

Corporate Compliance of the Twickenham Mine: Context and new knowledge

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Come-Act



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Contents

1. Who are we	2
<hr/>	
2. Introducing our change project?	3
<hr/>	
3. What is the context? What has already happened?	4
<hr/>	
4. Building a knowledge network	7
<hr/>	
5. Learning from new knowledge	12
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Who are we?

Come Act, Communities in Mining and Environmental Activism, is a fully registered community-based NPO, located in Burgersfort. Come Act's Elton Thobejane and Provia Sekome participated in the Changing Practice Course.



Introducing our Change Project

Our change project is around corporate compliance. Elton will investigate the compliance of mines, in particular the local Twickenham mine, with environmental laws, rules and regulations and the effect this has on communities. It is our intention to change unethical corporate practice by the Twickenham mine in terms of Social and Labour Plans (SLPs), monitoring and compliance enforcement.



Provia intends to start an awareness campaign, using video, about the water challenges we face.

What are the main questions guiding our action research?

Our project has chosen these research questions:

1. What would good compliance look like to the host communities?
2. What would meaningful consultation look like?
3. What would development mean in the context of challenges communities are faced with?
4. What would the grievance resolution and capacity related mechanism look like to hold the mining companies and the department accountable?
5. Is it necessary and ideal to have community orientated grievance resolution mechanisms to deal with community problems?
6. What mechanisms exist for Department of Mineral Resources (DMR) and communities to hold mining companies accountable?
7. What would the rules of a good guest look like to their host communities?

It is our intention to change unethical corporate practice by the Twickenham mine in terms of Social and Labour Plans (SLPs), monitoring and compliance enforcement.

What is the context? What has already happened?



In our communities, clean drinking water is a scarce resource, that is shared between people and animals, which is not safe. The water in nearby rivers is contaminated and taps have dried up, as a result of mining activities. It is well-proven that underground mining activities disturb the flow of water and the water table levels. Most of the available water is redirected to the mines for operations, so our taps have dried up. The communities are getting desperate and angry, and in 2016 the people of Ga-Kgoete village have broken the pipes that provide water to the nearby mine several times, because the mining company was not taking them seriously. The community demanded drinking water, but the company just came to fix their pipes and left again, without listening.

However, the communities have mobilised and are now standing together in this fight. This change project has opened their eyes: we now know we need to document everything that happened so far, and check if our pleas were ever considered when the mine drew up their Social Labour Plan (SLP), and to check if there ever was a commitment and obligation to deal with the communities' water challenges.

We know from the Centre for Applied Legal Studies (CALs) that problems with compliance have persisted under the new political dispensation since the inception of the Minerals, Petroleum and Resources Development Act (MPRDA) of 2000, which is generally regarded as toothless. For instance, it does not clearly outline public participation in the decision-making process, which a number of mines take advantage of by simply not adhering to it or by only involving traditional authorities, who are often

prone to corruption. The MPRDA also does not have mechanisms for monitoring or enforcing compliance. These gaps in the law open the door to corporate ignorance, exploitation, departmental corruption and abuse.

Come Act's member Elton is focusing on the following aspects of the SLP:

- The community consultation process during the development of the SLP. In the current situation projects are often implemented without the knowledge and/or approval of the host communities; what would meaningful consultation look like?
- The objectives of the SLP, which are about ensuring community development and redress: are these realistic and achievable? The current lack of will to patch the existing legislative gaps make it look like economic growth is the main focus instead of substantially and meaningfully expanding opportunities for historically disadvantaged communities.
- The departmental capacity to monitor and enforce compliance: which mechanisms exist to hold mining companies accountable?
- Given the false reporting discovered during the annual report auditing, it is necessary to have strong community monitoring of the social part of the plan: what are the possible mechanisms and roles that communities can use for this, and to help the department be more pro-active?
- Amended or good regulatory legislation is a way to promote good corporate behavior and governance in terms of compliance. Civil Society Organisations (CSOs) have worked together to push for stronger legislation on the processes that ensure communities are actively involved in decision-making processes. The MPRDA Coalition was formed by CSOs including national networks, such as Mining Affected Communities United in Action (MACUA) and Mining and Environmental Justice Community Network of South Africa (MEJCON SA) to oppose the MPRDA amendment bill of 2012, which was commonly understood to give more power to traditional authorities in rural areas. It did not deal with important aspects as meaningful consultation, monitoring capacity and compliance enforcement.

