



Getting the Balance Right? Mining Interests, Planning Law and Sustainable Human Development in South Africa

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Abstract: In the 140-odd years after the first diamond was found in South Africa in 1866, mining catapulted the country from a predominantly agrarian society into a modern industrial nation. For the biggest part of this period, mining drove and planning law and human development followed. This ‘order of importance’ was largely the result of the huge wealth and influence of the mining houses, the (perceived) importance of the sector for the development of the country, and the broader skewed power dynamics of colonial and apartheid rule.

Over the last decade, national government enacted new legislation by which it has attempted to ensure that mining is made more serviceable to broader societal reconstruction and development. A key component of this new legislation has been a provision to ensure that mining companies make tangible contributions to socio-economic development and human settlement in ‘mining areas’. At the same time, significant amendments have since the late 1990s been made to municipal governance and development planning legislation with the aim of ensuring progressive, assertive strategic planning by municipalities. Recent legal pronouncements are also adding further clarity to the mining and land use planning interface.

While these and other significant steps have been taken in the legal and policy domains to set the balance right, very little actual, empirical research has been done to establish what the outcomes ‘on the ground’ have been and if, how and to what extent the *actual* interface of mining companies with planning law, socio-economic development and human settlements has changed as envisaged.

In this exploratory study, the extent to which the changes in the legal framework have actually assisted in ensuring (1) a greater degree of balance, and (2) a more symbiotic relationship between mining, planning and human development, is explored in a predominantly rural districts with a long mining history. Use is made of (1) interviews with key role-players in the mining industry, municipal and provincial government, the private sector and communities, and (2) documented material. Key questions that are explored are: How do mining companies interact with municipal planning and planners, spatial planning law and sustainable human development and settlement reconstruction?

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How is this different from pre-1994 kinds of engagement and interaction? Is there *real* change, or is it just a case of legal compliance?

1. Introduction

In the 140-odd years after the first diamond was found in South Africa in 1866, mining catapulted the country from a predominantly agrarian society into a modern industrial nation. Even today, mining remains a key driver of South Africa's economic development. This situation is also set to undergo little change, for, after more than a century of intensive extraction, South Africa is (still) regarded as one of the richest countries in the world in terms of mineral reserves, and one of a handful of countries with mines with more than 100 years of remaining service at current exploitation levels (Leon, 2012).

The exploitation of the country's mineral wealth has, however, since its earliest days been a highly contested activity. Largely as a result of the huge wealth and influence of the mining houses, the (perceived) importance of the sector for the development of the country, and the broader skewed power dynamics of colonial and apartheid rule, mining drove and planning law and human development followed for the biggest part of the country's modern history and mining extraction period. Key questions that have been raised in this contestation revolve around issues of benefit, cost and ownership – i.e. who owns the resource, who gains from its exploitation and who carries the cost? Of major concern in these regards has been the impact of the activity on its host community and the manmade and natural environments in which it is located. While there have been significant direct and indirect economic benefits for many such communities, there have also been high costs in the form of (1) pollution and mining-related diseases; (2) environmental degradation; and (3) the introduction of value-systems and human interactions that challenge existing norms and values and human rights abuses.

Over the last two decades, the mining sector of its own accord, both locally and abroad, has made enormous strides in cleaning up its act and setting up a guiding framework of what is regarded as good practice in (1) the protection and enhancement of human rights and (2) co-development of host communities in mining areas (see International Council on Mining and Metals, 2003; 2009; 2011 and Ruggie, 2011). From its side, the South African government has introduced a new progressive legal framework by which it has attempted to ensure that mining is made more serviceable to broader societal reconstruction and development (see Republic of South Africa, 2002; 2004; 2008). A key component of this new legislation has been a provision to ensure that mining companies make tangible contributions to socio-economic development and human settlement in 'mining areas'. At the same time, significant amendments have since the late 1990s been made to municipal governance and development planning legislation with the aim of ensuring progressive, assertive strategic planning by municipalities.

Recent legal pronouncements have also added further clarity to the mining and land use planning interface.

Notwithstanding the many positive changes the mining sector has made in the wake of the new voluntary and legally-binding codes of conduct, the industry is often still treated as if it has not changed its ways, is a super-exploiter and is not complying with stated legal provisions. At the same time, the persisting levels of deep poverty and the slow pace of broad-based economic transformation in the country, coupled with the seemingly extraordinary profits made in the mining sector, has seen the activity becoming a key discussion point in debates about the future of the South African economy. A strong theme in these discussions has been that of nationalisation of the industry, and if not that, then ways of securing a greater tax income from the activity.

