% BBEE ownership, 5% must now go to an Employee Share Ownership scheme and 5% to the community on whose land the mine is located. The Bench Marks Foundation notes the following:
 - [if !supportLists]a. [endif]The community still loses its land to the mine which they will never recover. It therefore loses its fields for cultivation and grazing. We feel that communities should be compensated the value of all future harvests from that land, with inflation calculated into the equation;
 - [if !supportLists]b. [endif]In addition, the community should be compensated a percentage of the value of the mineral underground. This would determine the real value of their land to the mine;

- [if !supportLists]c. [endif]BBBEE shares are sold to BBBEE shareholders. This means that the employees and the communities affected must obtain bank loans to afford these shares. Bench Marks believe that the shares should be donated to communities as compensation for the loss of land, and not sold;
- 3 The community share, in terms of the Charter, is realised through the chief who is represented on a trust. Many communities do not trust the chiefs who often side with the mine;
 - 4 The inclusion of a 5% worker's stake will be realised through union representation on a trust. This will not benefit individual workers, but will enrich the trade union bureaucracy;
 - 5 The new draft raises targets for local procurement of capital goods to 60% from the previous 40%. This is easily circumvented by foreign companies opening local franchises, and through fronting. Normally this procurement is mainly from Gauteng, recreating the global core versus periphery contradiction at a local level;
 - 6 The new Charter raises targets for the procurement of services from 70% to 80%. Again this is easily circumvented by foreign companies, as stated in point five above;
 - 7 While Bench Marks welcomes the inclusion of a ban on testing mineral samples abroad, it believes that the Charter should ban the exports of concentrate and raw minerals altogether so as to force local beneficiation;
 - 8 With respect to the requirement that companies set up a skills development trust that will be funded to the tune of 5% of payroll, Bench Marks would like the Charter also require that mines employ unemployed South African engineering and geology graduates, of which there are plenty. It should also introduce an apprenticeship scheme strictly for South Africans;
 - 9 The proposed Charter has been amended to include the setting up of a community development fund consisting of 1% of turnover. While this is a start, the Bench Marks Foundation doesn't believe it is enough. It sounds very much like the department is mopping up crumbs from the industry's table instead of acting more boldly on behalf of South Africans; 10 to 20 percent will be more realistic, 10 percent being the norm in the USA.
 - 10 The new draft is silent on goals for water consumption and destruction by the mines. This should be urgently addressed as

- South Africa heads for an even more severe water shortage;
- 11 The revised Charter does not state its goals for toxic waste management and the externalised health and safety impacts of mines on near-mine communities and on the environment. It says nothing about the “polluter pays principle”. The Charter must be amended to include this point;
 - 12 Bench Marks also does not see anything regarding the employment of local communities and the phasing out of the migrant labour system. Bench Marks would like to see this point in the Charter and targets set for local employment;
 - 13 Further items absent from the draft Charter, which must be included is that of
 - [if !supportLists]a. [endif]Continuous free, prior and informed consent as well as the “right to say no to mining” principle;
 - [if !supportLists]b. [endif]Mine closure. More regulations and requirements need to be imposed prior to mining, during and once a mine has closed;
 - [if !supportLists]c. [endif]Consideration of people with disabilities, given that the mining industry is one of the biggest contributors to causing disabilities in the country; the Bench Marks Foundation would like to see a lot more legislation regarding this;
 - [if !supportLists]d. [endif]Grievance mechanisms for local communities and easy access to relevant expertise. Bench Marks would like an independent fund and grievance mechanism to be developed that will allow for recourse to justice for communities as well as the provision of independent professional, technical and environmental expertise to communities during the consultation processes from before mining commences right to after a mine closes.

“Only if these points are included or revised will we be looking at a Charter that really takes South Africa and its citizens’ best interests to heart,” says Capel.

“It will then be a Charter that stands for genuine people-centred development instead of that which favours corporations and greed”.

“We encourage others who also have concerns to utilise the invitation by the Department of Mineral Resources to submit their inputs and comments by 31 May 2016, as in our experience Gazettes regarding

mining are usually done during December or holidays when businesses are closed and people are unable to respond.

“This is a rare opportunity that we must all utilise”.

The Bench Marks Foundation is an organisation that monitors multinational corporations to ensure that they meet minimum social, environmental and economic standards and promotes an ethical and critical voice on what constitutes corporate social responsibility.

For more information on the Bench Marks Foundation, go to www.bench-marks.org.za.