Other activities to ensure that development in communities is finally realised, have been the workshops by CALS and Oxfam, who have shared information and focused on capacitating communities affected by mining.

We have managed to obtain copies of the Twickenham mine SLPs, listing their commitments, and we are now auditing the annual reports to see if there are any discrepancies, false reporting or non-compliance. We have also been working on a broader meeting to share our work with communities in the Catchment, to forge partnerships and mobilise communities.

What other ways are there to influence and change mining companies' behavior?

Our member Provia intends to raise awareness via a video clip about water challenges and post it on Facebook. Film and TV crew members (students) are helping her with this for free. The video clip will

also show the mines that the problems they've caused are detrimental to our health and safety. With this clip we want to elevate the community's voice. We've realized that our people won't get the help they need unless we come up with innovative ways to use media to expose the greed that ultimately causes our challenges.

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Building a knowledge network

Government

Limpopo department of Health, Bay Clinic (www.brabys.com) provide health and emergency services to our communities. They have experience with the challenges facing our communities, which are linked to the use of water, contaminated by the mines. The health department are strongly affected by the shortage of clean drinking water and by the problem of infrastructure (water supply pipes). Their patient numbers keep increasing, as does the expenditure of medicines, but their staff doesn't and neither does their budget. The department and the clinic are concerned about the situation in our communities: their statistics show that especially in summer the numbers of fatalities rise, as a result of the high temperatures and snake bites, since we are competing with animals to cool off.

Greater Tubatse Fetakgomo Municipality (www.fgtm.gov.za) is constitutionally mandated to render basic services to its community. However, they have budgetary constraints. The demands are very high and they mostly rely on mining companies to assist through adopting the local and economic development projects, which then form part of their SLPs. It seems some of the challenges facing the municipality should be addressed at national level. The communities are demanding that the corporations deal with water shortages, as they are the ones using more water than communities.

Department of Mineral Resources, regional director Limpopo Aron Kharivhe told Elton that the primary task of the department is to implement policies and developmental agendas as determined by the ministry. They don't interfere with law-making processes, but interpret the law and make sure that investors and mining companies are compliant. They have inspectors monitoring compliance on a daily basis. The department has no indications of non-compliance, except for challenges of illegal mining. Their responsibility is to stimulate economic growth in the sector and ensure sustainable mining and welcome any initiative to enhance and promote good governance.

Elton says he learned from this conversation that what the department says is misleading, as we know for a fact that mining companies are not compliant to their SLP obligations, which causes a public outcry.

NGOs/CSOs

Centre for Applied Legal Studies (CALs) is a law clinic, located within the University of Witwatersrand, that focuses on human rights and environmental justice. CALs conducted a study on empty SLP commitments by Lonmin Platinum mine at Marikana, following the massacre in August 2012. It then broadened the research to include key mining companies' SLPs in different provinces, to see whether the practice on the ground is in line with their obligations as stated in the regulations. The research revealed that the current regulatory system does not foster SLPs that contribute to their own goals, as there is no framework for public/community participation in the compiling or development of SLPs. As a result, the communities don't benefit at all from the mining activities.

Together with Open Society Foundation, CALS published Social and Labour Plans Series (phase one and two), which taught us that the legacy of mining in South Africa is of a stark disparity between communities and mining management or shareholders. SLPs are there to address this legacy. Unfortunately, in its current practice, the SLPs do not do that, and the majority of SLPs have no clear mechanisms for communities to hold mining companies accountable, nor are community needs and aspirations in any way grounded in the SLPs. In fact, the vast majority makes no mention of community consultation processes at all.

We have learned from this that mining companies manipulate the system to advance their business with impunity, because the regulations provide loopholes to do so. Mining companies by-pass the intended processes by establishing close contacts with government officials and environmental inspectors in order to disregard the SLP guidelines to obtain licenses, mining rights and SLP approvals. This may include sharing information on strategies and even bribery. The department does not have the capacity or mechanisms in place to monitor and enforce compliance; it relies on annual reports for oversight. Since the SLPs are a requirement to obtain a license, not fulfilling the SLP's commitments should be enough ground for revoking a license. CALS taught us how to do social auditing in relation to the Social Plans.