Despite (1) the introduction of the legal and voluntary steps to 'set the balance right'; (2) the importance of the industry for the South African and regional economy; and (3) the prominence of the debates out the future of the sector in the political arena, public debates and the popular media, very little actual, empirical research has been done to establish what the outcomes 'on the ground' have been and to what extent the *actual* interface of mining companies with planning law, socio-economic development and human settlements has changed as envisaged.

In this exploratory study, the extent to which the changes in the legal framework have actually assisted in ensuring (1) a greater degree of balance, and (2) a more symbiotic relationship between mining, planning and human development, is explored in a predominantly rural district with a long mining history. The questions that are explored are: How do mining companies interact with municipal planning and planners, spatial planning law and sustainable human development and settlement reconstruction? How is this different from pre-1994 kinds of engagement and interaction? Is there *real* change, or is it just a case of legal compliance? It is hoped, that in undertaking research that considers the sector from a more multi-pronged angle, a contribution will be made towards moving the debate beyond disdain, rhetoric and critique, and into an arena where more informed debates and decisions about the future of the sector and the communities that are closely tied to its prospects, can, and will be had.

The structure of the paper is as follows: The next section provides a brief overview of the changes in the legal framework in the mining-community-municipality interface in South Africa post-1994. This is followed by a short discussion of (1) the district in which the research was conducted and the reason for its selection as the area in which to do the study, and (2) the methodology that was used in the study. The next section provides the data, which is followed by a discussion of the findings in terms of the three questions that the research sought to answer. This is followed by a series of concluding thoughts.

2. Changes in the Legal Framework Governing Mining, Municipal Planning and Land Use Management post-1994

The most significant change in the legal framework governing mining activities, has been the introduction of the *Mineral and Petroleum Resources Development Act, Act 28 of 2002*, which, in accordance with its preamble, seeks to ‘... *make provision for equitable access to and sustainable development of the nation’s mineral and petroleum resources*’ (Republic of South Africa, 2002: 2). Key objectives of the Act in pursuit of this goal are *inter alia* (1) the protection and management of the environment and the management of the country’s mineral and petroleum resources through environmentally-responsible exploitation, so as to ensure economic and social development for current and future generations; (2) the promotion of local and rural development in the areas where mines are active, and the social upliftment of communities hosting, affected by mining and that supply labour to mining operations; and (3) far greater participation in and ownership of, and receipt of benefits from the mining industry by historically disadvantaged persons, i.e. Black South Africans, women and persons with disabilities.

In order to achieve the stated objectives, the Act, Amendments to the Act and Regulations passed in terms of the Act *inter alia* make provision for:

- The severing of the mineral rights from the owner of the land and placing these in the hands of the State and the introduction of detailed legal procedures to apply for prospecting and exploitation rights;
- The prescription of regulatory and progressive compliance measures, including conducting an environmental impact assessment and the preparation of an environmental management programme or plan by those seeking to acquire a prospecting, mineral, exploration and production right;
- The development and setting of a ‘*housing and living conditions standard for the minerals industry*’;
- The development of a broad-based socio-economic empowerment Charter to set the framework, targets and time-table for ensuring that previously disadvantaged South Africans enter and benefit from the mining industry;
- The provision of assistance to historically disadvantaged persons to conduct prospecting or mining operations;
- The making of provision for communities to lodge applications for mining rights on land that they own or will receive ownership of; and
- The placing of a requirement on successful applicants for mineral rights to (1) contribute to the socio-economic development of the areas in which they are located, as well as the communities hosting, affected by and/or supplying labour

to their mining operations, *inter alia* by the preparation of and reporting on the implementation of *Social and Labour Plans* (SLPs); (2) assist with the realisation of the objective of ensuring active participation in, and drawing of benefits from mining and beneficiation operations by members from historically disadvantaged groups prior to embarking on mining operations; and (3) ensure community participation in mining operations by affected communities (Republic of South Africa, 2002; 2004; 2008; Department of Minerals and Energy, 2004; Leon, 2009; Booysen *et al*, undated.).

