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Inside Mining

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

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" or "we are 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 28 of 2002 (MPRDA) 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.

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 (GIMSF), which comprised of government agencies or entities, affected mining companies and organised labour. The purpose of GIMSF 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 co-ordinate government's efforts to fight illegal mining and trafficking of precious metals, including bringing about successful prosecution of illegal mining cases.
- The DMR, in collaboration with stakeholders, had mainly adopted a three-pronged approach on combating illegal mining, ie promotion of legitimate mining, rehabilitation of 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 involvement, reports to the NCSMT. This notwithstanding, the measures put in place by the DMR, in particular, the three-pronged approach, 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 and, in particular, illegal mining on the mining areas of valid mining right holders.

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