



Bench Marks Foundation of Southern Africa for Corporate Social Responsibility (BeFSA CSR)

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<http://www.bench-marks.org>

Comments and Submissions to the National Assembly on the National Environmental Management Amendment Bill No 36 – 07

The Bench Marks Foundation

1. The Bench Marks Foundation is a faith based organisation whose core objective is to promote positive corporate social responsibility consistent with the responsibility to sustain the human community and all creation. Appendix “A” hereto sets out who and what the Bench Mark Foundation is and its mission.

2. Its ***“Principles for Global Corporate Responsibility: Bench Marks for Measuring Business Performance*** (the Bench Marks) *inter alai* call for:
 - A new relationship between the natural environment, communities and corporations;
 - Sustainable systems of production;
 - More equitable system for the distribution of the economic benefits of production and environmental services;
 - Participation of stakeholders in decision-making processes affecting them;
 - Affirmation of indigenous peoples' right to full participation in the business and other decisions which pertain to their way of life and ancestral lands;

- Development of a corporate human rights policy premised and based on the Universal Declaration of Human Rights;
 - Corporate governance policies that are properly monitored and enforced which are based on ethical values, including inclusivity, integrity, honesty, justice, accountability and transparency.
 -
3. Appended hereto marked Appendices “B” and “C” are extracts of its indices or bench marks for evaluating a company’s performance regarding ecosystems and resource extraction.

The Bill under Consideration

4. The NEMA amendment bill will, as submitted by the Legal Resources Centre fundamentally change and significantly water down the provisions of NEMA.
5. To quote the LRC’s document NEMA, as it stands, protects the environment when authorisations are granted after environmental impact assessments. These aspects of NEMA are the core of its protection of the environment and the changes that are proposed will significantly erode the fundamental right to the environment contained in our Constitution. The proposed changes will also reduce avenues for public participation in environmental decision making, an internationally recognised safeguard against bad environmental decision making.
6. The bill proposes to change most of the important mandatory requirements for environmental impact assessments including investigation of alternatives, mitigation measures, public participation and arrangements for monitoring into ***discretionary requirements*** meaning that in the authorisation process decision makers will have a discretion as to how far reaching an environmental impact assessment must be.

7. What was mandatory is thus made subject to just administrative action as governed by section 33 of the Constitution as read with the Promotion of Administrative Justice Act, 3 of 2000 (PAJA) and its regulations.
8. We share the LRC's views that these proposed amendments conflict with: -
 - 8.1. NEMA principles (section 2);
 - 8.2. NEMA's section 23 relating to integrated environmental management that has mandatory requirements for environmental impact assessments including public participation.
9. The Bill also makes the Minister of Minerals and Energy a competent authority for the giving of authorisation of mining, prospecting and petroleum exploration and production.
10. It is questioned whether a department that has as its core function the promotion of mining is indeed the appropriate organ of state to adjudge environmental matters.
11. The amendment proposed to section 24(8)¹ read with section 24L² and section 24M³, allows a competent authority to treat authorisations obtained after investigations under laws other than NEMA's environmental impact assessments to be regarded as sufficiently compliant with the assessment requirements for NEMA.
12. Some of these laws might not have public participation or the remaining procedural rights under NEMA. Authorisations under departments like the Department of Mineral & Energy Affairs for activities such as mining present a

¹ Page 6 line 15

² page 9 line 45

³ page 10 line 20

potential conflict of interest as DME is expected and required in terms of its legislation to promote mining.

13. The new section 24M⁴ allows the Minister or MEC to grant exemption from an environmental impact assessment. The public's right of participation is not made clear. It is left to the Minister(s) and MECs to regulate the procedures to be followed in such applications.
14. Exemptions may not be granted if they are likely to result in significant detrimental consequences for the environment or adversely affect the interests or rights of affected parties.
15. It is questioned how decisions of this nature may be arrived at without an impact assessment.