Benchmarks Foundation is a NGO, doing research also on mining-related issues. It has released reports known as 'policy gaps', identifying where their findings on mining practice on the ground differ from the companies' positive reports. One such study was in our catchment, on the lives of the relocated community of Magobading. The main findings of that study are:

- The mine managed to secure community consent for the relocation by systematically providing improperly informed perspectives
- The mine showed lack of respect for effective, continual and meaningful consultation with the community, which is a source of frustration for the community
- The mine did not provide land for grazing and cultivation
- The mine unfairly preferred and contracted companies that gave scant respect to culture and heritage of the community
- The mine did not provide potable household water for consumption and agricultural purposes
- The mine ignored spiritual and religious needs of the community, including scant respect for graves and the customs of ancestor veneration
- The mine made sure the community is unable to engage with the market economy.

Elton spoke to Eric Mokoua of the Bua Mining Communities and the Benchmarks Foundation and found that he has a wealth of experience working for mining companies and living in communities affected by mining practices. His experience is that mining companies, across the sector in the country, generally do not fulfill their SLP obligations. Lots of promises, little action. There is no commitment from government to change the status quo, in his experience, he has engaged often with top-level government officials, who commit to work together to find solutions for communities' problems, only to

pull out at the last moment. It's up to us as civil society to come up with strategies and programs including capacity building to put pressure on the mining sector and on government, to force them to change.

The information gathered from the Benchmarks Foundation taught Elton that mining companies have signed the UN general principles to uphold laws and human rights, and have an obligation to uplift the communities where they operate. And he has learned that the mining companies' reports don't truly reflect what they've actually done for the communities.

Since there are serious shortcomings in the current systems and processes, there is now a need for a problem-solving mechanism in the form of a facilitated dialogue that deals with the communities' challenges that occurred as a result of the mining practices.

Benchmarks Foundation can help our project by putting pressure on government departments and the mining company.

Networks

Alternative Mining Indaba by Africa Mining Vision, supported by Economic Justice Network of Focissia and the African Union, provides affected and impacted mining communities and civil society a platform to express their concerns and to engage with government and mining companies, to strengthen the capacity of mining communities in the fight for their rights. From this document, Eton has learned ways and strategies to bring this African mining vision for natural resources home to communities, such as coordinating capacity building workshops and campaigns on the ground, and by creating activities and systems that would work for communities. Mining is an important international trade, but it should be managed in a way that is informed by the communities where explorations take place. CSOs, communities and law-makers should interact more and make sure all affected and interested parties are capacitated to meaningfully engage on this topic.

Local sources

Tshepo Phala (Ga-Kgoetse) is from Thokwane and works as an administration officer for Lodge Construction Company, hired by the municipality to build a tar road for the community. Provia spoke to him about the road being built.

Mr. Makofane Ernest (0794872588) has been working as a taxi driver for over 8 years and has experienced many challenges with people crossing the road and carrying water. He spoke to Provia about the many accidents he encounters, which scare him. The road is narrow, full of potholes and people drive fast even though they are inexperienced drivers, and there are always mining trucks disturbing the road.

Media sources and documents

News24: “Car crash at R37 road” by James De Villiers, described how the R37 experiences a high rate of accidents, often deadly, and is considered one of the most dangerous roads in Limpopo. Villagers, especially the elderly and youth should not be crossing this road while fetching water in buckets or wheelbarrows from the mountain spring.

The Sun: “Car crash at R37 road” by Jo Barnes, speaks of the failing South African mission to provide safe sanitation for all. Sanitation requires running water. Lack of proper toilets affects the quality of life for billions of people globally. On 19 November people celebrate world toilet day. It highlights how access to safe sanitation, the practice of good home hygiene and safe water supply could potentially save 1.5 million children worldwide each year. In the South, the backlog in the provision of affordable housing is enormous and poor service delivery has become such a bone of contention that affected communities regularly protest to draw attention and put pressure on local authorities and mining companies to provide them with proper sanitation facilities, including clean water.

News24: “Local economic development strategy (Tubatse Municipality)” talks about the distribution of water, the reliability of water storage and vandalism or pollution still being a problem for communities hit by cholera. Although proper water supply to South Africa’s poorest communities has improved, not all are benefitting. Further outbreaks of water-related diseases such as cholera and typhoid can still happen. There is a lack of drinking water and when it is provided, there are interruptions. When there are regular delays, residents will store water for a long time in unsanitary containers, which increases the risk of water-related diseases. In our communities as well, we experience a lack of clean water and the consequences of drinking unclean water (without boiling it first) in cholera and other diseases.