In accordance with Guidelines prepared in support of the Act, the SLPs that have to be prepared must include (1) comprehensive Human Resources Development Programmes that include Employment Equity Plans; and (2) Local Economic Development Programmes that will ensure poverty eradication and upliftment of the communities living in the areas where mining is undertaken (Department of Minerals and Energy, 2004: 4). This is *inter alia* to be ensured through the involvement of these communities in mining and beneficiation actions and by setting out processes to save jobs in the case of the downscaling of operations and/or mine closure (*Ibid*). The Guidelines also clearly indicate that SLPs must ensure consultation and cooperation of the mining company with (1) the municipalities in the areas in which they are located, as well as (2) municipalities in the '*major labour-sending areas*', in their planning and development activities, notably in the preparation and implementation of their Integrated Development Plans (see the discussion on these plans in the next paragraph below) (Department of Minerals and Energy, 2004: pp. 8; 2007: pp. 16; Mabuza *et al*, 2010). A later set of Guidelines (Department of Mineral Resources, 2010: pp. 17) go further and specify that, '*The mine or production operation must furthermore consult with other economic development frameworks like Provincial Growth and Development Strategy (PGDS), National Spatial Development Strategy (NSDS), National Priorities and any other relevant stakeholders. The Mine or Production Operation must, through consultation with communities and relevant authorities provide a plan. The plan should be in line with the IDPs of the mine communities*'.

In addition to the Mineral and Petroleum Resources Development Act, Act 28 of 2002, the post-1994 government passed the *Local Government: Municipal Systems Act, Act 33 of 2000* and a set of *Regulations* in 2001 in terms of the Act, which *inter alia* provide for the preparation of a strategic five-year plan by every municipality in the country, called the *Integrated Development Plan* (IDP) (Republic of South Africa, 2000; 2001). This Plan, which includes a *Spatial Development Framework* (SDF) that is meant to both reflect the spatial outcomes as envisaged by the IDP, is also meant to provide strategic guidance in the preparation and implementation of the municipality's land use management system. Both the IDP and the SDF have to, in terms of the Municipal Systems Act, 2000, be prepared in a highly participatory way involving all stakeholders and seek to align and integrate the plans, strategies, investment and spending proposals of (1) all spheres and sectors of government active in the municipality, as well as (2) all

the major private sector actors in the municipality (Republic of South Africa, 2000; 2001). As such, this Act, mandates the involvement of mining companies in the preparation of municipal IDPs and SDFs, and binds them to locating and programming their infrastructure investment and spending plans in accordance with these plans.

Two recent court cases have provided another dimension to the interaction between mining companies and the State (see Business Enterprises at the University of Pretoria, 2012). In *Maccsand (Pty) Ltd versus City of Cape Town and Others* (12 April 2012), the Constitutional Court made a clear distinction between mining and land-use planning legislation and ruled as follows: While the Mineral and Petroleum Resources Development Act, Act 28 of 2002 (MPRDA) is concerned with mining, the Land Use Planning Ordinance, 1985 (LUPO), in the Western Cape Province governs the control and regulation of the use of all land. These laws serve different purposes within the competence of the spheres of government charged with the responsibility of administering them: While the MPRDA governs mining, LUPO regulates the use of land. However, the exercise of a mining right granted in terms of the MPRDA is subject to LUPO. An overlap between the two functions occurs due to the fact that mining takes place on land. This overlap does not constitute an impermissible intrusion by one sphere into the area of another, because spheres of government do not operate in sealed compartments. There is nothing in the MPRDA suggesting that LUPO ceases to apply to land upon the granting of a mining right or permit. By contrast, Section 23(6) of the MPRDA proclaims that a mining right granted in terms of that Act is subject to it (i.e. LUPO) and other relevant laws. The implication of this pronouncement is that, while permission may be granted to mine, mining cannot take place until the land in question is appropriately rezoned. The South African constitutional order provides that one sphere of government or organ of state may take a decision whose implementation may not take place until consent is granted by another sphere of government or organ of state within whose area of jurisdiction the decision is to be executed. Each is concerned with different subject matter. If consent is refused, it does not mean that the first decision is vetoed. The authority from whom consent was sought would have exercised its power, which does not extend to the power of the other functionary. This is the case, despite the fact that the effect of the refusal in those circumstances would be that the first decision cannot be put into operation. This difficulty may be resolved through cooperation between the two spheres of government or organs of state. Failing which, the refusal may be challenged on review.