Context of Environmental Decision Making

16. The world is facing an environmental crisis of almost unimaginable proportions.
17. Global warming is a fact not merely a speculative theory. In South Africa the phenomena of acid mine drainage, which is a direct consequence of mining activity, presents a threat to human health and wellbeing of considerably greater magnitude than Chernobyl.
18. Desertification, pollution, bad farming practices, urbanisation and industrialisation threaten our ability to feed ourselves and the destruction of our natural environment.
19. We are dependant on our environment and what threaten the environment threatens our existence.

⁴ Page 10 line 20

20. Decisions regarding the environment must per force be made after considering all facts, circumstances and views and only after proper and full investigation
21. Environmental practice has for these reasons been premised on the following: -
 - 24.1 All affected have a right to know of any activities, policies, programmes, processes, plans and projects that may significantly affect the environment;
 - 24.2 In turn all have a right to all pertinent information regarding any such activities, policies, programmes, processes, plans and projects;
 - 24.3 Any affected by a decision that is to be made have a right to put their case regarding the decision to be made to the decision makers;
 - 24.4 The decision maker must consider and take into account all facts, circumstances and views;
 - 24.5 All decisions must be made publicly and in an open and transparent manner;
 - 24.6 Once a decision is made it must be made public and accessible to all;
 - 24.7 Full written reason for any decision are a right;
 - 24.8 The decision must be reviewable by a court or, where appropriate, an independent and impartial tribunal.

25 NEMA as it stands seeks to give effect to the eight standards listed. The Environmental Impact Assessment practice, as we know it evolved from the now repealed 1989 Environment Conservation Act.

26 The procedures provided for in NEMA were intentionally created to be an alternative procedure that is fair and compliant with the Constitutional requirements of administrative justice.

The “Evil” Sought to be remedied by the Bill

27 Environmental practice and procedures are often criticised for being lengthy, costly and open to abuse. Some would say that what may be in the interests of the environment frustrate development and delay urgently needed activities.

28 Different interests have differing priorities. It is well known that mining interests and indeed the Minister of Minerals and Energy believe that they are best positioned to regulate mining matters. Indeed the provision in the Bill making of the Minister of Minerals and Energy a competent authority underlines these rather serious tensions.

29 It is also strongly argued that EIA procedures result in volumes of information about a particular issue, the cogency and relevance of the information is often in serious doubt.

30 More seriously the information that is accumulated during in an EIA process is not properly tested. The result is that a decision maker is often presented with highly contradictory submissions and no proper procedure for the critical evaluation of the information is put in place.

31 The result is that many decisions are correctly faulted for being based on inaccurate facts.

32 How the Bill seeks to correct matters is by giving administrators' far greater power to regulate the proceedings and the power to "short circuit" the process according to their discretion.

33 The result is that there is considerable discontent with the process which discontent is not without merit.

34 Environmental authorisations are by their very nature administrative decisions.

35 The question is therefore asked why should environmental decisions be associated with special procedures that underlie the discontent.

The Bill's Shortcomings

36 The Bill seeks to replace legislated procedural obligations with the decisions of an administrator. In addition the bill removes mining and petroleum production, both major contributors to environmental problems (refinery pollution, acid mine drainage etc...) from the control of the organ of State especially created to deal with environmental issues.

37 Instead they are placed in the hands of an organ of State designed to further the interests of the mining industry and petroleum production and exploration.

38 If the Bill is passed as it is the specific procedures will be determined by administrators on a case by case basis.

39 PAJA defines an "administrator" as "an organ of state or any natural or juristic person taking administrative action". 'Administrative action' is defined to mean "any decision taken, or any failure to take a decision, by an organ of state, when exercising a public power or performing a public function in terms of any legislation which decision adversely affects the rights of any person and which has a direct, external legal effect.

40 As it stands the Bill does not provide proper and clear guidance identifying the circumstances under which the discretionary power should be exercised or how particular decisions should be made.

41 The Bill does not give a clear direction as to how an administrator should in an open and transparent manner investigate and receive the information upon which the decision will be made.

42 Constitutional rights are at the heart of the matter.

43 Section 24(a) of the 1996 Constitution is plain – *“Everyone has the right to an environment that is not harmful to their health or well-being”*.

