THE ROLE OF THE PUBLIC IN MINE PLANNING, DESIGN, OPERATION AND CLOSURE
- Meeting the social challenge

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ABSTRACT

The role of the public has changed over the last decade. The public, regulators and third parties increasingly influence mine planning, design, operation and closure, and increasingly causes corporate social risk. The interfaces with these parties must be managed as effectively as any other aspect of business.

This paper looks firstly at why the role of the public has changed so dramatically over the past decade, secondly at the factors causing social risk to mining companies, and thirdly proposes ways for mining companies to deal with their social challenges: good neighbour relations, risk communication and public participation. Lastly, a few key recommendations are made.

1. INTRODUCTION

South Africa has witnessed in recent years that the public, regulators and third parties increasingly influence mine planning, design, operation and closure, and increasingly causes corporate social risk. The interfaces with these parties must be managed as effectively as any other aspect of business. Failure to recognise this could threaten the viability of developments, cause costly delays, cause proposed projects and expensive feasibility studies to be shelved, and force premature closures. This requires a new way of thinking about mines, and of evaluating those factors that cannot be defined in statistical or financial terms.

2. THE CHANGING ROLE OF THE PUBLIC

Globalization as an economic process has brought new social challenges facing mine planning, design, operation and closure. This has brought a new set of pressures and expectations on especially international companies (Joyce, 1999). Major drivers of change are described below.

2.1 International recognition of the rights of indigenous people

The rights of indigenous people have been internationally recognised in for example the United Nations Draft Declaration on the Rights of Indigenous Peoples (1993), the International Labour Organisation Convention 169 Concerning Indigenous Tribal People (1991), the World Bank Operational Directive 4.20 - Indigenous People, the International Finance Corporation Social Development Group, the IUCN Indigenous Peoples and Conservation Initiative and Agenda 21, chapter 26 - indigenous people. These imply for example that a company can no longer conduct mineral exploration in areas inhabited by indigenous people without a mutually agreed-to participative process, as well as a well-defined exit strategy, regardless of whether the inhabitants have formal land rights under the governing law of the country in question.

2.2 Internationalization of civil society

Globally, communities have become empowered. Global democratisation, coupled with virtually universal access to information technology, has brought about a public that has increased access to information and international pressure groups, an increased awareness of their rights, a declining political acceptance of repressive government and industry practices and most of all, the ability to challenge (Joyce, 1999).

No global player can any longer afford to lower its operating standards in developing companies when anyone there with a cheap Internet connection can broadcast transgressions to the global press. Sadly, this ability has also increased the risk to companies of being victims of inaccurate reporting, and becoming the victims of negative international public opinion.

2.3 The role of the State

In most developing regions of the world, the State is unable to effectively apply legislation and regulations and to improve social conditions due to lack of resources, ability and capacity. This results in communities increasingly calling upon companies to act as "surrogate governments" (Joyce, 1999), with numerous local examples where government has approached mining companies e.g. to assist in maintaining roads.

The inability of the State to maintain and guarantee the rights and property of mineral interests, and the tendency to model laws on those of developed countries, result in a lack of legitimacy (Joyce, 1999). These factors increase the challenge to companies of building their own credibility and trust among stakeholders.

2.4 International emergence of environmental standards and guidelines

The foundation for the public to demand good environmental management has been provided by the standards and guidelines of organisations such as the US Environmental Protection Agency (EPA), the World Bank, the European Union, the International Standards Organisation, the International Finance Corporation, the World Health Organisation and the United Nations Environmental Programme. In South Africa, funding bodies such as the Development Bank of South Africa and the Industrial Development Corporation now in instances make their funding conditional to good environmental management.

South African citizens since 1996 have a Constitutional right to an environment that is not harmful to their health and well-being. In 1986 already, risk communicator Dr Peter Sandman noted that the activist public distrusts others to protect its interests and thus chooses to protect its own (Sandman, 1986). The public now distrusts South Africa's older portions of legislation and demand that guidelines or standards stricter than those provided be employed by developers. South Africa's air quality guidelines are a case in point.

