



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Promoting transparency, accountability and environmental compliance: Holding company directors accountable for environmental crimes

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Introduction

South Africa has a comprehensive statutory framework for environmental law, but enforcement of compliance has historically lagged behind for a host of reasons. In the mining sector, this problem is even more acute, since the statutory obligation for enforcing compliance with environmental requirements resides with the very organ of state that authorises mining in the first place, namely the Department of Mineral Resources (DMR). The flagrant violation of environmental laws in the mining and broader industrial sector in South Africa causes significant violations of human rights: the right to an environment that is not harmful to health or well-being, but also rights to water, dignity, and life.

Through our work, the Centre for Environmental Rights (CER) addresses this problem in many different ways, including engaging with the state to improve compliance monitoring and enforcement. Another key strategy we have employed is to support civil society and community organisations who want to hold corporates and corporate management directly accountable for violations, including through criminal prosecution.

While these criminal cases require extreme patience and persistence, they have the potential to have significant impacts and can be a crucial lever for change.

The first case: Blue Platinum

In January 2014, the managing director of a small mining company known as Blue Platinum Ventures 16 (Pty) Ltd (Blue Platinum) was convicted of a criminal offence under the National Environmental Management Act. The director was sentenced to five years' imprisonment, suspended for five years on the condition that he rehabilitate the mining area within 6 months of the court order. In a first for the mining sector, the sentence had no option of a fine attached.

The criminal case against Blue Platinum and its directors came about as a result of criminal charges laid by an affected community-based organisation, the Bathlabine Foundation, with the assistance of CER attorneys. The charges were laid in response to extensive environmental degradation caused by Blue Platinum's mining activities, many of which were not authorised, and in the absence of enforcement action by mandated authorities. In addition to legal support provided, CER commissioned environmental specialists to conduct a compliance monitoring report and an assessment of the cost of rehabilitation, which reports greatly contributed to the outcome in this case.

As at May 2015, the mining area remains unrehabilitated, and proceedings are under way to strengthen the original sentence and hold the managing director in contempt of court. CER attorneys continue to work with authorities to ensure realisation of rights and environmental justice for the Bathlabine community. Despite this ongoing work and the relatively small nature of this case, the Blue Platinum conviction and sentence received extraordinary interest from the mining sector, lawyers, consultants, and even insurance companies – demonstrating the potential impact of an even more high profile case.

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The next case: Aquila Steel

This week, the CER will be assisting the Traditional Healers Organisation (THO), made up of 39,000 traditional healers, to lay criminal charges against a mining company called Aquila Steel SA (Pty) Ltd. In 2007 and 2008 Aquila obtained prospecting rights for iron ore on 2 properties outside of Thabazimbi in Limpopo. The “Madimatle” mountain and Gatkop caves, sites of significant heritage value, are situated on these properties. Many of the traditional healers visit the mountain and caves for spiritual reasons.

Although the prospecting rights allowed very limited drilling and associated vegetation clearance (approximately 1.6km of roads and 10 drilling sites), over the course of about 5 years Aquila constructed over 33km of road all over the Madimatle mountain, and drilled in approximately 200 locations, unlawfully clearing vegetation and protected tree species in the process. Apart from being in flagrant contravention of the conditions of its prospecting right, these activities were conducted without environmental authorisation, and constitute criminal contraventions of various environmental statutes. Significant damage has been caused to the mountain. Unfortunately no enforcement action has been taken by Limpopo provincial environment department, the DMR or the Department of Water and Sanitation against Aquila for its multiple breaches of environmental, water and mining laws.

To add insult to injury, at the end of 2014 Limpopo authorities granted Aquila retrospective authorisation for the listed activities that it commenced without authorisation, and fined a mere R300 000. Aquila has now also applied for a mining right, to which a number of interested and affected parties have objected (the Mineral and Petroleum Resource Development Act makes provision for the refusal to grant rights to companies not in compliance with that Act, but this is rarely implemented). Furthermore, late last year the SA Heritage Resources Agency ruled that “all exploratory mining activity near the Madimatle mountain and its caves must be stopped for the next two years because of the site’s cultural and religious significance”. The agency has until the end of next year to decide whether or not the area merits National Heritage status. Aquila has appealed this ruling.

The criminal charges laid against Aquila by the THO will specifically also be pursued against its directors.