44 24(b) of the Constitution makes it plain that everyone has the further and distinct right – *“to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-*
(i) prevent pollution and ecological degradation;
(ii) promote conservation; and
(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

45 Section 33 of the Constitution of the (Just administrative action) provides that –

- (1) *“Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.*
- (2) *Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.*
- (3) *National legislation must be enacted to give effect to these rights, and must-*
 - (a) *provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;*
 - (b) *impose a duty on the state to give effect to the rights in subsections (1) and (2); and*
 - (c) *promote an efficient administration.”*

46 Section 32 of the Constitution (Access to information) reads –

- (1) *Everyone has the right of access to-*
 - (a) *any information held by the state; and*
 - (b) *any information that is held by another person and that is required for the exercise or protection of any rights.*
- (2) *National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.*

47 The Promotion of Administrative Justice Act 3 of 2000 and the Promotion of Access to Information Act 2 of 2000 together with their respective regulations are in place.

48 In the matter of *Dawood and Another v Minister of Home Affairs and Others; Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others* 2000 (3) SA 936 (CC) the Constitutional Court held certain section of the Aliens Control Act 96 of 1991 (s 25(9)(b) read with s 26(3) and (6)) to be inconsistent with the Constitution “because of the absence of legislative guidance identifying the circumstances in which a refusal to grant or extend a temporary permit would be justifiable and that therefore those provisions constitute an infringement of the applicants’ constitutional right to dignity ... The inconsistency with the Constitution therefore lies in a legislative omission, the failure to provide guidance to the decision-maker.”

49 If the Bill is passed as it stands it must be asked whether a procedural decision limiting the rights of any person would be constitutional and indeed whether the resulting act that gives the power to the “competent authority” i.e. an administrator, should not be struck down.

50 South Africa’s apartheid era stands as a monument to rule by administrative decisions made behind closed doors and in terms of very wide discretionary powers. The same may be said of other oppressive regimes elsewhere in the world.

51 What is said should not be read as a view that there are no problems requiring attention by the legislature or as an indication that administrators should not be

given powers that enable better and faster decision making – indeed such powers may well be beneficial.

52 For such powers to be acceptable plainly they must not create unjustifiable limitations on any Constitutional right.

53 That there may be problems with the current dispensation does not in any way at all establish a reason for the limitation of any right. Indeed there are no facts or circumstances upon which a limitation of any right under discussion may be justified.

54 International experience documents why the sections quoted from the Constitution are the benchmarks of a rights based democracy.

55 For any limitation of a right to be valid the provisions of section 36(1) of the Constitution need be remembered. This section reads – *“The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-*

- (a) the nature of the right;*
- (b) the importance of the purpose of the limitation;*
- (c) the nature and extent of the limitation;*
- (d) the relation between the limitation and its purpose; and*
- (e) less restrictive means to achieve the purpose.”*

56 For authorisations to be given for activities that do have significant impacts on the environment is in itself conduct that limits our environmental rights. For the procedures by which such decisions are made to be constitutionally limiting is difficult if not impossible to justify.

57 The proposed power to grant exemptions from procedures also needs to be examined. Can an exemption ever be granted if the exemption materially and adversely affects the rights or legitimate expectations of any person? If this is

the outcome of an exemption decision it is as contemplated in section 3(1) of PAJA an “administrative action” that “must be procedurally fair”.

58 PAJA at section 3(2) (section 3 being entitled “Procedurally fair administrative action affecting any person) provides that –

- (2) (a) *A fair administrative procedure depends on the circumstances of each case.*
- (b) *In order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection (4), must give a person referred to in subsection (1)-*
 - (i) *adequate notice of the nature and purpose of the proposed administrative action;*
 - (ii) *a reasonable opportunity to make representations;*
 - (iii) *a clear statement of the administrative action;*
 - (iv) *adequate notice of any right of review or internal appeal, where applicable; and*
 - (v) *adequate notice of the right to request reasons in terms of section 5.*

59 Subsection 3(3) of PAJA reads – *“In order to give effect to the right to procedurally fair administrative action, an administrator may, in his or her or its discretion, also give a person referred to in subsection (1) an opportunity to-*

- (a) *obtain assistance and, in serious or complex cases, legal representation;*
- (b) *present and dispute information and arguments; and*
- (c) *appear in person.*

