



TO: ALL MEDIA

MEDIA RELEASE: IMMEDIATE

MINERALS DEPARTMENT REJECTS ALLEGATIONS OF BIAS IN THE SISHEN CASE

The Department of Mineral Resources today (**Thursday**, 03 February) emphatically rejected allegations of bias in the Sishen mining rights issue.

In a statement, following media queries, the director general, Advocate Sandile Nogxina, said: “As a government department we are not oblivious to the reality that we have a duty to apply the law as it is. Similarly, our constitution provides every person with the right to administrative action that is lawful, reasonable and procedurally fair.

We are obliged to apply the law consistently. We cannot discriminate against or act in favour of any applicant, based either on size or experience in the industry. The discretion, therefore, cannot be exercised arbitrarily, capriciously and discriminatorily, it must, however, be premised on the provisions and requirements laid down in the law.

In the case of SIOC (Sishen Iron Ore Company) and Imperial Crown Trading (ICT), this is exactly what happened. To illustrate this point:

- (1) SIOC lodged its application for the conversion of its old order right. This is in respect of the 71.8% of the rights it originally had and for which it was entitled to apply. This met all the relevant criteria as contained in the MPRDA, and the Department, therefore, was obliged to convert the said old order right into the new order mining right.
- (2) In the same vein, the Department (DMR) evaluated the prospecting right application of ICT strictly within the ambit of the MPRDA. Having regard to the criteria stipulated in the law, the application was found to be compliant. The Department was consequently obliged to grant a prospecting right to the successful applicant, in this case the ICT.
- (3) Similarly, the Department evaluated the new mining right application of SIOC, and found it to be defective in a number of respects. As obliged by law, the Department had to refuse this application.
- (4) Accordingly, the Department has received an application for a mining right by ICT in respect of the properties in question. The application met the criteria for acceptance, and was, therefore, duly accepted, as provided for in the Act. The Department will now process the application in terms of the MPRDA, and will evaluate and make a final determination on the application once this process has been finalized. As with the previous three decisions, the Department will be guided by the relevant provisions of the law in arriving at the final decision as to whether to grant or refuse the said mining right application by ICT.

From the above; it should be manifestly evident that the Department applies the law consistently, thereby protecting the constitutional right of every person to be treated in a manner that is lawful, reasonable and procedurally fair. In so doing, the security of tenure issue is being guaranteed. We believe that the rule of law is a critical factor in determining whether or not a country can be regarded as a stable investment destination.

However, Government is not the only player or stakeholder in this field. The mining industry, private sector companies as well as workers, have an important role to play in creating and influencing perceptions. The role of the media in creating and managing perceptions should also not be underestimated.

In instances where one or more of the above-mentioned stakeholders fail to operate within the regulatory framework, perceptions and investment decisions will inevitably be negatively affected.

However, as a Department we are concerned that some small sections of our reporters are failing woefully to interrogate the legal basis and justification of the decisions that have been taken by the DMR with regard to this case. We are calling on members of the media to critically read documents about this matter which are now available on our website and, henceforth, act in a manner that will ensure they respect the *audi alteram partem* principle.

The DMR further welcomes jurisprudence on this very important and relatively new piece of legislation (the MPRDA) which governs one of the key sectors of our economy. It is our view that legislation which is being subjected to the scrutiny of the courts will ultimately provide better guidance in future cases when the law is being applied.

Finally, the DMR will continue to apply our laws and guarantee administrative action which is fair and lawful. While we will continue to take measures to redress the imbalances of the past by promoting access to all compliant applicants, we will simultaneously continue to promote, protect and guarantee the security of tenure in a bid to maintain and consolidate a stable investment environment in the mining and minerals sector of our country.”

Ends

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Regards

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