In the second case, *The Minister for Mineral Resources versus Swartland Municipality* (12 April 2012), which was heard together with *Maccsand v The City of Cape Town*, the judge concurred that a party who is granted a mining right or permit in terms of the MPRDA may start mining operations only if the zoning of the land in terms of LUPO permits it.

3. The John Taolo Gaetsewe District Municipality: Overview and reason for inclusion in the study²

The John Taolo Gaetsewe District Municipality is one of five District Municipalities in the Northern Cape Province, and is located on the northern border of the South Africa with Botswana. The district, which is 27 293km² in size, comprises three Local Municipalities, the Gamagara, Ga-Segonaya and Joe Morolong Local Municipalities. According to the 2007-Statistics South Africa Community Survey, the district is home to 172 454 persons, which put in the 47th place out of the then 52 District Municipalities in the country in terms of population size. The density of settlement is very low by national and international comparison (7 persons per km² in 2011). Other than sizeable population concentrations in one large regional town (Kuruman) and six smaller towns (Mothibistad, Bathlaros, Moropeng, Kathu, Olifantshoek and Dibeng), the bulk of population (more than 50%) is spread across a vast landscape dotted with approximately 185 rural villages and medium to large farms. Nearly 44% of the population live in deeply impoverished conditions in the Joe Morolong Local Municipality, primarily on land which once formed part of the former apartheid-era Bantustan of Bophuthatswana. The district is marked by a harsh semi-desert climate with annual temperatures ranging between 8°C and 28°C, and an annual rainfall ranging from 500mm in the south-eastern part of the district to 200 mm in the north-western part.

The district was for many decades home to large asbestos mining activities, which came to an end in the early 1980s. Large iron ore and manganese reserves and deposits of a range of semi-precious stones in the area, coupled with the commodities boom of the last decade, has seen a resurgence and massive expansion of mining in the area. Most of the mines are open-cast, with the district also being home to one of the largest open-cast iron ore mines in the world (Sishen), from where iron ore is carried by train on one of the longest iron ore railway lines in the world to the port of Saldanha, 861 km away on the south-western coast of South Africa. The last decade has also seen the arrival of multi-national mining companies in the area, largely in pursuit of the manganese reserves in the area. In addition to the mining industry, and its associated transport and logistics sectors, the two other, far smaller economic activities in the area are extensive agriculture in the form of cattle and game farming, and subsistence agriculture.

The reason for selecting this district as area in which to do the study is as follows: The author was part of a team that was appointed to undertake a review of the Spatial Development Framework of the district in 2011. This appointment provided the ideal opportunity to not only get access to (1) an area that is not only far removed from the major urban complexes of the country, but also (2) to the many stakeholders that would need to be interviewed in the kind of study that was envisaged. In order to ensure sound research ethics, the author (1) obtained informed consent from the project manager in

² The information discussed in this section was obtained from the *Spatial Development Framework* of the John Taolo Gaetsewe District Municipality (John Taolo Gaetsewe District Municipality, 2012).

the municipality to undertake the study, and (2) throughout the study, explained the dual-focused nature of his questions, interviews and requests for data to all interviewees. Given the emphasis in the preparation of the Spatial Development Framework on producing something that would be to the benefit of all that live and work in the district, which is also the reason for undertaking this research, no clashes of interest were encountered.

4. Methodology

Use was made of two sources: (1) documents and (2) semi-structured interviews. The former consisted of (1) planning documents, notably plans, policies, strategies and development frameworks prepared by the John Taolo Gaetsewe District Municipality, the Local Municipalities that fall within the area of the jurisdiction of the district and the Northern Cape Provincial Government; and (2) information on the activities of mining companies as provided on the websites of mining companies. The *interviews* entailed (1) one-on-one interviews; and (2) focus group sessions with representatives of the mining companies active in the area, municipal and provincial officials, consultants, local politicians and traditional leaders. These interviews were informed and enriched with information gained from a series of public participation meetings, conducted as part of the review of the John Taolo Gaetsewe District Municipality. All the interviews and public participation meetings were held in the period March 2011-February 2012.

While the documents and interviews provided a wide and a rich source of information on a myriad of issues and aspects surrounding the mining industry, the emphasis throughout the data-gathering and analysis session fell on exploring the way in which mining companies interfaced with the State, communities and each other in response to, and in accordance with the legal requirements for involvement with and support of: (1) the integrated development planning and implementation activities by municipalities and provincial governments; (2) the Local Economic Development plans, projects and programmes of municipalities and communities; and (3) the sustainable long-term development of the district. As such, the data gathered was both (1) quantitative (i.e. dealing with economic growth, human settlement formation and change and environmental indicators); and (2) qualitative (i.e. the views, opinions, concerns, aspirations, hopes and dreams of those interviewed) in nature.

