



NEWSLETTER- MARCH 2016

Dear Readers,

We would like to wish our readers a belated very Happy Easter. We trust that our January newsletter was well received and you have been waiting in anticipation for the next Gunn Attorneys newsletter.

The March edition of the newsletter will look at interesting environmental, mining and natural resources cases, law and news.

ENVIRONMENTAL CASE LAW

Minister of Environmental Affairs and Another v Aquarius Platinum and Another

On 23 February 2016, the Constitutional Court upheld the Minister and Department of Environmental Affairs' appeal against a judgment of the Pretoria High Court setting aside the publication of the National Environmental Laws Amendment Act 25 of 2014 (NEMLAA) signed into force by the president in June 2014. This means that the validity of the NEMLAA, a key piece of legislation in the infrastructure of the One Environmental System, has been confirmed. The judgement related in particular to the new requirement that mining companies must obtain environmental licences for stockpiles and residue deposits.

RHINO POACHING

An article dated 9 March 2016 was published by the International Union for Conservation of Nature (IUCN) regarding Rhino Poaching numbers. The article stated that the number of African rhinos killed by poachers has increased for the sixth year in a row with at least 1,338 rhinos killed by poachers across Africa in 2015, according to new data compiled by IUCN Species Survival Commission's African Rhino Specialist Group (AfRSG).

The article continues to look at the effect of poaching on rhino numbers and it analyses the effect on different rhino species.

Interestingly, the article makes reference to the loss of revenue for African countries. *"Rhinos lost to poaching also represent a significant loss of revenue for African countries, reducing incentives for the private sector and communities to conserve rhino. Based on recorded average live rhino sale values from some major sellers, rhinos killed illegally in 2015 in South Africa alone represent an estimated loss of around US\$25 million."*

The article continues to explain the importance of the economic sector of rhino live sales and that such crime, poaching, is a form of wildlife organized crime.

Read the full article: http://www.iucn.org/media/news_releases/?22519%2FIUCN-reports-deepening-rhino-poaching-crisis-in-Africa

RHINO HORN TRADING

The Minister of Environmental Affairs noted on the 17 March 2016, that the government has decided to submit a proposal to the 17th Conference of Parties to the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES CoP17) to trade in rhino horn.

In terms of public participation regarding the decision, a Committee of Enquiry was appointed in 2015 in order to investigate the feasibility of trade in rhino horn. Public-hearings were conducted and comments were received from South African citizens. These comments were taken into account in order to help inform the final decision.

Recommendations from the inter-governmental Technical Advisory Committee (TAC) will be considered by Cabinet in due course. Therefore the process has not been concluded as of yet and the final decision of Cabinet will be reported publicly once the process has been concluded.

RHINO POACHING CASE LAW

Magistrate Mike Coetzee handed down a 15-year imprisonment sentence to five of the six accused involved in a rhino poaching syndicate, while the sixth accused received a 10-year sentence in the Louis Trichardt Magistrate Court in Limpopo on Friday 11 March 2016. The accused were arrested through the efforts of the SANParks Environmental Crime Investigators. They were found guilty of illegal hunting and dehorning of a white rhino bull under section 57(1) of the National Environmental Management: Biodiversity Act No 10 of 2004. Section 57(1) states:

'A person may not carry out a restricted activity involving a specimen of a listed threatened or species without a permit issued in terms of Chapter 7'

The judgement shows a positive move in the enforcement of the law against the rhino poaching industry, showing that poachers will be held accountable for their crimes and that the courts are willing to hand down severe judgments.

MINING NEWS

On 22 March 2016, Sikhosiphi "Bazooka" Rhadebe the Chairperson of the Amadiba Crisis Committee (ACC) was gunned down in his home in the Wild Coast. The ACC is the affected community's committee spearheading the resistance against the mining project proposed in the Wild Coast.

The project is expected to mine 22 kilometres of the coastal land for titanium. There has been great resistance against the prospected mining and as such the community members

have continued to contest the issuing of a mining right to Mineral Commodities Ltd (MRC), an Australian mining company.

Since the attack 82 (eighty-two) civil society organisations have called for the suspension of the application until such time as a full investigation into the murder has taken place. The 82 organisation include Oxfam SA, Right2Know Campaign and the Treatment Action Campaign.

CLIMATE CHANGE NEWS

With COP21 just behind us, the burning issue of climate change still lingers in the air. Further, even though South Africa does not have any legal obligations in terms of international (or domestic) climate change legislation, the Department of Environmental Affairs (DEA) has made a decision regarding an appeal against an Environmental Authorisation (EA) for a coal-fired power station, whereby the DEA inserted a condition into the EA, calling for the Applicant to conduct a climate change impact assessment report. The condition has been seen as controversial. This is based on the lack of clarity from the DEA on the requirements for such a report as well as the lack of implemented empowering legislation which authorises such condition to be imposed in an EA.

ABOUT THE GUNN ATTORNEYS TEAM

Adam Donald Gunn



Gunn Attorneys was founded by Adam Gunn in June 2014. Adam was admitted as an attorney of the High Court of South Africa in 2001, since then gaining over 13 years of experience in providing legal advice to clients in the resources sector.

He started his career at Webber Wentzel Bowens where he obtained valuable experience in commercial, mining, environmental and property law.

Being a serial entrepreneur and with a love of the outdoors, Adam tried his hand at running his own business in the eco-tourism industry, before returning to a career in law.

Adam also served as a director on the boards of client's companies and this has given him first-hand experience of the strategy required to ensure a successful business.

Gunn Attorneys is therefore positioned to provide your business with strategic legal advice.

Gunn Attorneys has also built a niche practice advising clients on issues relating to the agricultural sector and is proud to be able to offer clients a full service offering in this regard. Please refer to the attached summary of services.

Alexa-Rae Sebba



Alexa-Rae Sebba completed her BA Law LLB at the University of Johannesburg and her LLM in Environmental Law at the University of the Witwatersrand.

In her LLM, Alexa-Rae, focused on Environmental & Sustainable Development Law, Energy Law, Prospecting & Mining Law and International Environmental Law. Alexa-Rae's LLM research report focuses on the section 24 of the Constitution of the Republic of South Africa, 1996. It is titled 'Environmental Ubuntu? The inclusion of non-human animals under section 24 of the Constitution of the Republic of South Africa, 1996.'

Alexa-Rae was accepted to present her report at the 2015 Environmental Law Association of South Africa Postgraduate Conference, held at the University of KwaZulu-Natal.

Alexa-Rae is currently carrying out her articles at Gunn Attorneys.

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Disclaimer:

This newsletter does not aim to provide a summary of all the legal developments in the environmental, mining and natural resources sectors. For professional legal advice on any particular issue, please contact us.