

Dealing with illegal miners



The Chamber of Mines of South Africa reports that illegal mining activity is on the rise. Recent news headlines confirm as much. In September 2016, Mine Rescue Services was dispatched to assist in the rescue of illegal mine workers trapped underground in Langlaagte, Johannesburg.

By Muhammed Khan*

MINING ILLEGALLY often occurs in abandoned shafts or improperly closed mines, as was the situation in Langlaagte. However, illegal mining can also occur in areas where there are holders of valid mining rights. In such a situation, the question is: what are the options available to a mining right holder, whose mining area is being illegally mined by zama-zamas? "Zama" is a Zulu word that roughly translates to "trying". Zama-zama is a colloquial term used within the South African mining industry to describe illegal miners working with

gold or other precious metals. The Mineral and Petroleum Resources Development Act (MPRDA) (No. 28 of 2002) prohibits mining activity in the absence of an appropriate permission, right or permit granted under the MPRDA. Should there be a contravention of any provision of the MPRDA, such contravention is an offence and carries a penalty of a fine or imprisonment up to a period not exceeding six months.

These are criminal law offences and the prosecution thereof would require the intervention of the South African Police Services (SAPS) and the National Prosecuting Authority. Practically, this process may not be the most expedient.

Enforcing the MPRDA

The Department of Mineral Resources (DMR), and more specifically, the Minister of the DMR, is vested with certain powers and entrusted to administer and enforce the provisions of the MPRDA.

In a media statement released by the DMR in September 2016, it stated that it had established a stakeholder forum, the Gauteng Illegal Mining Stakeholder Forum (GIMSIF), which comprised of government agencies or entities, affected

mining companies and organised labour. The purpose of GIMSIF was to implement measures to eradicate illegal mining activities. During a parliamentary briefing in November 2016, the DMR advised the portfolio committee on the measures implemented to combat illegal mining. The DMR stated that illegal chrome, coal and sand mining had become prominent in the provinces of Limpopo and Mpumalanga. During the briefing, the DMR stated that it had put the following measures in place to combat illegal mining:

- The DMR established stakeholder forums in provinces that implement measures to ultimately eradicate the illegal mining activities.
- The government had established the multi-enforcement agency National Coordination Strategic and Management Team (NCSMT) to coordinate government's efforts to fight illegal mining and the trafficking of precious metals, including bringing about the successful prosecution of illegal mining cases.
- The DMR, in collaboration with stakeholders, had mainly adopted a three-pronged approach on combating illegal mining, i.e. the promotion of legitimate mining, the rehabilitation of

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mines and sealing of open shafts, as well as supporting law enforcement where necessary.

The NCSMT was formed in 2010 as a result of increased mining activities in Mpumalanga. It appears to be made up primarily of government

agencies and entities

with no private sector

involvement. The

GIMSF, which has

private sector in-

volvement, reports

to the NCSMT. This

notwithstanding,

the measures put

in place by the

DMR, in particular

the three-pronged ap-

proach, appear to deal

with the prevention of illegal

mining on a larger scale, focusing on

illegal mining that occurs in areas where

there is an improperly closed mine and

no right holder. The briefing appears to

contain no procedure or reporting line

for mining right holders whose mining

areas are being illegally mined.

What can mining right holders do?

The most immediate solution for a mining right holder, faced with the situation of illegal mining on its mining area, is to approach the courts seeking to interdict the illegal mining activity. While the facts of each case, and the ability to identify the illegal miners, would determine whether this would be the most appropriate remedy, it is a remedy that ideally should be sought as a last resort. This is because there are government agencies, such as the DMR and the SAPS, who are vested with powers to investigate and prevent illegal activities. Only time will tell if the measures put in place by the DMR will curtail the rising

prevalence of illegal mining, particularly in the mining areas of valid mining right holders. **35**

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