



Media statement by the Bench Marks Foundation

Mines' grievance mechanisms intimidate stakeholders and are ineffective

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FOR IMMEDIATE RELEASE

Coal mines' bureaucratic processes with regard to grievance mechanisms intimidate those who lodge a complaint and is therefore fairly ineffective in dealing with stakeholder's grievances, according to a report released by the Bench Marks Foundation on coal mining in South Africa.

The report, Policy Gap 9 on South African Coal Mining: Corporate Grievance Mechanisms, Community Engagement Concerns and Mining Impacts, was released in Johannesburg on 19th August 2014 and focuses on communities near mines in the Nkangala District including Witbank (eMalahleni) and Middelburg (Steve Tshwete) in South Africa and on two mining corporations, Anglo American Corporation and BHP Billiton.

"The grievance mechanisms implemented by these two mines are mostly employer/employee orientated and largely excludes communities," says John Capel, executive director for Bench Marks.

"It's mostly related to workplace and space issues rather than wider community grievances.

"There is also an implied threat, especially with BHP Billiton's grievance process, that if an issue or grievance raised is not considered 'genuine' by the corporation, punitive steps may be taken against the person raising the grievance. This is nothing short of intimidatory!"

"In addition, the mechanisms are a one-size-fits-all tool which does not take into account regional, national, provincial and local variations as well as culture, economics and environmental issues".

Anglo American introduced a tool referred to as 'The Socio-Economic Assessment Toolbox' (SEAT), and although it has been in place for a number of years, potentially affected people who should be using this tool, are not yet aware of it and do not make use of it.

"The company has introduced various entry points through which grievances can be lodged including a phone hotline, email and regular mail service as well as a Facebook page. And although this and SEAT looks good on paper, it is fairly ineffective," says Capel.

"The problem is that in communities with low levels of literacy, poor education, scant access to education, and limited access to information technology, the poorest of the poor and those most impacted on by mining operations are mostly excluded.

"If affected stakeholders are not aware of the tools available to them, they cannot lodge complaints through the 'right channels', this will reduce the effectiveness of the corporation's tools. Serious rights violations and grievances will not be recorded or dealt with.

"Anglo needs to properly consult with all stakeholders and explain what's available to them. Face-to-face consultations are what communities really want.

"Both corporations have to work on stakeholder relations as there is a massive lack of confidence in the company, not only by communities near its mines, but by non-governmental and community-based organisations".

Capel said that when communities or organisations do complain about issues such as cracked housing on the coalfields and in other areas where open cast mining and blasting takes place, poor architecture is blamed. When they complain about air or environmental pollution or health issues, the claims are not met with actionable solutions or with respect.

“This clearly goes against the purpose of having corporate grievance mechanisms”.

Policy Gap 9 refers to the three principles of corporate grievance mechanisms set out by Professor Ruggie from Harvard University. The goal of the principles is to recognise and realise the following principles:

- a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) The role of business enterprises as specialised organs of society performing specialised functions required to comply with all applicable laws and to respect human rights; and
- c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

In addition, the report also highlights the effectiveness criteria for non-judicial grievance mechanisms. These should be:

- a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- c) Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of processes and outcomes available and means of monitoring implementation;
- d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism’s performance to build confidence in its effectiveness and meet any public interest at stake;
- f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognised human rights; and
- g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.
- h) Operational-level mechanisms should also be based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

“BHP Billiton’s engagement with communities near mines in Australia is qualitatively different from what they are in South Africa. This is due to the excellent and strict Australian Mining Code,” says Capel. “And Anglo American’s good intentions of its head office in London are often diluted when it comes to on-the-ground operations where productivity and cost containment are often the primary concern of local management.

“Global best practice guidelines on corporate responsibility don’t seem to matter when it comes to South Africa.

“We want the government to replace voluntary principles with statutory and legally binding regulations and obligations as it is clear that voluntary principles have minimal impact and are easy to manipulate”.

Says Capel: “Bench Marks strongly recommends the formation of an independent national grievance and arbitration mechanism to which mining impacted communities can refer all mine-related grievances to.

“We also recommend the establishment of an independent central fund on which mine-impacted communities can draw from to appoint their own expert law, geological, environmental, social and economic experts. This will offset the imbalance in knowledge and power that currently exists in the consultation process.

“The current processes used by mines are just not working! Our report clearly shows that the social, labour and economic crisis that’s been plaguing the mining sector will continue if urgent steps are not taken to address the valid grievances of all stakeholders affected by mining in a truthful, transparent and equal consensus-seeking way”.

To download the report and to view Bench Marks Foundation’s other research reports, go to www.bench-marks.org.za.

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Bench Marks Foundation is an independent non-governmental organisation mandated by churches to monitor the practices of multi-national corporations to

- ensure they respect human rights;
- protect the environment;
- ensure that profit-making is not done at the expense of other interest groups; and
- ensure that those most negatively impacted upon are heard, protected and accommodated within the business plans of the corporations.

The Foundation was launched in 2001 and the Rt Rev Dr Jo Seoka chairs the organisation.

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