

## February 2014

No, this article has nothing to do with sexual preference, the state of the country's roads or the Highveld. Dykes, potholes and rolling reef are some of the underground geological features that negatively impact on a miner's ability to extract minerals. They also introduce significant safety risks to underground mining conditions.

As the New Year starts, let us take a birds-eye view of some of the legal, labour and economic challenges the mining industry may face over the next year and see where the dykes, potholes and rolling reef may be.

### Sea-change

Just over a year ago, in August 2012, the mining industry was shaken to its foundations when, near the rural hamlet of Marikana in the platinum-rich North West Province, a stand-off between mineworkers, rival trade unions, their mine bosses and security forces resulted in the violent deaths of 43 people. The effects of Marikana on the mining industry and the country are indelible.

The anomaly of Marikana was not that the mineworkers were disenfranchised and sought collective bargaining rights – the overwhelming majority of them belonged to the largest trade union active in the mining industry who enjoyed recognition and organisational rights at these mines – it lies therein that they sought immediate and direct improvement of their living conditions which, ostensibly, were not being achieved by their recognised trade union. They switched their allegiances and demanded the immediate recognition of and representation by a hitherto fringe trade union, not particularly impressive or active in that part of the country.

For employees, Marikana as a term encapsulates their aspirations for contemporaneous improvement of their socio-economic conditions 20 years after democracy. For employers, it exemplifies the ever-changing parameters of mining in a heated political environment often fuelled by populist rhetoric.

### Dykes

A dyke is an intrusive, often parallel, body of igneous rock that cuts through the pre-existing rock strata. Depending on its size and form, when a dyke appears in a mining panel, it introduces significant safety risks to the hanging wall (roof) conditions.

So too, does the worldwide economic slump cut through the pre-existing conditions of supply and demand. Murmurs abound about downscaling of loss-making entities to adapt to these economic conditions. We have been forewarned that companies, who have been synonymous with the

mining industry for decades past, may not even continue their investment in the mining industry in years to come. Downscaling of operations bring with it concomitant retrenchments and loss of jobs in the formal sector.

At least, the ghost of nationalisation of the mining industry has been put to rest. Or has it? The manifesto of the newest political party to enter the election race calls for the nationalisation of mines (again).

In a capital intense mining industry most reliant on direct foreign investment, these economic "dykes" create unstable hanging wall conditions requiring additional structural support to maintain safety levels and so to avoid injury or death.

## **Potholes**

Massive outpouring of molten magma led to partial or complete melting of the sediment floor some 30 million years ago. Flow and turbulence, high temperatures and chemical reactions, sculpted and "potholed" the surface floor in a manner similar to that of water erosion - hence the term. Potholes introduce ground instability posing significant health and safety dangers.

Over the past number of years, the "winner takes all" mentality in the recognition of trade unions have led to the threshold of representation being set at high levels (often 50% plus one) resulting in a single union being recognised in a bargaining unit to the exclusion of all others.

In the aftermath of Marikana one has to question whether this approach is still sound. Over time the relationship between the single recognised trade union and the employer often develops to such a level of pragmatic cooperation that, to the outsider, appears just too cosy. Groundswell unhappiness builds up over time and, as was the case in Marikana, erupted violently at great cost.

Over the past year, we have seen an increased appetite for wildcat strike action. Will this propensity endure in the next year and is the employer's response of dismissals the best recourse? Not only is there a shortage of skilled mine labour, but unemployment in communities surrounding mines is a recipe for confrontation and instability.

This might also be the time to rethink collective employment strategies to take into account socio-economic demands (which are often the ones most likely to lead to wildcat strike action).

The Mining Charter, published in September 2010, requires that by 2014 mining employers must complete the conversion of all hostels to family units with an occupancy rate of one person per room, and (in consultation with organised labour) to facilitate home ownership by mine workers.

To the extent that these targets have not been met by mining employers, they will be harshly judged, not only by antagonistic organised labour, but so too by the Minister and the Department of Mineral Resources (DMR). A failure to comply with these Charter obligations will invoke the wrath of the Minister who will be within her rights to apply section 47 of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) in revoking the mining right for want of compliance.

## **Rolling reef**

In the formation of the platinum and chrome-rich Merensky reef, influxes of hot energetic pulses of magma deformed the rock sediment and created a "rolling reef". Depending on how much the reef deviates, mining has to adapt to the rolling reef.

The legal landscape, within which the mining industry operates, remains ever-changing, just like the features of a rolling reef.

Recently proposed amendments to the MPRDA were published and further amendments to the Mine Health and Safety Act 29 of 1996 (MHSA) are on the cards.

Black economic empowerment (BEE), procurement requirements and corporate social investment have been updated and compliance standards intensified. The Charter requires that its incremental compliance targets be met by this year and a failure to do so will, no doubt, attract further criticism of the industry. In her budget speech in Parliament in May 2013, the Minister criticised the mining industry's lack of progress in achieving the ownership targets circumscribed by the Charter. Regardless of the past, this year, 10 years after the advent of the MPRDA, BEE ownership must be at 26%, or face the risk of mining rights being revoked.

The DMR has intensified its vigilance in the enforcement of mineral law regulation at an operational level. Inspections by health and safety inspectors often result in the halting of mining operations, sometimes for what is perceived to be the smallest of infractions. Appointment of competent persons in health and safety positions are more closely inspected by the regional DMR offices to ensure that persons who hold appointments are in the DMR's view competent to do so. Even acting appointments require the approval of the principal inspector in certain provinces.

Having said this, we live in exciting times in which opportunities for growth, development and prosperity abound within in an ever-increasing compliance sovereignty.

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