



Mining Charter: who is fooling whom?

Minister excludes communities from discussions

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Nkaneng informal settlement near the Marikana mine

The new Minister of Mineral Resources, Gwede Mantashe, has said that he will finish the negotiations over the new Mining Charter in three months. In his haste to get the job done, he proceeded without including mining communities in a mini-indaba in mid-March. And it seems communities have again been excluded from the next meeting, scheduled for 10 April. Who is fooling who?

Newly-elected President Cyril Ramaphosa, Mantashe and former President Kgalema Motlanthe constitute the new regime committed to seeing mining as part of the country's economic regeneration - a sunrise sector. The three were all leaders of the National Union of

Mineworkers, with Ramaphosa among its founder members in 1982. Mantashe was a worker when Motlanthe joined the NUM in 1987 after being released from Robben Island. For the following ten years, he worked mostly as an education officer, with a spell in 1992 as acting General Secretary of the NUM, when Ramaphosa departed. Six years later, in 1998, Mantashe was elected as the first worker General Secretary of the NUM, occupying the post until May 2006.

Since those days, these men have become leaders in the political terrain and business with one linked to the events that led to the Marikana massacre in 2012.

In his role as chairperson of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, Motlanthe was forthright about the rights of communities in decision-making.

In this role, Motlanthe argued that the Mining and Petroleum Resources Development Act (MPRDA) benefited those with deep pockets and disadvantaged poor mining communities. The Panel specifically recommended that Section 10 of the Act be amended so that directly affected communities be invited to negotiate and seek agreement on any mining application. This would put the mining law to be in compliance with Interim Protection of Informal Land Rights Act, which mining companies must adhere to. In addition, the Panel recommended where more than one community is affected, “each shall have the right to independently decide whether to grant or refuse its consent”. This we take to mean that mining communities have a right to choose how to use their communal lands and to do so democratically. This view is emphasised when dealing with relocation and the loss of property and livelihoods, as the Panel recommends that the “majority of those to be relocated must consent to the mining activity.”

While Mantashe excluded mining communities in his first engagement, Motlanthe’s High Level Panel squarely pushed the fundamental questions onto the legislative agenda. These are:

- The exclusion of mining communities from decision-making in matters that affect them. Mining communities have no legal right in mining law and social practice to be included as equal partners in decision-making on Social and Labour Plans, the Mine Health and Safety Council, grievance or redress mechanisms or in discussions about profit sharing, royalties. Often, companies argue that they deal with traditional authorities and chiefs, or local authorities, who are more concerned about their own wealth and power than serving the true needs of their people. Participatory democracy as understood by our traditions of struggle and our Constitution implies the right to negotiate, and to say no to mining where communities deem it inappropriate or undesirable.

- The externalisation of costs onto the poor and the wider environment. It is a truism that corporations would not profit if they did not exploit others. Mining companies would not be profitable if they did not shift the cost of doing business onto mining communities, the natural environment and the wider community. In the 40-odd communities the Bench Marks Foundation works with, the mines do not take responsibility for the polluted water, the cracked homes, the various cancers and other lung diseases and respiratory infections, unless they are forced to do so.
- The lack of capacity of the Department of Mineral Resources to implement policies and monitor these in the public interest, including its administrative failures in recording and making transparent the Social and Labour Plans and to record the processes of relocation of mining communities to make way for mining, are a fundamental problem.

It is these considerations that Mantashe must take into account when dealing with his first challenges on the mining charter.

He has been involved in the mining charter from the beginning. The first charter, a draft of which which was leaked to the public, sought to transform the sector at different levels: ownership, skills development, procurement, and so on.

It set out what it considered to be a shared vision: “to create an industry that will proudly, reflect the promise of a non-racial South Africa.” But sadly – in both its conception and delivery – the charter excluded the very people it sought to empower. The lofty objectives included redressing historical and social inequalities guided by the Constitution (Bill of Rights), implementing the objectives of the then Minerals and Petroleum Resources Development Bill “to expand opportunities for historically disadvantaged persons to enter the mining and minerals industry or benefit from the exploitation of the nation’s mineral resources,” and, dealing with skills shortages among black people and women. This was 2002 and Gwede Mantashe, sitting in the negotiations as secretary of the NUM, was accompanied by the president Senzeni Zokwana.

The mining sector then was seen as a sunset industry, unlike the current euphoria surrounding the new president who optimistically sees it as a sunrise sector. Job losses were on the cards. The charter came into being just after the MPRDA, which specifically empowered the Minister to develop, within six months “a broad based socio-economic empowerment Charter”, aimed at allowing black South Africans “to benefit from the exploitation of mining and mineral resources.”

It did not help that the charter was drafted in secret and when it was leaked to the financial media, mining share prices plummeted on foreign markets. The leaked draft proposed that mining licences not be given or renewed unless the applicant had a black partner, and 30%

black economic empowerment (BEE) equity was required for all existing operations and 51% for new operations. The 'final draft' of the official Mining Charter was given to then President Thabo Mbeki in 2002, and Parliament voted for it to be implemented two years later, in May 2004. The vision and the spirit of the RDP runs through this document, in particular 'to mobilise all our people and our country's resources toward the final eradication of apartheid and the building of a democratic, non-racial and non-sexist future.'

This spirit compels the minister to include mining communities, alongside mining bosses and organised workers in the re-conceptualisation and formulation of the charter. Mining communities that the Bench Marks Foundation works with insist that the immoral, unfair and unjust passing-off of the costs of mining onto their homes and environments be addressed. Mining communities want the cracked houses, the poor quality of water supplies, the illnesses caused by the polluting of air and water supplies, and much more, to be factored into this mining charter. In short, they insist that the true cost of mining must be a starting point of the negotiations.

However, we are not confident of the capacity and courage of the Department of Mineral Resources to monitor and set right the ills of the sector. The department has failed to ensure compliance to the commitments made by the parties to the first mining charters. Mining communities often see the department as part of the problem and not yet part of the solution.

Whether the mining sector is a sunset or sunrise sector depends on who you speak to. For many we work with, the outlook is cloudy. But if the Minister stays close to those who suffer the most, we may see the sun again.