2.5 International emergence of public participation policies and guidelines

The International Association for Public Participation (IAP2) was established in the early 1990s, demonstrating the degree of importance afforded to public participation world wide. Few global organisations are without policies and guidelines that lay down the principles by which public participation should be conducted, e.g the Global Environmental Facility, UNESCO, the International Finance Council, the US EPA, the Commonwealth Foundation, the World Water Vision Project, the European Bank and many others. Most US and Canadian government departments and councils have public participation guidelines.

In South Africa, consultation with stakeholders has become a statutory requirement, laid down in legislation. The principles that demand communication with society at large are best embodied in the National Environmental Management Act, 1998, South Africa's overarching environmental law, summarised below:

- The participation of all interested and affected parties in environmental governance must be promoted.
- All people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equal and effective participation, especially vulnerable and disadvantaged persons.
- Decisions must take into account the interests, needs and values of all interested and affected parties, including the recognition of traditional knowledge.
- Community well-being and empowerment must be promoted through environmental education, raising environmental awareness, sharing knowledge and experience and other appropriate means.
- Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.

These and the other NEMA principles have been taken up word for word in South Africa's new Minerals Development Bill.

In South Africa, public participation guidelines are available or now being drafted by for example the Department of Water Affairs and Forestry, provincial government and several large companies. The Chamber of Mines has also recently indicated that it would develop guidelines.

3. SOURCES OF SOCIAL RISK

Corporate social risk threatens investments, share value and company image, as some South African companies have experienced in the past few years. Susskind and Field (1996) of the MIT-Harvard Public Disputes Program note that business loses out when the public is disenchanted or angry. "A continually angry public undermines competitiveness in the international marketplace. It can sap the productivity of companies that must spend inordinate amounts of time to defend themselves." Public dramas are often enacted through the press and soon after in the courts. Company money spent on legal battles is lost to investment in infrastructure, social responsibility, environmental improvements and wage increases. Social risk undercuts the profitability of organisations and adds to the cost of operations and eventually products (Susskind and Field, 1996).

Social risk is caused both by stakeholders and neighbours, and the company itself. The source of much conflict is in preconceived ideas, fears or assumptions on the part of either stakeholders or the company. These can either be strengthened of dissipated depending on how relations and information are managed at the local level.

3.1 Social risk caused by stakeholders

An important source of corporate social risk is long-standing conflicts with and mistrust of the company, or of government. In South Africa, this is particularly pertinent where today's mine managers are operating in a changing world. Several mines were established 20-50 years ago when South Africa's imperatives did not leave room for environmental management or social equity. In essence, government used to allow pollution and social inequity. As a result, today's managers are belaboured by neighbours that have suffered past contamination, reduced water supplies or loss of land, without compensation or a clear right to recourse. With changing legislation, this situation has put companies on the back foot, and stakeholders on the attack. Opportunistic neighbours out for a quick buck muddle the picture. This situation has bred immense mistrust and conflict.

Disputes over the distribution of economic and social benefits from a project, demands for joint decision-making as a result of undue expectations from South Africa's legislation, and outstanding land claim disputes, are other sources of social risk caused by stakeholders.

3.2 Social risk caused by company personnel

Social risk is also caused by company personnel themselves. Ignorance of local cultures and customs, an assumption that only formal land owners have compensation rights, and not seeking prior consent for access to private land, have in numerous instances resulted in costly delays to projects, especially in regard to mineral exploration. Assumptions that local people have the same values as company personnel, assuming that government will keep stakeholders informed, and failure to appreciate different expectations, are further causes of social risk. A key mistake made by company personnel is to assume that complying with legal requirements is sufficient to provide social acceptance of a project (Joyce, 1999).