60 At section 4(1) (Administrative action affecting public) PAJA provides that – *“In cases where an administrative action materially and adversely affects the rights of the public, an administrator, in order to give effect to the right to procedurally fair administrative action, must decide whether-*

- (a) *to hold a public inquiry in terms of subsection (2);*
- (b) *to follow a notice and comment procedure in terms of subsection (3);*
- (c) *to follow the procedures in both subsections (2) and (3);*
- (d) *where the administrator is empowered by any empowering provision to follow a procedure which is fair but different, to follow that procedure;*
or
- (e) *to follow another appropriate procedure which gives effect to section 3.*

61 Exemptions decisions, as will be the case of any decision made in terms of the proposed “discretionary” powers, will need per force to be made in the manners set out in sections 3 and 4 of PAJA.

- 62 In addition PAIA as read with section 32 of the Constitution continue to apply. Government and other parties are still obliged to make information available to each other.
- 63 It is submitted that any decision that does not comply with the procedures and principles outlined in summary herein will be challengeable and fall to be set aside for want of, *inter alia*, procedural fairness.
- 64 Section 5 “Reasons for administrative action” of PAJA obliges written reason. Section 5(1) and 5(3) provide that – *“Any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the action may, within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned furnish written reasons for the action.”*
- 65 Section 5(3) proceeds to legislate that –*“If an administrator fails to furnish adequate reasons for an administrative action it must, subject to subsection (4) and in the absence of proof to the contrary, be presumed in any proceedings for judicial review that the administrative action was taken without good reason.”*
- 66 It is therefore asked what in fact the Bill is proposing? Is it not creating a Pandora’s box of unintended and unwanted consequences including what will be a highly litigious situation?
- 67 The current EIA procedures in terms of NEMA provide for what is described above.
- 68 What is being emphasised is that there are other procedures in place that achieve what is required without interfering with any constitutional rights.
- 69 Much has been said about diminishing the powers of the Ministry charged with environmental affairs. Why this is seen as desirable is not clear from the information publicly available. No facts have been made public justifying why

either the Department of Environmental Affairs and Tourism and its Ministry is not competent to control, police and monitor all aspects of the environment or whether the Department for Mineral Affairs and Energy and its Minister are better positioned. For this recommendation to be properly considered requires open and transparent disclosure of the facts underlying it.

- 70 It is plain that for the moment the correct option is to do nothing until what is being planned has been thoroughly considered and investigated.

The Bench Marks Foundation's Concern regarding Governance

- 71 The Foundation's mission includes the promoting and development of: -

71.1 Peoples participation in decision making processes in an informed and strategic manner;

71.2 Authorities, corporates and business including peoples in a participative and informed manner in decision making processes;

71.3 Programmes that result in corporates and communities complying with ecological and environmental codes and practices that have the outcome of securing a sustainable living, work and environmental epoch;

71.4 Corporates that in a sustainable and measurable manner become compliant with its principles or indices for global corporate responsibility;

- 72 Plainly the public participation processes associated with environmental authorisation are effective tools that bring corporate responsibility as negotiated with corporates and government into reality.

- 73 Disadvantaged, poor and unskilled persons and communities are least able to secure their positions and protect their interests.
- 74 Indigenous persons are also not always equipped and able to protect their ancestral lands, traditions and life style.
- 75 Public participation processes designed to ensure that the principles set out in section 2 of NEMA are applied in decision making are a highly effective method empowering historically disadvantaged and disposed persons to achieve the outcomes that are our mission.
- 76 These provide a structured and directed manner for corporates, individuals and communities to, with government's regulatory authority, deal with many environmental and other issues that would otherwise not become the focus of attention.
- 77 Despite the processes that should result in positive and acceptable outcomes we are, as the submissions made to this Committee prove, confronted with a serious failure of the system under consideration to address and solve many serious and fundamental complaints. Everyone's right to an environment that is not harmful to their health and wellbeing is not being delivered as required by the Constitution.
- 78 It is also plain that what is in place is not delivering what section 24(b) expects which is *"to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-*
(iv) *prevent pollution and ecological degradation;*
(v) *promote conservation; and*
(vi) *secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.*

79 The benchmarks against which the policies, programmes, processes and plans proposed by the Bill and the current system is to be assessed and considered are those: -

79.1 Set out in section 24 of the Constitution. The question is whether substantively the rights are being delivered; and

79.2 Set out in sections 32 and 33 of the Constitution. Is what is proposed procedurally fair and compliant with what is expected?

