



***Do Social and Labour Plans  
Belong to Communities?  
Strategies of advocacy, research  
and litigation***

Alternative Mining Indaba  
Cape Town  
South Africa

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# Introduction

- Does the SLP system truly belong to communities?
  - Clarity - Accountability - Responsiveness - Inclusivity - Transparency
- CALS SLP Project- *Design and Implementation*
  - PAIA- 50 SLPs
  - Instrument development
  - Data Capture
  - Design flaws
  - Legislative gaps
  - Explanations and recommendation
- 2<sup>nd</sup> phase of a journey to identify and address systemic issues

# Origin of Research

- Prolonged strike action in the Platinum sector
- Marikana
- The promises of a “better life” made by mining companies remain largely unfulfilled
- Frustrations directly linked to lived reality
- Water, developmental, housing and food
- Reality - crime, unemployment and failing infrastructure.

# What are SLPs

- Mechanism (MR requirement) through which the mines channel the proceeds of mining into benefits for the community.
- The SLP contains proposed programmes directed at the host mine-affected communities and labour sending areas
- Offset the negative impacts of the mine and improve the quality of life for both mine employees and mine-affected communities.

# Outline of the Research (Broad)

## **Legal Framework**

- Major deficiencies in accountability, transparency, participation

## **Roles and responsibility**

- Partial transfer of public functions = confusion of division of roles and responsibilities
- Companies and government to shift responsibility for non-delivery.

## **Compliance and enforcement**

- Very few instances of mine's license being pulled due to non-compliance.
- Amendment dilution
- Confusion what is considered compliance

## **Alignment**

- Alignment with government programmes (e.g. IDP)

## **Status**

- Discretion when drafting, regulations very thin mostly in the guideline document

## **Participation**

- Little guidance on consultation - not discussed at all in the MPRDA and regulations.
- Report annually to DMR on compliance - no mechanism for reporting to communities
- No provision for consultation in the review of SLPs that occurs every 5 years.

# Transparency and Access to Information

## Access

- Considerable discretion on public participation and the dissemination of information.
- SLPs seem to belong more to mining companies than to the intended beneficiaries of the system.
- Particularly unclear about whether SLPs, approved amendments to SLPs and annual compliance reports are to be publicly available

## Inclusivity and Transparency

- Life cycle communication
  - Influence design– dissemination – amendment - reporting
- Language
- Technicality
- Community v worker inclusion

# Transparency and Access to Information

## PAIA

- Most companies were difficult to obtain with a few notable exceptions of companies who post their SLPs online.
- Process: Form A and Form C- Electronic and physical
  - Set out the rights to be exercised and the reasons why the information is required for the exercise of the rights.
  - No internal appeal, straight to court
- Companies cited various reasons as grounds for refusing access.
  - Insufficient specificity on the rights justification
  - Confidential information
  - Financial information
  - Not a listed company and therefore not required to provide SLP
  - No legal right
  - Sign an NDA

# Transparency and Access to Information

## Main Issues

- Levels of Compliance
  - 30% deemed refusal, 40% reasoned refusal
- Knowledge of PAIA / Inconsistencies
  - State v Company confusion
- Readiness to Release SLPs
  - Under no obligation / suspicion
- Effectiveness of systems for processing PAIA requests
  - Manuals out of date, wrong contact, deeply buried
- Quality of records management
  - Could not locate
- Accessibility of process
  - Significant time and resources

# Social and Labour Plan Assessment Tool

Centre for Applied Legal Studies

2015

ENQUIRY	COMMENTS	EVALUATION	RATING
<b>A. THE SLP CONTAINS CLEAR TARGETS AND BENCHMARKS</b>			<b>MARK/15</b>
a. Are SLP programmes treated as binding contractual obligations or as guidelines?			0-5
b. Is the relationship between each output and the needs of the community clearly drawn?			0-5
c. Is there clarity on the nature of the outputs namely what is to be produced, the timelines for producing the output and the intended beneficiaries?			0-5
<b>B. INDICATORS OF SOUND PLANNING</b>			<b>MARK/10</b>
a. Is there evidence that project selection has been preceded by feasibility analysis (or does the SLP state that feasibility assessments are to be conducted in the future)?			0-5
b. Is there clarity on the measures/actions to be undertaken in fulfilment of SLP outputs including a clear description of the actions, a timeline for actions and reasonable budgetary allocations for these actions?			0-5

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Font: Calibri, 9, Bold, Italic, Underline, Text Color, Background Color