The following are often cited by stakeholders as reasons for not trusting the company and as cause for instituting public or legal retaliation:

- mine personnel not honouring promises made to neighbours and stakeholders
- hiding the real facts or not proactively distributing information, or distributing information that is not accessible to stakeholders (too technical, or written in a language they cannot understand)
- not being transparent and honest, i.e. not proactively sharing expansion plans with neighbours, or springing surprises on them, e.g. not proactively informing them of blasting or other disturbances
- not having empathy with the situation of land owners
- having a holier-than-thou attitude
- believing that stakeholders are too dumb to comprehend information.

The above factors are rooted in *feelings* rather than in *quantification* or hard evidence. They are however as real,

valid and important to stakeholders as statistics and data are to company personnel.

4. RESPONDING TO THE CHALLENGE

Susskind and Field (1996) note that there are better ways than direct conflict and legal battles to listen to the public's concerns, respond to criticism and engage stakeholders and neighbours. They say that conversation and negotiation, rather than sales pitch and a fight, are what are required. To reduce and manage a company's social risk requires that mines address environmental and social issues at two levels:

- the substantive or *content* level, focusing on the letter of the law legal requirements, hard science and the quantifiable aspects of its business, and
- the *process* level, i.e. those factors that cannot be defined in statistical terms such as trust, credibility (Greyling, 1999) and the underlying issue of control: Who decides what is to be done? (Sandman, 1986).

According to Sandman (1986), specialists in negotiation and conflict resolution have long understood the relationship between substantive issues and the process issues of equity and control. He says that "So long as people feel disempowered on the process issue, they are understandably unbending on the substantive issue, in much the same way as a child forced to go to bed protests the injustice of bedtime coercion without considering whether he or she is sleepy. (B)ecause the equity and control issues come first, people typically never even ask themselves whether they agree on the merits. Outraged at the coercion, they simply dig in their heels."

Three ways in which process objectives can be achieved and lead to a reduction in a mine's social risk are outlined in the sections below.

5. A NEIGHBOUR RELATIONS PROGRAMME

The challenge for many mines is to overcome many years of bad neighbour relations, and mutual mistrust between neighbours and the mine. Good neighbour relations need not be difficult or costly for a mine. The foundation of good neighbour relations is ongoing and *proactive* provision of information, and personal contact. Below are a few basic pointers (to be read in conjunction with the section on risk communication below):

- Develop a mailing list of neighbours and ensure that it is kept updated. Spell their names, surnames and farm names correctly. Use first names and not only initials.
- Proactively distribute information. Often, it is easy to allay undue fears and counter undue expectations by simply and patiently providing sufficient and accessible information to stakeholders.
- Provide neighbours with short written information on a quarterly basis. Keep information simple.
- Place neighbours on the distribution list for the mine's internal newsletter, annual and other reports. In that way, they receive regular information from the mine with little extra effort.
- Assist neighbours to move from seeing the mine as a large, faceless intrusion to seeing people that work there. Get to know neighbours. Introduce them to the company's environmental officer, community liaison officer and safety officer, and ensure that neighbours have their contact details. Personal contact goes much further than bureaucratically worded flyers.
- Hold at least an annual information day and tour of mine infrastructure. Clearly communicate environmental compliance, and social responsibility efforts to help establish trust and credibility.
- Involve neighbours in crime prevention and fire management – several mines have reported that such joint efforts have brought about mutual benefits, cost savings and better relations.
- Advise neighbours of forthcoming disturbances or changes in advance. A mine on the West Rand recently conducted routine upgrading of equipment, resulting in neighbours observing increased heavy vehicle delivery. As it happened, a public participation process was being conducted at the same time for a proposed extension to the mine. Neighbours, not knowing about the upgrade programme, believed that the proposed extension was being implemented already and that public participation was merely rubber-stamping.
- Develop in consultation with neighbours a compensation plan, or simple compensation principles, guidelines and procedures, and honour them.
- Confirm that the mine will conduct public participation for proposed new extensions or projects.
- If there are serious relationship problems, engage a good mediator or facilitator (not a lawyer!).