5. Findings

The findings are structured under four themes: (1) views of the representatives of the mining companies active in the district; (2) views of representatives of provincial and municipal government officials and municipal councillors in the district; (3) views of community and traditional leaders and community members; and (4) documented evidence of investments by mining companies in the district.

5.1 Engagements with Representatives of the Mining Companies

All of the representatives that were interviewed were fully aware of the (new) legal requirements on mining companies and specifically, their own operations. In a number of cases, interviewees indicated that they had good working relationships with (1) officials and councillors in municipalities, and (2) traditional and community leaders in the area. References were also made to stakeholder-structures on which they served and the involvement of the mines in (1) initiatives by organs of state and communities to initiate and support local economic activities and to increase job creation in the areas in which they were located; (2) the provision of bursaries for learners in the area; (3) the construction and maintenance of infrastructure in the region, including the very costly maintenance and upgrading of local and regional roads; (4) the provision of housing; and (5) the construction of community facilities, such as clinics, class rooms and sporting facilities. While the level of enthusiasm for this involvement in the area and its people varied from very keen to mere compliance, there was not a single interviewee who expressed the view that such investments and contributions, while sizeable, should not be made.

What did, however, emerge in a number of interviews, was a distinct irritation, which in some cases was closer to a real frustration with a number of aspects around the way in which the public/State sector worked. These included (1) the perceivably far more laid-back approach and much slower speed at which ‘things moved along’ in the public sector; (2) the lack of adequately trained and committed officials to give full and real expression to the requirements of the new laws; and (3) the lack of integration and implementation in the plans, decisions and funding decisions in the three spheres of government.

In a number of the interviewees respondents from the mining sector would explain their frustration by explaining where they were coming from. What these explanations emphasised was the enormous difference between the nature and scale of a mining operation and the public sector and the way one had to function to survive in the mining sector. This business environment included (1) 300-plus carriage-iron ore trains of more than 3.2 km long; (2) hundreds of iron ore and manganese trucks running 24/7, all year-long; and (3) huge amounts of capital had to be invested in the construction and maintenance of mining infrastructure (i.e. ground preparation, erection of structures, machinery and training and relocation of workers), while being super-exposed to a highly competitive business climate and erratic fluctuations in supply and demand on a global scale. This harsh business and operational climate, it was argued, meant that miners that wanted to ‘make it’, and flourish in the sector had to show enormous dedication to task, work very hard and long hours, have an astute focus on what matters for the company and the mining operation, a pragmatic, can do, no-nonsense approach and have an acute awareness of the bottom line. This meant that there was no room for error or any waste of time, which it was argued, meant that it was often very hard to

fathom the very different work environment, lack of plan implementation and seemingly very different work ethos in some areas of the public sector.

On another note, a concern was expressed that (1) the enormity of the costs involved in setting up a new mine, and (2) the investments and contributions required in terms of the new mining laws, meant that older, larger, capital-rich companies were at a huge advantage relative to smaller, emerging, start-up companies who had not yet built up such reserves or access to such funds. This, it was argued, ran counter the government's objective of boosting small and medium-sized companies and new, start-up Black-owned enterprises. Coming to the same question from another perspective, it was argued by an interviewee that it is for this reason that it would not be the larger, established, in most cases global, companies that would contravene the legal requirements, but rather the smaller ones. A number of interviewees argued along similar lines that (1) the huge financial and reputational risk for global mining companies associated with contravening human rights and environmental regulations, and (2) the far longer period of exposure to both the world of mining and the rules and regulations that go with it, meant that these companies were far better than the newer, younger companies at ensuring legal compliance (see also Mabuza *et al*, 2010 for a similar finding).

With regards to the recent court cases that had the effect of requiring of mining companies to ensure that their surface activities complied with the land use rights on the properties on which they were located, there were no qualms. In most cases, representatives from the mining companies had met with municipal officials and appointed town planning firms to undertake the necessary steps to ensure that they complied with the relevant land-use controls. In others, the mining companies had instructed their legal sections to undertake the necessary steps to ensure that they were legally compliant with regards to the land use regulations.

