



Media statement by the Bench Marks Foundation

Judgment is ‘game changer’ for communities

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FOR IMMEDIATE RELEASE

Today’s judgment in the North Gauteng Court is a game-changing victory for the right of communities in South Africa to be properly consulted before mining rights are issued, the Bench Marks Foundation says.

Judgment in the case involving 128 applicants and the Bench Marks Foundation as the 129th, was handed down today by Judge Annali Basson. Respondents included the Minister of Mineral Resources and Australian companies Mineral Resources Commodities (MRC) and Transworld Energy (TEM), among others.

In her findings, Justice Basson declared that the mineral resources minister must obtain the prior and informed consent from the community, as the holder of rights on land, prior to granting any mining right to TEM, and that they may not be deprived of their land without their consent.

Executive Director of Bench Marks Foundation, John Capel, said afterwards that this judgment had far-reaching implications for both communities and mining.

Capel said the judge’s ruling that the Mineral and Petroleum Resources Development Act (MPRDA) and the Interim Protection of Informal Land Rights Act (IPILRA) must be read together was particularly noteworthy in this case.

“It is extremely important that this ruling has recognised that where land is held on a communal basis, the community must be placed in a position to consider the proposed deprivation and be allowed to take a communal decision in terms of their custom and community on whether they consent or not to a proposal to disposed of their rights to the land. This is something that Bench Marks Foundation has long argued and, in fact, was a central tenet of our submission to the court in this particular case,” he said.

He added: “No longer will mining companies and the Department of Mineral Resources be able to ride rough shod over communities’ wishes by simply getting the approval of tribal authorities in granting mining licences. In many cases, these authorities represent vested interests, and do not correctly reflect the wishes of their communities.

“Neither will authorities be able to bus in groups of disconnected parties to so called community meetings, and claim that they represent the affected communities, as happened recently on the Wild Coast when the Minister came to meet the Xolobeni community.

“It will also be of great interest to see how this court case impacts on previous mining licences issued without due consideration of community wishes,” he added.

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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 by the Rt. Rev Dr Jo Seoka who chairs the organisation and by member churches of the SACC.

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