6. RISK COMMUNICATION

More than three decades of research and hundreds of articles published in scientific journals underpin the science of risk communication (Covello, 1998). Sandman (1986) says that "(t)he most common sources of risk information are people who are professionally inclined to ignore feelings. And how do people respond when their feelings are ignored? They escalate — yell louder, cry harder, listen less — which in turn stiffens the experts, which further provokes the audience. The inevitable result is the classic drama of stereotypes in conflict: the cold scientist or bureaucrat versus the hysterical citizen."

Mine personnel that have contact with stakeholders and neighbours can reduce the mine's social risk by becoming familiar with and applying the basic principles of risk communication. Trust, credibility, personal contact and control form the basic foundation for risk communication. Some pointers are listed below:

- Accept and involve the public as a legitimate partner; listen to their specific concerns (US EPA, 1988)
- Understand that the risks that kill people and the risks that upset people are often completely different (Covello, 1998). In a recent public participation process, neighbours were much more upset about the constant nuisance effects of dust from mine dumps in their area than about the carcinogenic Chrome 6 that could be generated in a proposed ferrochrome plant.
- Do not use the DAD model: Decide, Announce, Defend. Leave room for dialogue and resolving disputes *before* decisions are implemented (Covello, 1998) otherwise costly delays may result later on.
- Express caring, empathy and commitment, and respond humanely. Do not trivialize people's feelings. These attributes account for over 50 percent of trust in high-concern situations. When people are worried and upset, *they don't care what you know until they know that you care*. People often decide if a person is caring within as little as 9 seconds (Covello, 1998).
- Show respect. Do not negate people's concerns just because you are not of the same political orientation as they are. Their concerns may be real and sufficiently substantial to support legal action.
- Adapt to the fact that many people use health, safety and environmental risks as a proxy or surrogate for other social, political or economic concerns (Covello, 1998). Sometimes it is the only way they know how. Assist them to express their unspoken but real concerns. In a recent process on the Highveld, land owners demanded that an alternative route for a proposed conveyor be selected since "it would cause less environmental damage". One stakeholder threatened to tarnish the name of the company if their demands were not met. Their real concern, however, was stock theft, which they revealed during personal contact. They wanted the conveyor located between them and a settlement. Personally and subsequently publicly expressing caring and sympathy for their situation, and patiently and without technical jargon explaining the environmental criteria for having selected another route, settled the issue.
- Do not use complex and difficult probabilistic or technical language to communicate information about risks (Covello, 1998). Keep it simple. Avoid technical jargon and any words that teenagers won't understand.
- When people speak emotionally, do not immediately respond with data, but with sympathy and caring. Breaking a conflict is often "a matter of explicitly acknowledging the feeling (and the legitimacy of the feeling) before trying to explain anything substantive — because any effort to explain substance first will be experienced by people as just another way of not noticing how they feel" (Sandman, 1986).
- Be honest, frank, and open (US EPA, 1988). Openly acknowledge past misbehaviour and current problems. Explain plans and financial commitment in place to rectify current problems and ask for suggestions.
- Coordinate and collaborate with other credible sources (US EPA, 1988). If air quality is the problem, compare emissions to international standards and guidelines. If environmental management is the problem, make it known that the mine has ISO certification, and explain what it means.
- Do not use the "wrong" public relations techniques. While public relations textbooks may highlight the need for quality information and mutually beneficial relationships, public relations often employ techniques such as stonewalling, smokescreening, whitewashing and blaming someone else (Susskind and Field, 1996). Union Carbide, Exxon, several US tobacco companies and some South African companies have it on good authority that these techniques do not work.
- Let go of some control. Allow stakeholders to select the dates and times of meetings, to indicate the language of their choice, to indicate by what methods they would like to receive their information, to assist in listing criteria for making choices, and to assist in exploring alternatives (Greyling, 1999 a). Lay people, "undeterred by conventional expert wisdom, often have good ideas that experts can adapt to the situation at hand; at a minimum, lay people are the experts on what frightens them and what would reassure them" (Sandman, 1986).