80 The Bench Marks Foundation requests that the Committee examine what is being proposed in this manner.

The Way Forward

81 What emerges from the submissions on hand is an unfortunate polarisation of opinions.

82 Strident calls are being made from opposing viewpoints.

83 On one hand the charge is that the system is as it is not rigorous enough, on the other for a dilution and weakening of the environmental assessment practices and systems.

84 In this case the National Assembly is the decision maker and the plans and policies it legislates in to law will have far reaching and profound environmental consequences.

85 In this decade what we decide and do regarding the environment will have consequences for many generations to come. We in this generation are merely trustees for those who will come after us and suffer the consequences of our actions.

86 The precautionary rule of environmental practice counsels that we be risk averse if we do not fully know what the consequences of our planned actions will be.

87 With regard the Bill's proposals further consideration and investigation is required before a decision may properly be made.

88 A dedicated committee assisted by selected experts of high repute should be tasked with hearing oral evidence on what is under consideration and reporting back the National Assembly with considered recommendations on what is to be done.

The Position of Traditional Communities, the Poor and the Disadvantaged

89 Special mention needs be made of those who are not privileged to be here and have their voices heard.

90 Fundamentals that NEMA at section 2 gives effect to are that: -

(c) *Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons.*

(d) *Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.*

(e)

(f) *The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.*

(g) *Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.*

91 The thrust of many of the inputs being made to the committee is that the Bill's proposals will NOT further these objectives.

International Environmental Responsibilities

92 South Africa is a party to many environmental treaties and conventions.

93 We are expected by our neighbours and the international community to adhere to proper environmental practice and procedures.

94 How we keep house is of international interest and concern.

95 It needs to be considered whether what is being proposed meets with the expectations resting on us.

Environmental Debt & Financial Consequences for Harming the Environment

96 Section 2(4)(p) of NEMA gives effect to this concept and legal responsibility in the following words – *The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.*

97 Will the measure planned be the cause of harm to the environment? If so we in this generation are at least morally responsible for that harm.

98 We need to consider carefully what harm we may be responsible for.

Conclusion

99 What is the wise course of conduct that may be adopted?

100 What is at stake is the realisation of an important constitutional right.

101 The matter needs to be reconsidered and novel constitutionally sound solutions that will deliver what is expected explored.

Appendix “A”
About the Bench Mark Foundation

***About the Bench Marks Foundation of Southern Africa
for Corporate Social Responsibility (BeFSA-CSR)***

Mission Statement

The Bench Marks Foundation of Southern Africa is committed to providing leadership and advocacy on issues regarding benchmarking of good corporate governance, ethical and socially responsible investment as well as linking people and institutions committed to these ideals.

The Bench Marks Foundation is a section 21 registered company not for gain and is constituted by five Christian organisations: the [South African Council of Churches](#), [Ecumenical Service for Socio-Economic Transformation](#), [Christian Development Trust Foundation](#), Industrial Mission of South Africa and the Justice and Peace Department of the [South African Catholic Bishops Conference](#).

The Bench Marks Foundation is open to all faiths. In time the Bench Marks Foundation intends to become more representative of society, business and labour and other faith based organisations.

Our guiding principles are set out in the [Bench Marks document](#). Our starting point is the recognition that society is made up of diverse interest groups, and that all life is interdependent, and to sustain the earth, we need to see the linkages between production, resources, environment and our eco-system, people and communities.

The focus of the Bench Marks Foundation is two-fold:

- ?? To promote a climate of ethical and sustainable investment choices in the church and religious communities, and
- ?? To monitor corporations and encourage a climate of positive corporate social responsibility.

Why are we interested in Corporate Social Responsibility?

There is a big need for moral and ethical decision making in the world of big business. The Bench Marks Foundation aims to guide business in ethical decision making to the benefit of all stakeholders, including employees, customers and society at large.

