Centre *for* Environmental Rights
Advancing Environmental Rights in South Africa

Investor Roadshow on our *Full Disclosure* report:
Corporate dishonesty about breaches of environmental laws
November 2015

Introduction

1. In early September 2015, the Centre for Environmental Rights launched our Raith-funded report, *Full Disclosure: The truth about corporate environmental compliance in South Africa.* The report – available in full online at cer.org.za/full-disclosure – comprises a baseline assessment of twenty listed South African companies with serious environmental impacts. The purpose of the assessment was to ascertain the extent of compliance by those companies with environmental laws, and the extent to which non-compliance with environmental laws is disclosed by those companies to their shareholders (the list of assessed companies appears on page 3 of this report). The period assessed was 2008 to 2014.

2. All of the selected companies have also regularly appeared on the JSE's Socially Responsible Investment Index, and as such should be expected to be star performers in "ESG", or "environmental, social and governance" factors. All of the information that we used to conduct the assessment is publicly available, and included government reports (in particular the Department of Environmental Affairs' National Environmental Compliance & Enforcement Reports or "NECERs"), company reports, and information drawn from the media, civil society, academia, and the accounts of affected communities.

3. Before publishing the report, we sent our findings to each of the assessed companies and asked them to respond to us within one month. 17 of the 20 assessed companies replied, and the replies are also published in full on the website. Key findings and conclusions of the assessment included the following:

    a. Many companies hailed as shining examples of good sustainability / "ESG" practice committed serious and often ongoing breaches of environmental laws during the assessment period.
    b. Most assessed companies did not accurately disclose the extent of their non-compliance with environmental laws to shareholders – the information was either misleading or so minimal or euphemistic that it was impossible to verify.
    c. Some companies actively misrepresented their levels of compliance with environmental laws to shareholders.
    d. The manner in which SA companies are rated as good targets for "socially responsible investing" – at least from an environmental perspective - is inadequate.
    e. Despite lack of disclosure, institutional investors and asset managers are failing to recognise red flags in company reports and ask important questions.

4. Some of the key challenges identified as a result of the assessment include:
    a. South Africa's environmental legal regime does not allow regulators to impose immediate monetary penalties which accurately reflect the cost of environmental violations ("administrative penalties"). This gap has serious implications for the perceived "materiality" of these offences: investors use financial penalties as a basis on which to assess risk – if there are no financial penalties, and companies are failing to disclose the fact that they are breaking environmental laws, then these risks do not come to the attention of investors until it is too late.
    b. There is a pervasive culture of "engagement" between companies & regulators: companies believe that environmental compliance is a matter of negotiation, and the limited tools available to regulators to enforce environmental laws places them at a significant disadvantage. This also means that long stretches of time pass between an inspection and any final enforcement action taken, which in many instances undermines the impact of the enforcement action altogether.

Investor Roadshow

5. *Full Disclosure* was very well received and widely covered in print media and on the radio. The Investec analyst who facilitated our last investor roadshow in November 2014 (on Sasol's legal challenge to SA's new air pollution regime), agreed to arrange a second roadshow to enable us to present our findings to large institutional investors in Johannesburg and Cape Town. Between 29 October and 9 November 2016, we presented our findings to representatives from 21 different asset managers including Stanlib, ABSA, Visio, Peregrine, Old Mutual, Coronation, Kagiso and Prudential. The only asset manager to which we had presented in 2014 which declined the invitation for a *Full Disclosure* presentation was Allan Gray.

6. Overall, we found our audience to be more receptive to our message than they had been in 2014. It made a huge difference that we had met them before, and so did not have to convince them of our credibility! Our assessment is that although progress is slow, there is certainly more awareness of the importance of these issues in many sections of the investment community than there was a year ago – although there are of course still those who think that environmental, social and governance issues are not their concern. We have had follow-up enquiries from a couple of those we presented to, which we did not have last year. Something we thought was particularly encouraging was that the Head of Resources for Kagiso Asset Management, with whom we met last year, this time around also brought in 5 of his junior staff to hear our presentation, and each of them had clearly been instructed to read *Full Disclosure* before the meeting.

7. In relation to the findings of *Full Disclosure*, most of those we presented to were genuinely surprised at the level of deception revealed in company reporting about environmental non-compliance. While few people are unaware that company reports are essentially marketing tools, rather than an accurate reflection of the performance and impacts (positive and negative) of a company, our report provided irrefutable evidence of the vast discrepancies between the damage caused by environmental breaches on the ground, and what companies are actually saying about it.

8. There was also universal amazement amongst investors at the fact that our legal regime does not allow environmental regulators to impose monetary penalties. We believe that this chasm between the "language" of investors, and the activities of regulators, is a crucial gap which ultimately means that those who really have the most power to compel changes in company behaviour are effectively unable to do so.

Closing the loop: feedback to regulators

9. We have presented the findings of *Full Disclosure*, as well as investor feedback, to the Department of Environmental Affairs' Environmental Management Inspectors (EMIs). As the EMIs do not generally engage with investors, we believe that we were closing a crucial information gap. Although not necessarily the easiest feedback to receive, EMIs nonetheless expressed their appreciation for the information.

10. As an immediate positive outcome, the Department has indicated its intention to develop a working paper on "administrative fines" for environmental violations, a process in which the CER will participate proactively.

Companies assessed in *Full Disclosure: the truth about corporate environmental compliance in South Africa*

AECI Limited	Illovo Sugar Limited
African Rainbow Minerals Limited	Impala Platinum Holdings Limited
Anglo American Platinum Limited	Lonmin plc
Anglo American plc	Merafe Resources Limited***
AngloGold Ashanti Limited	Mondi Group
ArcelorMittal SA Limited	Nampak Limited
DRDGOLD Limited	Pretoria Portland Cement Co Limited
Exxaro Resources Limited***	Sappi Limited
Gold Fields Limited	Sasol Limited
Harmony Gold Mining Company Limited***	Tongaat Hulett Limited

Red: “worst performers” (i.e. multiple breaches of environmental laws, low levels of disclosure and poor response to CER)
Green: “good performers” (i.e. few breaches of environmental laws, good disclosure, very responsive to the CER)
*** No response to CER