Radio talk show “Power FM” by Iman Rappety hosted the two deputy directors from the Department of Social Development and the Department of Environmental Affairs about innovative ideas to counter climate change and the social implications of environmental disregard, especially in high density areas like mining settlements, where human waste is a serious challenge. We’ve learned that communities need to be fully aware that they have a responsibility in keeping their environment safe and healthy. This includes their role in developing the SLP, that should not be left to the mining companies alone. Disregard for the environment results in the poor suffering the most. Therefore, inclusivity is vital to collectively drive these forces for change.

Television interview with Chris Rutledge from Action Aid (SABC3). Chris Rutledge is the mining and extractives coordinator at Action Aid South Africa. He has been in the fore along with the Kuruman community on the Northern Cape to legalise artisanal mining, commonly known as Zamazamas. The artisanal miners are highly skilled former employees of mining corporations in various mining towns in South Africa. We’ve learned that there is a problem when mines close, that they have not devised

programs to ensure a shift from community dependency on the mine to other sources of income and livelihood, so the community can sustain themselves after mining.

Internet: Action Voices is the media platform for activists and communities affected by mining to share first-hand information. Come Act's Elton is an active member of this platform. There are many posts from all over the country, dealing with issues of mining, environment and social injustices, ranging from pollutions, intimidations, transparency and accountability and community beneficiation. The problems are common and similar across the country. It is clear that the existing systems and processes have gaps that benefit the politicians and officials, and are detrimental to the communities. The site is a great source of on-the-ground evidence of how communities are affected by mining.

Learning from new knowledge

Before they start operating, the companies are required to submit a SLP, which includes infrastructure development and poverty eradication projects that the mine will support in line with the local IDP. Communities can use the consultation process required for the SLP, to put pressure on the company about which project to support and how the community will benefit.

We've learned several important things by consulting these sources:

The mining companies don't consult affected communities properly or at all. Sometimes they mislead communities by giving them incomplete or incorrect information. Before they start operating, the companies are required to submit a SLP, which includes infrastructure development and poverty eradication projects that the mine will support in line with the local IDP. Communities can use the consultation process required for the SLP, to put pressure on the company about which project to support and how the community will benefit. However, due to loopholes in the existing legislation, most mining companies don't include a community consultation process. Some community members are however supportive of the mines, just because they receive some useless token benefits. But they have the right to claim much more substantial, sustainable and meaningful benefits. Communities can fight back by taking steps to protect themselves, but they need a trusted mechanism to voice their concerns. Companies need structured ways in which they can be held accountable by their host communities. At the moment, it is very difficult to hold companies accountable to good corporate compliance, since the legislation and regulations they should adhere to, especially around the SLPs, are failing. That should be transformed and tightened up in such a way that the loopholes are fixed.

Elton summarized the following gaps in the existing regulatory legislation:

- Inadequacy of provision for community participation
- Inadequacy of the definition of key concepts like community
- Lack of clarity on parties to be consulted during the process by which SLPs are compiled
- Lack of inclusivity for community participation during the development phase of the SLPs
- Lack of awareness to ensure that communities are well informed, whereby the space is created for community participation in the design of the SLPs
- Lack of provision to emphasise the need for community participation in the implementation and monitoring of the SLP
- Lack of distinction between the greenfield and brownfield operations (speaks to the infancy stage of mining operation which focus more on skills development compared to the matured stage of the operation which will have an existing workforce)
- Inconsistencies between the MPRDA and the SLP guidelines of 2010.

The monitoring capacity of the department of mineral resources should be enhanced by accepting suggestions from civil society and by equipping and supporting community-based groups working in the monitoring and compliance field. Communities should be capacitated to see that they have a bigger ground work role to play in the monitoring system to ensure accountability and good corporate

governance. Inclusive, transparent and meaningful participation is vital for a fair process to unfold. Mining corporations have signed the UN global principles to uphold and respect laws and human rights, including the right to access accurate information and an opportunity to participate in order to influence decision-making. Community development means there is a fair process to be followed in design and implementation. This is about identification of community needs and aspirations and checking if these are relevant, realistic and achievable.

A locally based grievance resolution mechanism provides a promising avenue by offering reliable structures and approaches where local people, local government and the company can find effective solutions to their problems together.

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