Multinationals in South Africa and South African companies doing business in neighbouring countries have a tendency to confuse Corporate Social Responsibility with philanthropy and/or hands-out to communities of their locations. Most companies do this at the expense of sustainable community development, which does not empower the local people.

We believe that if the company is doing business in Southern Africa, it needs to use the Bench Marks Principles to measure itself otherwise it is unlikely to sustain its business or contribute to sustainable communities.

Together with our global partners we believe that investments and business ventures are acceptable if they contribute towards sustainable development that empowers local communities by promoting:

- ?? The quality of life and enhancing the environment
- ?? Productive employment on a broad scale
- ?? Meeting basic fundamental human needs
- ?? Gender sensitivity particularly at leadership level
- ?? Care for those infected with and affected by HIV/Aids
- ?? Pollution free production.

External agencies such as the Bench Marks Foundation of Southern Africa should monitor and measure management and investors to act socially responsible in the interest of society and the environment.

International partners

- ?? Interfaith Center on Corporate Responsibility (USA)
- ?? Kairos Canadian Ecumenical Justice Initiatives Taskforce on Churches and Corporate Responsibility (Canada)
- ?? Ecumenical Council for Corporate Responsibility (UK)
- ?? Christian Centre for Socially Responsible Investment (Australia)
- ?? Friends of the Earth (Colombia)
- ?? Hong Kong Christian Industrial Committee

South African partners

- ?? South African Council of Churches
- ?? Christian Development Trust Foundation
- ?? Industrial Mission of South Africa
- ?? Ecumenical Service for Socio-Economic Transformation
- ?? Southern African Catholic Bishops Conference, Justice & Peace Department

Sponsors of the Bench Marks Foundation

- ?? Christian Aid
- ?? NIZA
- ?? EED - Germany
- ?? AMA/CMC
- ?? Missio Austria
- ?? Diakonia-Sweden
- ?? Bread for ALL

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History of the project

After the Rio World Summit 1 in 1992, when the UN Centre on Transnational Corporations (UNCTAD) failed to implement an international code of conduct, a taskforce of religious bodies from the UK, USA, and Canada formed a partnership to an analytical frame work which could be applied to organizations across the full range of socially responsible expectations.

The framework is called '*Principles for Global Corporate Responsibility: Bench Marks For Measuring Business Performance*', known as Bench Marks.

In April 1999, 53 delegates from 22 countries endorsed the framework and formed an International Secretariat. The Secretariat was initially based in the United Kingdom, but at the Bench Marks 3 meeting of the Steering Committee held in Pretoria, South Africa in October 2002, it was agreed that the Secretariat be based in a south country. South Africa now hosts the International Secretariat.

In 2000 a group of Southern African delegates along with a representative of five Christian organizations formed a steering committee to launch the South Africa initiative. In March 2001, the Bench Marks Foundation was launched under the chairmanship of Bishop Jo Seoka, and inaugurated over by Archbishop Desmond Tutu.

Appendix “B”

1. THE WIDER COMMUNITY

47 Section 1.1 - Ecosystems

Principles

1.1.P.1

Careful attention is paid to ensure that the company's actions do not damage the global and local environment. Issues such as climate change, bio-diversity and pollution prevention are central to this. The company adopts, as a minimum, internationally recognized standards and ensures that they are implemented universally regardless of any legal enforcement or lack thereof in any jurisdiction and continually seeks to improve its performance.

1.1.P.2

To minimize environmental degradation and health impacts, the precautionary principle [2](#) is the overriding principle guiding action, shifting the burden of proof from one of proving environmental harm to one of proving environmental safety.

1.1.P.3

The presence of unused, unexploited, non-renewable, natural resources within a particular area is recognized as an asset of the community of that area.

1.1.P.4

The company has responsibility for the environmental impact of its production processes and its products and services throughout the life-cycle of these products and services.

1.1.P.5

The company affirms the precautionary principle that must be invoked prior to the development of genetically modified organisms (GMOs).

1.1.P.6

The company develops genetically modified organisms only where there are safe and clear health, social and environmental benefits.

