

Public participation essential for an equitable Mining Charter

The mining industry is a paradox. On the one hand, it's the foundation of the country's industrial development, but it is also a major player in the creation of an unjust socioeconomic order. So, the current furore over the proposed Mining Charter should be seen as a catalyst to craft a genuinely transformed mining industry based on the kind of public and stakeholder participation envisaged in the Constitution.



Vanessa Jacklin-Levin, counsel at Dentons South Africa

“The industry can only build on that legacy by creating a mining industry that genuinely provides leadership in empowering the previously disadvantaged,” says Vanessa Jacklin-Levin, counsel at Dentons South Africa.

At present the industry is in something of a stalemate as the proposed third Mining Charter has been put on ice pending a legal challenge from the Chamber of Mines.

Public engagement

The Constitution requires that Parliament ensures that the public has an opportunity to participate in the legislative process before it is completed, so that the new laws take into account the needs and expectations of society as a whole. Various judgements have also given further direction on how this participation should be handled to create a truly participative democracy.

All of the most important basic elements relating to public participation have been captured in the Public Participation Framework, which also makes clear that those who have a “specific and clearly definable interest in what is undertaken and have an interest in the institutional outcome” should be seen as partners in the design and implementation and of better solutions and outcomes.

“The real point here is that all levels of government have an obligation to include the public as well as stakeholders in a genuine process of joint law-making that meets the needs of society and the industry itself,” she points out. “This process of consultation is not a courtesy that government affords, or something that can be undertaken simply to tick a box; no, it is integral to the process of formulating the legislation that goes before parliament for debate.”

As part of integrating participation into the legislative process, government does not only have to make space for it, but also come up with ways to remove obstacles to public participation. Internally, these obstacles could include lack of financial and human resources, lack of the skills needed to enhance participation, and lack of alignment with the priorities of elected officials.

Challenge and opportunity

External obstacles might include public cynicism about the process, language and cultural issues, lack of public interest perhaps based on poor understanding of the issues or how to participate, and inconvenient location of meetings.

“It seems like the mining charters, including the current one, may not have had the desired impact because they were not the result of a genuinely participatory process and, certainly, many of the arguments around the current proposal center on this issue.”

“To get buy-in from all stakeholders, and to ensure the new charter contributes to real empowerment, it is essential that stakeholder and public participation is properly integrated into the drafting process. That’s a huge challenge, but an equally vast opportunity—we need to seize it,” Jacklin-Levin says.

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