Alignment: Wrap Text, Merge & Center

Number: General, Percentage, Decimals

Styles: Conditional Formatting, Format as Table, Cell Styles

Cells: Insert, Delete, Format

Editing: AutoSum, Fill, Clear, Sort & Filter, Find & Select

A5 :    fx Anglo Plat- Rustenburg Platinum

	A	B	C	D	E	
3		Signed	Annexures	Size (Output/Physical)	Potential/current impact	NBA
4	<b>Mines</b>					
5	Anglo Plat- Rustenburg Platinum	Green	Red	Red	Red	Yellow
6	Anglo Twickenham	Green	Red	Red	Green	Yellow
7	AGA- Vaal River Operation	Green	Red	Red	Red	Yellow
8	AGA West-Wits	Green	Red	Orange	Red	Yellow
9	Anglo Thermal New Largo	Orange	Red	Green	Red	Yellow
10	De Beers Venetia	Green	Red	Green	Green	Yellow
11	De Beers Kimberley	Green	Red	Red	Green	Yellow
12	De Beers Voorspoed	Green	Red	Yellow	Red	Yellow
13	Harmony Joel	Red	Yellow	Red	Green	Yellow
14	Harmony Tsepong	Red	Yellow	Red	Green	Yellow
15	Harmony Bambanani	Orange	Red	Red	Yellow	Red
16	Harmony Elandsrand	Orange	Red	Red	Yellow	Red
17	Harmony Gold Target 3	Orange	Red	Red	Yellow	Red
18	Harmony Gold Target 1	Orange	Red	Red	Yellow	Red
19	Harmony Kuzuzalethu	Orange	Red	Red	Red	Red
20	Harmony Steyn	Orange	Red	Red	Red	Green
21	Blue Platinum	Green	Red	Red	Red	Orange
22	Bankfontein	Green	Orange	Red	Red	Orange
23	Chromex Mecklenburg	Green	Red	Red	Green	Yellow
24	Dilokong Chrome Mine	Green	Red	Red	Yellow	Red
25	Exxaro Grooteluk	Green	Red	Yellow	Red	Yellow
26	Irvanhoe Platreef Mokopane	Green	Red	Red	Green	Yellow
27	Khangisa	Red	Red	Red	Red	Yellow
28	Leplats-Amogelang	Yellow	Green	Red	Red	Yellow
29	Lonmin East and Westplats	Orange	Red	Red	Green	Yellow
30	Northern Coal Hartbeesport	Orange	Red	Red	Green	Yellow
31	Ntshovelo Mining Resources	Green	Red	Red	Red	Green
32	Pasmodzi Steyn 1 and 2	Red	Yellow	Green	Red	Yellow
33	Petra Cullinan Mine	Orange	Red	Red	Green	Yellow
34	Pilansberg Platinum Mines	Green	Red	Red	Yellow	Red
35	Rio Tinto- Palabora Mining	Green	Red	Red	Yellow	Red
36	BHP Optimum Colliery	Green	Red	Yellow	Red	Yellow

Sheet1

FILE HOME INSERT PAGE LAYOUT FORMULAS DATA REVIEW VIEW

Calibri 11 A A

B I U

Font

Alignment

General

Number

Conditional Formatting

Format as Table

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Editing

fx

A	B	C	D
in that it includes both workforce and community		10.3%	4
force		7.5%	3
company spending and programmes in general- not mine specific		7.5%	3
es dealt only through LED project		2.5%	1
limited to workforce		10.1%	4
ioned and not outlined		7.5%	3
		52.5%	21
f SLP		0.0%	0
		85.3%	34
ified in parts of SLP		9.7%	4
		7.3%	3
		31.7%	13
		51.2%	21
		17.1%	7
n in Tons		31.7%	13
		68.3%	28
ed needs of community beyond govt. and trad. Leadership			
		2.4%	1
of govt (LED reflective of IDP/ govt consultation) and or trad. Leadership		85.4%	35
consultation but does explain who or why or how consultation was reflected in LED		12.2%	5

# Main Recommendations

- The adequacy of provision for community participation
  - The adequacy of notice requirements
  - Inclusivity of participation
  - Participation in the implementation of SLPs
- Lack of distinction between greenfield and brownfield operations
- Critical details contained in guidelines rather than hard law
- Clarity on level of detail of background information
- Clarity on when feasibility studies must be undertaken
- Authorship of SLPs
- Clarity on the roles and responsibilities of local government
- Regional co-ordination
- The problems with the amendment procedure
- SLP regulatory framework does not adequately promote access to information
- The sufficiency of parameters determining the financial provision and scale of SLPs
- Transfer of public obligations to private bodies
- Sanctions and recourse
- Reporting

# Preliminary findings

- 98% SLPs not online
- 4% Mention direct consultation with host community beyond gov and traditional authority
- 0% mention a mechanism to address any grievances
- 94% do not state whether their will be agricultural loss
- 51% Size and output not discussed
- 45% No mention of potential and current impact of mining
- 52% No mention of previous commitments
- 53% No mention of communicable diseases including HIV
- 95% No mention of the author of the SLP
- 56% No mention of feasibility analysis
- 80% No mention of population influx
- 30% of SLPs link profits to SLP commitments
- 12% identified risks to completion of LED projects

# Conclusion

- Do SLPs truly belong to communities?

# Thank you

**Louis Snyman**

**(Attorney: Environment and Mining Programme)**

**Centre for Applied Legal Studies**

**University of the Witwatersrand**

