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A SUMMARY OF THE THIRD-PARTY MINERALS POLICY REVIEW

This document was compiled by Mining Dialogues 360° in association with Good Governance Africa, which both conducted the Review.

The mining sector has no equal in South Africa's contemporary economic history. After about 150 years, mining continues to:

- yield significant returns to capital
- generate tax revenues and foreign exchange earnings
- create and sustain employment
- engage in skills development and technological development

It also contributes indirectly to the economy through its substantial intra- and inter-sectoral linkages. Despite the long-term structural decline of the gold sub-sector and the general underperformance of the mining sector in recent years, it remains a vital contributor to the national economy, host communities, and to those directly and indirectly involved in it whose livelihoods depend upon it.

With the advent of democracy in South Africa, the imperative to bring about equitable access to the country's mineral resources while continuing to grow the mining industry gave rise to the enactment of the Mineral and Petroleum Resources Development Act (MPRDA) in 2004. However, 20 years after its commencement, the Act is viewed by many as not having delivered expected results, either in terms of minerals-led growth and development commensurate with South Africa's mineral endowment, or in terms of what some would regard as sufficient transformation.

In recent years, the mining sector has faced a series of multidimensional exogenous and endogenous challenges, the net impact of which manifests as an industry experiencing a troubling decline in its economic performance. Without sweeping changes on the policy, legislative, institutional and social fronts, the capacity of the industry to compete for investment capital, create jobs, and promote sustainable economic development will continue to decline with the risk that many of the gains made thus far regarding transformation and redistribution could be lost.

Mining Dialogues 360° in association with Good Governance Africa and in partnership with the Minerals Council undertook a programme of work to review the Minerals and Mining Policy White Paper and the MPRDA in their national and international contexts. From August 2023,

a series of small-group multi-stakeholder dialogues were convened and several key informant interviews conducted over the months that followed to elicit inputs from industry actors on the impact of the MPRDA on mining sector growth, development and transformation. At the same time, a policy analysis, legislative review and economic analysis were undertaken by the project team and in August 2024 a Minerals Policy Review report was published that describes the multidimensional challenges facing the mining industry and tables a range of findings and recommendations based on the aforementioned research.

Mineral policy has historically been a product of compromise, there is insufficient alignment of mining policy with that in other key policy areas and better policy coordination and integration is required. The context for policy and a degree of policy inertia necessitates a review and reformulation of mineral policy objectives. This should be achieved through an independently convened, dialogue driven multi-stakeholder process designed to establish a new vision for the minerals and mining sectors

Mineral legislation

While the initial focus was on trying to make a determination regarding the extent to which the MPRDA may have constrained sector growth and performance, it soon became apparent that the Act needed to be reviewed in its wider policy, legislative, economic, institutional and social context. While essentially sound, many problematic clauses in the MPRDA and the manner in which the Act is administered create uncertainty and disquiet amongst many prospective investors. An in-depth legislative review highlighted numerous provisions in the Act that arguably undermine South Africa's attractiveness and competitiveness as a destination for exploration and mining investment and made recommendations to address them.

Economic performance

Mining sector performance is in serious decline partly as a result of general economy-wide stagnation but also because growth is constrained by a number of binding structural factors that have been especially deleterious (electricity supply, logistics failures, crime and decaying infrastructure) for the industry. But it is also true that these are compounded by numerous other sources of instability in the operating environment for mining such as failing local government, crime, illegal mining, uncertainty regarding what constitutes sufficient transformation, and labour unrest, all of which create uncertainty that deters investors and stifles growth, both of which are heavily constrained. A multi-faceted strategy for growth that addresses structural constraints in partnership with the State and addresses the instability inherent in the operating environment for mining through multi-stakeholder alliances is recommended.

Institutional challenges

Dialogues participants repeatedly lamented the inefficiency and inconsistency with which the Department of Mineral and Petroleum Resources (DMPR) discharges its mandated responsibilities as both regulator and promoter of the mining industry. Capacity constraints were cited as being a limiting factor driving inefficiency. A general lack of transparency and accountability in decision-making processes were said to be a compounding factor driving uncertainty, frustration and distrust among investors. It was recommended that this be addressed through capability and capacity building within the DMPR, or, by adopting a model

for the regulation of licensing that assigns the responsibility for this function to an independent mining licensing authority.

Stakeholder discord

Discordant views on a range of issues have left stakeholder relations in the mining sector fraught, plagued with acrimony and characterised by trust deficits. Government and industry actors exhibit weak levels of common purpose, tension characterises the relationship between many mining companies and their host communities, communities are poorly organised and local government in these areas is often weak and sometimes dysfunctional. SLPs rarely achieve results commensurate with spend and the industry experiences relatively high levels of labour unrest.

Transformation

Although the mining sector has acknowledged the importance of transformation as a justifiable policy imperative, and although significant progress has been made in this regard since the enactment of the MPRDA, it remains a source of stakeholder discord. Tellingly, investors struggle to calculate with any certainty the impact of compliance on returns to investment and this undermines competitiveness for investment capital. Industry and the DMPR should engage to find common purpose on transformation objectives and targets, agree that it is only with a growing mining sector that broad based empowerment and development can be sustained. They should also find consensus on the most optimal means of codifying these objectives and targets so as to create certainty for investors.

Conclusion

The report concludes by noting that the reasons for the recent decline of the South African mining sector go beyond the MPRDA to a range of “non-policy” and other “non-legislative” matters. Recovery and growth necessitate action way beyond a range of amendments to the MPRDA and holistic, integrated solutions, driven by multiple stakeholders with the private sector more prominent than it has been to date are needed. Piecemeal, ad-hoc solutions are unlikely to be sufficient or effective.

New Vision

Finding common purpose amongst mining industry stakeholders on a vision for the future development of an industry still widely considered to have tremendous growth potential, but which must achieve a more equitable distribution of benefits is essential. Without a collective vision it will be impossible for stakeholders to eradicate the trust deficit that plagues stakeholder relations and undermines recovery. However, deriving that vision and building trust will also require progressive leadership. Participants at the dialogues advocated that it is the mining industry that is probably best equipped to play this role. But to avoid accusations that this would be yet another case of industry looking out for its own narrow interests, the process of deriving a new vision must be driven by independently convened multi-stakeholder dialogue that is inclusive of all industry actors and other relevant stakeholders.

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