1.1.P.7

The company affirms the principle that patent rights do not supercede farmers' rights to pursue traditional sustainable agriculture or forest use.

1.1.P. 8

The company affirms the right of communities to be involved in any proposals regarding the development of GMO products.

1.1.P.9

The company affirms that situations of hunger and famine are not used to impose the GMO system of agriculture over traditional methods.

Criteria

1.1.C.1

A company-wide environmental code has been adopted and implemented.

1.1.C.2

An active environmental committee has been established by and reports to the Board of Directors.

1.1.C.3

The company has in place appropriate management systems to implement its policies.

1.1.C.4

Environmental assessments are completed by the company in which the unused, unexploited natural resources are stated as assets of the community.

1.1.C.5

The company provides to the public regular reports on its environmental performance and future plans. These are based on a pattern of environmental auditing and reporting according to, at a minimum, internationally recognized standards and include data for each facility.

1.1.C.6

The company holds public consultations and seeks collaboration from interested individuals and groups to review both its past performance and its future plans, including the location of new facilities.

1.1.C.7

Where environmental damage does occur, every effort is made by the company to reduce its impact immediately, to provide technical data to those working on the containment and repair, to restore the damaged ecosystem and to ensure appropriate measures are taken to redress injuries to persons caused by environmental hazards created by the company.

1.1.C.8

The company has policies, practices and procedures to prevent pollution, reduce resource and energy use in each stage of the product or service life-cycle.

1.1.C.9

The company has a designated person to provide assurance of compliance with its environmental policies.

1.1.C.10

The company has established a regular procedure to monitor the environmental impact of the production process on the health and safety of workers.

1.1.C.11

Prior to development, the company establishes a process for determining the benefits and safety of GMOs through independent stakeholder groups in order to satisfy stakeholder concerns, such as, unknown long-term effects of GMOs on human and animal health, soil ecology and local germplasm.

1.1.C.12

Prior to the introduction of GMO products, the company initiates and makes public a study that takes into account the impact on land, soil, natural limits on gene flow, indigenous farming techniques and the sustainability of local agriculture and forest management.

1.1.C.13

The company adopts a policy of consultation with credible and recognized local and national bodies, especially civil society, before exporting GMO products.

1.1.C.14

The company adopts a policy of transparency so that consumers can make fully informed choices about GMO ingredients in food.

Bench Marks

1.1.B.1

Natural resources, which become an asset to the company, are stated as a debit to the community, which the company addresses in a mutually agreed negotiation with the community.

1.1.B.2

Environmental assessments are made periodically and include, but are not limited to:

- ?? environmental impact;
- ?? physical infrastructure impact;
- ?? social infrastructure impact;
- ?? cumulative (synergistic) impacts

1.1.B.3

The company has a policy, which includes performance standards relating to:

- ?? protection of the biosphere;
- ?? sustainable use of natural resources;
- ?? reduction and disposal of wastes;
- ?? reduction of anthropogenic greenhouse gas emissions;

- ?? the development of renewable and alternative energy sources in place of reliance on fossil fuels;
- ?? energy conservation;
- ?? risk reduction;
- ?? safe products and services;
- ?? environmental restoration;
- ?? informing the workers involved and the public.

The company has adopted and implemented at least one or more of the recognized environmental monitoring programmes.

1.1.B.4

Environmental performance standards are set and applied on a comparable basis throughout the company's operations.

1.1.B.5

The company is in full compliance with all international, national, and sub-national environmental regulations and breaches are recorded.

1.1.B.6

The company discloses for each of its operations the same or better categories and levels of information as are required in their 'home' country.

1.1.B.7

An annual, standardized, environmental report, including data on the extent to which performance goals have been met, is publicly issued and its contents are verified by an independent authority.

1.1.B.8

On-going environmental performance evaluation is conducted and the results are periodically audited by an independent auditor. The results of the audit are reported to the stakeholders.

1.1.B.9

Employee remuneration/compensation packages, especially those of senior executives, are linked to corporate environmental performance.

1.1.B.10

The company produces useful products which fulfil community needs and which avoid built-in obsolescence. It employs process technology that reduces life-style impacts.

1.1.B.11

The company commits to the on-going transparent and independent monitoring of environmental, social and health impacts accompanying any production of GMOs.