Finally, and somewhat unexpectedly, even though prompted on the matter, none of the interviewees indicated that there was any form of corruption or bribery in the interface between mining companies and officials and leaders in the public sector or community leaders or members that they were aware of. This does of course not mean that it does not take place; it may simply mean that the mining companies have no interest in stirring controversy or engaging in debates and issues that have no direct, positive outcomes for their operations, and that could land them in costly litigations.

5.2 Engagements with government officials and councillors in the district

In the case of these role-players, the views regarding the mining industry were more mixed. While there was a generally positive view towards the industry, and a real appreciation for the endeavours of the mining companies in complying with the legal requirements, there was a clearly expressed wish for the municipality and the community to benefit more from mining activities. In addition to this, a frustration with the way in which mining companies disposed of their legal requirements was expressed

by a number of interviewees. This frustration revolved around mining companies, while spending the required components of their turn-over in the area, doing so (1) in an *ad hoc* way, and (2) in accordance with the commitments and timing of the mining company, and not necessarily in terms of what the municipality wanted to see done/invested at a particular point in time and space/place. While the Municipalities in the district (the District and the three Local Municipalities) had at various points set up economic development forums consisting of the mining companies, community members and other stakeholders in the district, these often only lasted for a short while and/or did not integrate their actions with those of other structures, especially so the planning units in the Local Municipalities in which they were located.

Officials tasked with preparing the legally required Integrated Development Plans (IDPs) and Spatial Development Frameworks (SDFs) for their municipalities, also complained about the lack of disclosure on the side of the mining companies as to their envisaged and planned future activities/operations. This not only made the ‘forward planning’ by municipalities difficult, but also meant that the identification and/or setting aside of land for especially housing for workers in the mines and the planning for massive infrastructure investments, could not be done, or where it was done, was done on a hunch, and not based on ‘real figures’. The result of this was (1) housing shortages when new mining operations were initiated; (2) a mushrooming of informal settlements and contraventions of land use rights; and (3) shortages in key municipal services – refuse removal, water and sanitation and electricity. As for compliance with land use regulations, while officials expressed the view that mining companies cooperated very well in this regard, the concern was expressed that it does require from the municipality to take a strong position that ‘the law will be enforced’ and to actually do so. The situation according to one of the officials was simply that, ‘*while mining companies will in most cases comply with what the law requires, they in some cases needed to be reminded of this obligation*’.

An area in which a high level of unhappiness was expressed by not only municipal, but also provincial officials was the impact of the mining operations on the roads in the district and the wider region. The key challenge here was that the roads were planned for ‘normal rural use’, not for hundreds of heavy, fully loaded mining trucks moving across them on a daily base. Given the high costs associated with road construction and maintenance, and the huge investments required in social investment in the country post-1994, and especially so in some parts of the district, the State simply did not have the funds to keep roads in a running order by themselves. While it was indicated by both officials in the provincial and municipal governments that the mining companies often assisted with the upgrading of roads, this was generally done in an *ad hoc* way and not based on, or driven by a comprehensive roads master plan. In addition to this, the view was expressed that the mining trucks were working to the detriment of other economic activities in the area by often causing long delays on the roads to and from, and in the district, and by taking huge trucks through the central business district of the major town

in the area (i.e. Kuruman), in the process hurting this retail, education and administrative hub. Finally, the trucking industry was said to have led to a massive increase in prostitution and associated social ills in the central business district of Kuruman and also increased levels of air pollution in the region.

As for the question of improper behaviour or corruption in the dealings between the mining companies and officials, again, while it was stated in a number of interviews, that it may happen, not a single interviewee indicated that they themselves were aware of such activities in their areas of work. One of the officials waggered the opinion that, due to the urgency of mining companies to get their operations up and running, and the slow pace at which decisions sometimes move in the public sector, it may be that mining companies may have been tempted to nudge the process along in improper ways. The official was, however, quick to add that there were no such cases that he was aware of.

In a number of cases, it was mentioned by officials that unresolved questions and tensions (1) amongst councillors and (2) between councillors and traditional leaders around the economic development of the district and the future spatial development pattern of the district, have made planning for the district difficult, and has not been served by mining companies speaking to, and seeking to address the needs of individual leaders who often had very different views about the future.

