

Transformation: Social and Labour Plans & Mining Charter

A social and labour plan is one of the documents that must be submitted with a mining rights application in order for a company to get a mining right from the Department of Mineral Resources.

A social and labour plan shows how a mining company intends to invest in the local community development and labour in order to benefit the lives of people living close to the mine and workers working at the mine. Other objectives include contributing to transformation of the mining industry, promoting employment and advancing “the social and economic welfare of all South Africans.”

There are some problems regarding consultation and compliance with social and labour plans. The Mineral and Petroleum Resources Development Act does not require that a company consults with community members when creating its social and labour plan. There are guidelines which say that a mining company should consult with the local community, but these guidelines are not legally enforceable.

Mining companies must submit an annual report on its compliance with its Social and Labour Plan to the relevant Regional Manager but it is not immediately clear what consequences there are if the mining company does not comply with its Social and Labour Plan. It seems that there the Minister of Mineral Resources may be able to cancel the company’s mining right if it does not comply, but this is not immediately clear in the legislation.

The Mining Charter also tries to improve transformation and a fairer share of benefits in the mining industry. The mining charter is a document produced by the Department of Mineral Resources and applies to all mining companies.

The 2017 mining charter has been challenged and it is not in operation yet. The 2010 Charter is operational and its requirements are binding on mining companies. For instance, the 2010 charter requires that each mining venture must be owned at least 26% by historically disadvantaged South Africans.

Every year, mining companies must report their level of compliance with the Charter. Non-compliance with the Charter may come with consequences. It may result in breach of the Mineral and Petroleum Resources Development Act, which allows the Minister of Mineral Resources to cancel a company’s mineral right. A non-compliant company may also be guilty of an offence and a penalty. Lastly, the Minister must not award a mining right to a company that is not compliant with the Charter. However, companies can also hide their lack of compliance by altering their reports and there is a poor track record of monitoring companies’ compliance with the Charter by the Department of Mineral Resources.