1.1.B.12

The company publicly reports on the results of testing for long-term safety of its crops, organisms or products on humans, animals, the environment and local agronomic cultures.

1.1.B.13

The company develops its GMO policies based on the recommendations of the International Treaty on Plant Genetic Resources for Food and Agriculture.

1.1.B.14

The company clearly labels its GMO food products to inform consumers of the genetically engineered ingredients.

2 Precautionary Principle: Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation. (Agenda 21, Principle 15)

Appendix “C”

1. THE WIDER COMMUNITY

48 Section 1.5 - Resource Extraction

Principles

1.5.P.1

The company conducts the extraction and/or exploitation of natural resources such as minerals, timber, oil and energy sources, including hydro-electric power, in such a manner as to avoid conflict with the human rights, the sustainability of the environment and the economic survival of national, local and indigenous communities.

1.5.P.2

The company is careful to control its exploitation, management and extraction of natural resources, especially non-renewable resources, in countries where environmental laws and regulations are inadequate or are improperly enforced, or where there is protracted internal or regional conflict to which the government is a party.

1.5.P.3

The company does not make unfettered exploitation of natural resources, especially non-renewable resources, against the wishes of national, local or indigenous communities, nor in such a way that it damages or dramatically changes the ecosystem.

1.5.P.4

The company recognises that resources which it may wish to extract from a particular area are an asset of that community and conducts its business in accordance with that recognition.

1.5.P.5

Where the company is engaged in the extraction of natural resources in zones of conflict it does not engage governmental or militia forces to provide security but conducts its own independent security operation.

1.5.P.6

The company, if it is unable to provide proper security for its workforce in zones of conflict does not enter into an engagement to conduct such extractive business or if already engaged, it withdraws from such locations.

1.5.P.7

The company does not engage in resource extraction in highly vulnerable and nonsustainable communities without ensuring that its operations are designed to benefit the local community and monitors the impact of its engagement.

Criteria

1.5.C.1

The company ensures that its policies in regard to resource extraction do not infringe the human rights of local populations and do not contravene local laws and regulations.

1.5.C.2

The company only proceeds to extract natural resources in situations where their renewal is guaranteed or where, in the case of non-renewable resources, it has made provision for the creation of sustainable alternatives.

1.5.C.3

The company has a strategy whereby proper compensation for the extraction of resources is made to all the relevant national, local and indigenous communities for the acquisition of their assets.

1.5.C.4

In instances where the extraction of resources either, violates human rights or where the extraction can only be carried forward with the aid of military intervention in zones of conflict, the company does not proceed with the work programme.

1.5.C.5

The company publicly discloses all royalties, taxes, fees, payments and any other revenue paid to state or parastatal partners as derived from project partnerships.

1.5.C.6

The company does not contract with or collaborate with governmental military authorities or with local militias to facilitate the extraction of natural resources.

1.5.C.7

A company which is engaged in resource extraction, on discovering previously unknown vulnerabilities or non-sustainable situations immediately seeks to withdraw in such a way as to ensure that these works are not proceeded with by other agencies or companies.

1.5.C.8

The company has a consultation and appraisal process in place that involves all local communities where new developments of resource extraction are contemplated.

Bench Marks

1.5.B.1

The company, in its endeavours to ensure the human rights of the peoples who live where it is extracting natural resources, has policies that specifically ensure the human rights of communities within the terms of the Universal Declaration of Human Rights and its two covenants and the International Labour Organisation's standards.

1.5.B.2

The company ensures that when extracting non-renewable resources it creates and puts in place alternative and sustainable benefits for the future of the community in which it is operating.

1.5.B.3

The company has an agreed policy whereby compensation for the removal of natural, nonrenewable assets is fully paid.

1.5.B.4

The company has in place performance standards for the monitoring of the extraction of natural and especially non-renewable resources.

1.5.B.5

The company, as a minimum, adheres to the Voluntary Principles on Security and Human Rights to ensure respect for human rights and fundamental freedoms in their security operations.

1.5.B.6

The company has in place policies that prohibit it from accepting protection from governmental military forces or from local militias.