5.3 Engagements with the community and traditional leaders and community members

In the case of these interviewees, while the views were generally still more located on the positive side, they were far more mixed. While nobody complained about the economic activities and jobs the mining industry had brought to the area, there was a high degree of unease at the fact that only some benefitted and not more or all of the community members. While some community members expressed the view that they lacked the skills to be employed in the industry, and that special education programmes needed to be put in place to ensure this, there was also a view that the companies *'brought in their own workers from elsewhere'* and were not interested in employing local labour in especially the better paying positions, irrespective of how well they were trained. Rather than wait to be employed by mining companies coming in from outside, a number of local community members and traditional leaders indicated that they were interested in undertaking their own mining operations.

A number of community members indicated that they were not necessarily interested in working in or on a min, but saw secondary economic opportunities in the prevalence of the mines and their workers in the area, notably in the areas of agriculture (food production) and housing provision and road construction. Making use of these opportunities, they argued, however, required capacity building and financial support, which they believed should be provided. At the same time, they indicated that

preferential procurement practices should be put in place to assist local small-scale, start-up companies.

A number of community members expressed concerns about the levels of pollution caused by the mining industry in the area, notably the dust from the mining dumps. In addition to this, many references were made to the damage caused by the asbestos mining in years gone by, which has, despite rehabilitation activities, rendered many parts of the district inhabitable, and also led to respiratory diseases (asbestosis) and numerous deaths. It was especially the combination of having to suffer the negatives of the industry (pollution), while not being offset by receiving greater benefits from the activities that many felt to be *'just wrong'*.

In a few cases, the view was expressed that while the mining companies were involved in (1) the construction, upgrading and maintenance of municipal infrastructure provision (notably water and sanitation services) and roads and (2) the building of class rooms, community halls and clinics, more should be done in the deeply deprived rural areas with the funds generated in the mining industry. On this score, it was stated that the dominance of the mining industry meant that many members of rural communities, especially the youth, yearned for a high-paying job in the mines and were no longer interested in doing what they had done for generations, i.e. agriculture. The high levels of water-usage by the mines, and the pollution of the mining activities of especially the groundwater reserves in the district, were seen as further aggravating the situation, and leading to a growing reliance on the mining sector for jobs and an ever-greater loss of connection to earlier ways of making a living with their associated traditions and indigenous cultural practises.

In the case of the community members, there were clear signs of suspicion amongst a number of interviewees regarding the interactions between mining companies and government. It was often grimaced that corruption and unfair advantaging does happen, but again no one single case could be mentioned as to where it had actually happened. In one of the community meetings, it was argued that there is not enough transparency in the interactions between representatives and mining companies, notably in the local economic development forums on which both groups served, and that this had to be addressed by at least making the minutes of forum meetings available to the public.

5.4 Investments by mining companies in the district

This analysis revealed that mining companies active in the district have made hundreds of millions of Rands of social investment in the area³, *inter alia* in the following: (1) the

³ Unofficially a figure of more than R500-million (approximately \$62) being invested by mining companies in the district over the last ten decade (2000-2010) was mentioned in an interview with a manager of a mine in the district. Officially, Kumba, the largest mining operation in the area, invested R134 million in 2010 and R73.6 million in 2011 respectively on the implementation of social and community development projects, and a total of R264.6 million on the implementation of its Social and

construction and upgrading of schools, class rooms and hostels at schools; (2) the provision of support for early childhood centres; (3) the provision of bursaries for learners in the district to study at tertiary institutions; (4) the provision of support to libraries; (5) assisting with the establishment of a higher education institution in the province; (6) putting in place internship and mentoring programmes in the mining industry for youths from the district; (7) the provision of one-stop business support services; (8) the sponsoring of sport activities and events and the upgrading of sport facilities; (9) the construction, upgrading and maintenance of municipal infrastructure, especially water provision and sanitation services, in the district; (10) the provision of mobile health units, support with the construction of clinics and primary health care services; (11) the setting up and support of community farming activities; (12) the provision of assistance with the establishment and development of new small-scale, local enterprises; and (12) the making available of technical expertise (e.g. engineering services) to under-capacitated municipalities; (BHP Billiton Development Trust, undated and Kumba Iron Ore, 2010; 2011a; 2011b).

6. Discussion

The study sought to explore the way in which mining companies interface with the State, and communities in response to, and in accordance with the legal requirements for involvement with and support of: (1) the integrated development planning and implementation activities by municipalities and provincial governments; (2) the local economic development plans, projects and programmes of municipalities and communities; and (3) the sustainable long-term development of the areas in which they are located.