7. PUBLIC PARTICIPATION

7.1 What is public participation?

Does public participation mean that a developer can no longer make its own decisions, or run its own business? No. Consider the following definition of public participation (Greyling, 1999 a):

> Public participation is a process leading to a joint effort by stakeholders, technical specialists, the authorities and the proponent *who work together to produce better decisions than if they had acted independently.* Public participation includes this promise.

Public participation does not necessarily aim at consensus. During an environmental assessment process, it is usually the diversity of opinion rather than consensus that enriches decision-making (Greyling, 1999 a). Unfortunately, and there are many valid and not-so-valid reasons for this, public participation has been viewed by developers as an irritating regulatory "add-on." Appropriately conducted, public participation benefits the company through capitalizing on the collective wisdom of a range of people representing various perspectives of society (stakeholders can be seen as free consultants), and can give an up-front indication of social, environmental and other issues that may cause social risk unless resolved timeously (Greyling, 1999 b).

7.2 When is public participation adequate, and who decides?

A public participation process is evaluated not only by minimum legal requirements. As it is, current South African legislation and the NEMA principles leave the door wide open for disagreement on whether a process was adequate or not. Different players evaluate public participation by different sets of requirements, each of which must be satisfied if it is to be deemed adequate by all players:

- Letter of the law legal requirements, e.g. the few process aspects listed in the EIA Regulations (DEAT, 1998)
- Stakeholder requirements in terms of the international good-practice guidelines for public participation and the Core Values of the International Association for Public Participation (IAP2, 2001)
- Proponent requirements in terms of whether the public participation process resulted in an increase or decrease in the company's social risk.

7.3 Requirements for appropriate public participation

Many of the requirements of appropriate public participation are founded in the principles of risk communication, and not necessarily in the law. A summary follows (Greyling 1999 a):

- Stakeholders want to know that the proponent sincerely wants them to participate.
- Transparency and honesty must characterise the process. Present negatives along with the positives.
- Stakeholders should have opportunity to suggest how the process can accommodate local needs. In some areas, people simply don't read, and need meetings and visuals rather than documentation.
- Consultation should be inclusive and include all sectors of society, and all perspectives of society.
- The opportunity for comment should be announced several times, and in different ways.
- Key stakeholders whose inputs are crucial should be identified up front and special efforts made to consult them, in some cases on a person-to-person basis.
- Information must be sufficient to allow meaningful contributions, and must be accessible i.e. written in a language and style that stakeholders can understand, and easily obtainable.
- Highly technical documents should be presented only to highly technical stakeholders; simplified documents should be presented to stakeholders that are not technically-minded; special briefing sessions may be necessary for groups of lay people before they will be able to contribute.
- Information should be presented to stakeholders in various ways - some stakeholders are better at hearing than reading, and vice versa. Thus information must be presented both in written format and during meetings, workshops or small-group discussions.
- There should be more than one opportunity for stakeholders to comment throughout the process. Consultation must take place in various successive rounds.
- There must be various ways for stakeholders to comment such as written submissions, comment sheets, verbal comment at meetings, and through personal contact with members of the project team. Again, some stakeholders contribute better in writing, others better by talking.
- Previously disadvantaged people must be assisted to understand the concepts involved. Use community

facilitators who speak local languages and understand local customs.
- Allow enough time for comment at each successive round and agree up front with stakeholders and the authorities on time periods, but time must not wasted on options that are no longer viable
- Stakeholders should have their contributions reflected back to them to see that their issues have been considered. They should receive an explanation for issues that could not be accommodated.
- Stakeholders from different sectors of society should have the opportunity to exchange information and viewpoints and share information (e.g. at brainstormings, public meetings or workshops).
- The process should ideally be facilitated by an independent facilitator.

