Press Release

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Mining and the environment – SA needs new, more balanced approach

The latest *@Liberty* report from the IRR – "Grounding Growth: Finding the right balance between mining and the environment" – argues that South Africa must revise its many and complex environmental regulations if it is to attain effective environmental protection, together with a thriving mining sector capable of boosting economic and social progress.

The report notes that "environmental regulations are crucial in constraining negative impacts from mining, but they also raise the costs of opening and operating mines".

A more balanced approach is needed, both to safeguard the environment and to maintain a competitive mining sector – one well able to promote growth, employment, and improved living standards. The report sets out key elements of an alternative approach.

Author of the report, IRR head of policy research Dr Anthea Jeffery, writes: "Both the design and the implementation of environmental regulations are important in reducing potential negative effects. Environmental rules should thus be clear, certain, and reasonable, rather than vague, fluctuating, and unduly onerous."

The report notes that South Africa's environmental rules for mining are "often flawed" in design and implementation. "They seek to regulate every aspect of mining operation, but often do so in vague and imprecise terms that open the door to selective interpretation and enforcement."

In addition, the rules "keep changing in significant ways, which erodes the certainty and predictability required".

The absence of regulatory certainty and predictability – in both environmental and other spheres – has seen South Africa's attractiveness as a mining investment destination slipping significantly in international rankings.

South Africa's score on the Fraser Institute of Canada's annual policy perceptions index dropped from 56.9 in 2013 to 42.7 in 2017, with one of the key factors being 'uncertainty concerning environmental regulation'.

Writes Jeffery: "Though South Africa has enormous mineral wealth, its mining industry is at risk of becoming 'uninvestable' under the impact of unrealistic empowerment and other policies."

Dealing with the industry's "major challenges in the environmental sphere" calls for a better balance "between protecting the environment and preserving the competitiveness of the mining industry".

Jeffery adds that South Africa "has much to learn from international experience", especially as its increasingly detailed environmental rules are at odds with a global trend of moving away from "overly prescriptive requirements with heavy compliance costs".

Instead, the aim is to develop "'goal-setting' regulations", backed up by non-mandatory guidance notes.

"Such regulations set out the objectives, but allow flexibility in the methods to be used by companies in doing so."

This relieves the regulator of the "burden of having to decide in detail on the relevant rules and puts the onus on companies to come up with environmental management plans that are reasonable, responsible, and tailored to their particular circumstances".

Jeffery points out that this "'internal control principle' avoids the problem of ever more prescriptive regulations, which cannot easily cater for complex situations and soon become outdated as circumstances change".

The report recommends that the task of drawing up a co-ordinated set of appropriate goal-setting environmental rules for mining should be given to a specialist agency, funded from tax revenues but staffed by independent experts.

"This specialist agency should also be responsible for granting all the permissions needed for mining, from air emission permits to waste management licences. These permissions should be granted in a timely and predictable manner – and on the basis of a single environmental impact assessment that covers all likely impacts and sets out a comprehensive environmental management programme that caters for them all."

In addition, mining companies "should be obliged to take out insurance cover against any potential unmet environmental liability arising, for example, from bankruptcy or other premature closure".

The report argues that if all mining companies have this obligation, "the overall risk will be widely spread and premiums can be kept lower".

Incentives could be introduced into this system.

"Where overall closure costs are reduced as remediation proceeds, the financial guarantee or insurance cover required should come down by an appropriate amount. This would give companies financial incentives to rehabilitate as much as possible as mining proceeds," writes Jeffery.

Furthermore, to cover post-mine closure latent environmental impacts, South Africa "should introduce a mine rehabilitation fund (loosely modelled on a similar institution in Western Australia) to which all mining companies should contribute an annual levy amounting, say, to 1% of their estimated total rehabilitation costs (up to and including closure)".

Mining companies "which are already helping to deal with legacy issues – for example, by countering acid mine drainage and other pollution from abandoned mines and dangerous tailing dams – could contract with the proposed specialist agency to continue their important work.

"Such contributions to legacy clean-ups by mining companies," Jeffery argues, "could also be recognised and encouraged through appropriate tax credits."

Ends.