The findings suggest that in the district that was studied, the interface, while not perfect, is far removed from the negative image that the often down-beat headlines around the sector may suggest. By and large, the interface is approached and experienced in a positive way. In addition to this, the mining industry was found to be (1) providing employment opportunities and livelihoods in an area with otherwise very little other economic activities; and (2) making a significant contribution towards the provision and maintenance of municipal services, local economic and community development ventures, education, bursaries and sport facilities and socially beneficial activities in communities. As for the law, mining companies did what the law prescribes in what could be described as an engineering efficiency-mode. There is just way too much to lose by not doing so in terms of retraction of the mining licence (the right to mine) and the danger of reputational risk. It is, however, in this careful pursuit of legal compliance that a major concern lies, *viz.* in doing what the law prescribes and not more or less than that, the spirit of the legislation and the real reason, of ensuring a joint, collective approach towards planning and development in an area, may not be served. It can very

Labour Plan commitments and enterprise development in the period 2006-2011 (Kumba Iron Ore, 2011a: pp. 47 and 2010: pp. 13).

easily become an individual pursuit of each mining company of admittedly socially and economically very beneficial objectives, but without the ‘bigger bang’ that collaboration between the different mining companies could have achieved.

In addition to this, while the investment by the mining companies is crucial, it is only one part of the story – the other parts lie with the public sector and the community. Should especially the public sector, especially in cases where communities are deeply impoverished and hence not be able to contribute little else but their time and labour, not deliver what and when they can, the input by the mining sector will have far less of an impact than it could have had. Relating this to the Integrated Development Plans and Spatial Development Frameworks that municipalities have to prepare to (1) plan and (2) guide the future development of their municipal areas, the reality is simply this: should a municipality not have a very well-directed implementation strategy, and stand strong as to where investment has to be made, mining companies could invest anywhere, in no specific order, and with no specific cumulative impact in mind. In such cases, a mining company could be fully legally compliant by constructing a road segment in an impoverished rural part of the district, and assisting the movement in that segment of the district, but not necessarily be serving the collective or the the longer term development of the district or the wider region.

Associated with this issue, is that of capacity-building of officials and community members about the mining sector, how it works and how to engage it to ensure optimal outcomes for all concerned (see also Mabuza *et al*, 2010, pp. 4). At the same time, there is a need to ensure that mining companies are aware of and familiar with (1) the objectives and enabling, regulatory and supportive legal and policy framework of government, notably with regards to municipal government and (2) ways in which to support especially this sphere of government.

While the piecemeal, *ad hoc*, compliance-driven un-integrated, unsynchronised investment by mining companies may over the short to medium-term result in the municipality not succeeding with the implementation of its plans as envisaged, the result may over the longer term be that (1) living conditions on the ground and (2) economic prospects for communities do not change. Given the widely shared view amongst communities that they are not benefitting enough from the mining activities, this may lead to growing levels of unhappiness with the mining industry and even hostility towards the industry. Clearly this would not be in anyone’s interest, and could, given the limited investment in other sectors of the economy in the district, leave the district highly vulnerable, should mining companies either be forced to suspend or close their operations.

While the new legal framework for mining and municipal planning has put in place a series of measures to ensure greater involvement by mining companies in the preparation and implementation of plans and proposals of government and investment in the communities and places in which they are active, the successful implementation of

the law requires leadership on the side of the representatives of the State and affected communities to provide the public voice, direction and vision in response to the very strong voice and intent of the private sector, as presented by the mining companies. One way in which this could be done is through the introduction of a governance model/structure in which the public, community and private interests are all represented in a structure that is focused on (1) the long-term planning for the district; (2) the programming of investment and spending in support of this plan; and (3) the preparation, implementation, monitoring and review of this investment and spending programme. Such a proposal, however, falls outside the ambit of this study, and will, as such, be left at that.

8. Concluding thoughts

While there are without doubt real, negative externalities to the mining industry, this exploratory study has revealed that mining companies operating in the district that was studied, are not mute to these, and have approached the new legal requirements placed on the mining industry in a positive way and are complying with these requirements. What the study, however, does suggest, is that while the new laws are a good start, more will have to be done, with a view to ‘up-scaling’ the legal regime to ensure (1) greater synergy in the investment by the State and individual mining companies in mining areas, and (2) that communities living in mining areas, enjoy a greater share of the benefits of these activities. Far more research in mining areas, such as that undertaken in the study is, however, required before such steps are taken.

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