It is essential to communicate stakeholders' role to them at an early stage. They must understand at which points decisions will be made about what aspects and by whom, where the accountability for decisions lies, how their contributions will be taken up, etc. Stakeholders not only have *rights*, but also *responsibilities*. If they want to participate fairly, they are responsible for reading and familiarising themselves with discussion documentation, submitting their comments and contributions by the dates agreed upon, participating in meetings, and not waiting until the end of the process before contributing. Also essential is that stakeholders are assisted to appreciate that it is the sum total of all inputs from all participants that will add value to decision-making, and that the process can recognise, but cannot be governed by, individual or vociferous viewpoints, and that there will usually be trade-offs.

8. TAILORING PUBLIC PARTICIPATION TO SUIT PROJECT REQUIREMENTS

Statistics based on recent environmental assessments show that the degree of environmental assessment and public participation that is required for a project is a function of the aspects outlined below (Greyling, 1999 b.)

8.1 Scale of predicted impacts

Technical environmental evaluation and public participation will increase with the following:
- Size of footprint of impacts (a facility with air emissions on the Mpumalanga Highveld may affect industrial forestry in the Lowveld; industrial effluent may affect users far downstream)
- A Greenfields vs Brownfields project
- Aggregate and cumulative impacts, e.g. increased air emissions in areas already suffering air pollution
- Whether the impacts would be felt at national, provincial, regional or local levels
- Number of issues expected to be raised by the authorities and stakeholders.

8.2 Sensitivity of the receiving environment

The sensitivity of the receiving environment is a major determinant of the effort required in technical environmental evaluation and public participation. The following are more sensitive:
- Important or stressed water catchments with multiple users, and major drainage lines
- Areas around nature reserves, National Parks, Ramsar or Heritage Sites (a 5-km road in an already built-up area would require much less effort than the same road in the vicinity of a World Heritage site)
- Areas of archaeological, cultural or historic value.

8.3 Sensitivity of public perceptions

The sensitivity of public perceptions and the potential for corporate social risk is usually directly linked to the sensitivity of the receiving environment. Other determinants are:
- Potential impacts to areas with a spiritual sense or "sense of place"
- Fear of contamination and health effects, often linked to recent cases, media articles or films
- Past environmental neglect by government or the proponent, or by other similar industry in the area
- Past expropriations or not having received compensation for damages
- Recent negative press
- Emotive issues (hazardous waste, health issues, relocation of local people)
- Undue time pressure on the public participation process
- The potential for surprises e.g. where a mine has not had contact with its neighbours for some time.

9. RECOMMENDATIONS

Meaningfully interfacing with third parties requires experts and technical specialists to switch from right to left brain. It is therefore recommended that mining companies select mine personnel that are not strongly opposed to dealing with the public to conduct their neighbour relations programmes and risk communication. In addition, invest in some risk communication and public participation training for mine personnel that will have contact with stakeholders and neighbours.

Do not expect immediate results after having bravely instituted a neighbour relations programme. Both mine personnel and neighbours will need time to overcome years of mutual mistrust and acrimony.

Engage the help of a trained facilitator or mediator if the issues seem insurmountable, and take their advice. Mine personnel may be highly trained professionals, but being able to expertly design a slimes dam is not going to be helpful in resolving public conflict and reducing social risk.

A good shorthand rule would be to invest one dollar of risk communication effort for every dollar devoted to risk assessment (Covello 1998).

Engage the public and stakeholders prior to having taken final investment decisions. Diversity of opinion may well enrich the mine's own decisions, and reduce its corporate social risk.

Corporate social risk often surfaces when a company that does not have an ongoing and meaningful neighbour relations programme has to conduct public participation for what may be a small expansion. Since the company may not have materially changed its operations for some time, no surprises are expected (Susskind and Field, 1996). However, company personnel are shocked when years of mistrust and public anger are dumped on the platform created by the public participation process and when projects are delayed as a result. It is therefore crucial to evaluate the likelihood of social risk before embarking on public participation, to set aside sufficient time and money and to engage professionals to conduct a process that will not fuel mistrust and increase social risk. Also important is to appreciate the time and effort that will be required by company personnel during the process.

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