

Catherine Horsfield  
Centre for Environmental Right  
Programme Head: Mining  
1 Scott Road, Observatory, 7925  
2nd Floor, Springtime Studios  
Cape Town, South Africa

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**Response to the report: ‘Zero hour poor governance of mining and the violation of environmental rights in Mpumalanga’**

Dear Ms Catherine Horsfield

Your letter dated the 20<sup>th</sup> May 2016 which contained the report of the Centre for Environmental Rights (CER) “Zero Hour Poor Governance of Mining and The Violation of Environmental Rights in Mpumalanga”, launched on the 23rd May 2016 has reference.

The Chamber of Mines and its members have studied the report thoroughly and would like to offer you our perspectives.

We acknowledge the pivotal role of non-profit organisations such as CER as watchdogs on environmental compliance and also advocating transparency and accountability on environmental laws. The Chamber welcomes the input from all stakeholders, including that of the CER, in contributing to a sustainable mining industry, and takes the findings of the report seriously.

We would like to table some in principle concerns about the report which underpins our general reaction/response to the report. These issues include the following:

**Consultation**

We regret that the CER did not attempt to engage the Chamber and its members cited in the report in order to obtain credible, real time information prior to



publishing the report. The engagement of member companies would have contributed to enhancing the accuracy and quality of the report. It is stated in the report that some mines were consulted in the development of the report, but it is not stated which mines. The Chamber is unaware of any of its members companies having been consulted. In the acknowledgement section of the document, civil society, NGOs and academia are acknowledged. However, local authorities and mining companies that were allegedly consulted are not included in this section.

Constructive consultation and engagement with interested and affected parties or key stakeholders while developing such an important document is paramount to the integrity and value of the report.

### **Methodology/factual Inaccuracies**

We are unable to determine the methodology that was used to collect the information, or the analysis approach followed reaching the report's findings and conclusions. It is stated that site visits were made. There is, however, no specific information on mine visits.

The report contains factual inaccuracies including the statistics referred to for instance the Derelict and Ownerless mines (D&Os) and the state of some of these mines. The Chamber can confirm that there has been a number of applications made over those mines which essentially graduates some of the mines to have owners. In this regard, CER is encouraged to obtain accurate statistics from the Department of Minerals Resources. The data/info in some of the graphs is inaccurate and sometimes very misleading, especially with regard to the correctness of the location of some of the polluted medium.

In addition, the CER failed to obtain updated information which would depict the state of play in relation to the case studies. The information supporting those case studies is inaccurate. The Chamber members cited in the case studies are willing to provide evidence that would prove the factual incorrectness of the information cited in the report.

### **Governance on environmental matters**

The Chamber understands the thrust of the study being based on poor governance and inferior implementation of policies governing mining, and pollution resulting from a perspective of ill-considered authorisations and lack of compliance enforcement. The latter is said to be due to under

staffing both at Department of Mineral Resources (DMR) and Department of Water and Sanitation (DWS).

Consequently, the report questions the DMR's and DWS's ability to execute their mandate in relation to governing environmental issues in the mining industry. In this regard, one should note that various stakeholders, including NGOs, have been complaining for many years that the DMR cannot be the "the referee and a player" when it comes to mining and environmental authorisations, and this is again stated in this report. Over years, the mining industry has been engaging government on the implications (i.e. delays of development) that the duplication and fragmentation of environmental legislation applicable to the mining industry.

In an attempt to deal with these issues, the DWS, DMR, and Department of Environmental Affairs (DEA) initiated a process to develop the One Environment System (OES) agreement, which mandated the DMR to be the competent authority. The OES agreement entails that the DEA is the policy maker and the appeal authority through NEMA, with the DMR being the competent authority to implement NEMA. This agreement was further legitimised through the enactment of laws signed off by Parliament and the President.

From the mining industry's point of view, this is an acceptable policy stance as it divorces the DMR from setting policy and, most importantly, affords the public the opportunity to make appeals to the DEA with regards to decisions taken by the DMR. Nevertheless, one should note that there are various implementation challenges posed by the OES, which the mining industry believes are receiving the necessary attention from the authorities.

However, in terms of the CER report, this policy development is still unsatisfactory because the Minister of Mineral Resources still faces conflicts of interest. The industry does not share your view in this regard

The issue of capacity constraints is real. But it is not unique to the DMR. It is a nationwide challenge across various ministries. Given the fact that the DMR has always been the only ministry with proven track record in terms of regulating environmental matters in the mining industry it would have been

helpful if the CER report had recommended a pragmatic approach detailing how the DMR's capacity could be improved.

## **Conclusion**

In conclusion, it is important to note that Mpumalanga is a key coal mining hub in South Africa, which supports the country's energy needs, and also supports the export market, thus contributing significantly to South Africa's developmental agenda and economic growth. Of strategic importance is the fact that the South African energy sector is primarily dominated by coal as a major source of electricity, therefore sustainable coal mining plays a significant role in terms of supporting the implementation of the country's energy plan.

The mining industry acknowledges that unregulated coal mining can lead to detrimental environmental impacts. However, the current operating mining companies always strive for compliance and also often go beyond compliance by applying best practices. The Chamber is therefore confident that the environmental impacts from coal mining by its member companies is managed and mitigated adequately.

In order to tackle pollution matters pragmatically in Mpumalanga, it is important to holistically look at various pollution sources such as power generation and manufacturing, amongst others. The narrow focus on mining would not necessarily improve the environmental quality in the province.

Therefore, the Chamber's conclusion about the report is that it is based on inaccurate information and it lacks balance. The Chamber and its members would therefore like to register their objections to the report. We extend an invitation to the CER to collaborate with the mining industry in the provision of accurate data and information that would improve the accuracy of the conclusions of similar reports in the future.

Yours sincerely,

Ms Stephinah Mudau

Head: Environment