



PROFILE

The whole SHABANGU

Our Mines Minister cuts a controversial figure. So it seems right she's at the helm of fresh efforts to change South Africa's mining legislation. Miningmx reporters DAVID MCKAY and ALLAN SECCOMBE spoke to Susan Shabangu on change, the Chamber of Mines and life as a minister...

It's fair to say Susan Shabangu, South Africa's Mines Minister since May 2009, cuts a controversial figure. It was while serving as Deputy Safety & Security Minister in 2008 that she told a police imbizo in Danville to shoot to kill. "I want no warning shots," she said. "You have one shot and it must be a kill shot."

Mortality was close to her heart when, barely half a year into her tenure as Mines Minister, she told shocked Chamber of Mines stakeholders attending its annual general meeting that they ought to wish her dead, since that was the only way they were going to avoid a fresh round of fundamental legislative changes to mining law. SA's mining industry had failed to transform, she said. It must change.

A somewhat more lenient Shabangu addressed local and international mining figures at the Mining Indaba conference in May this year. But her language was again striking: responding to questions about the likelihood of nationalisation, she said: "Over my dead body." Clearly, Shabangu holds forthright views.

Sitting in her newly appointed offices in Pretoria's Sunnyside district, winter sunlight flooding through the windows, she happens to be a highly engaging, articulate interviewee. Absent is the hesitancy of her public appearances, where "going on the attack" seems her best defence. Having said that, Shabangu doesn't dismiss the possibility of again crossing swords with the Chamber of Mines.

"The chamber's AGM is coming up again in November," she smiles impishly. We ask whether she expects more fireworks. "We have discussions," she says of the chamber and the mining firms it represents. Another conflagration, one suspects.

This year has been one of potentially tectonic change for SA's mining industry. It's about six years since the promulgation of the Minerals & Petroleum Resources Development Act (MPRDA), legislation aimed at transferring 26% of SA's mining industry into black hands by 2014. Ownership of 15% of the industry should have been transferred this year, but Shabangu thinks it's been a failure. Commenting on what the MPRDA, in her view, should now be achieving, Shabangu says: "Our Act must be dynamic and engaging. Our Act needs to be alive."

NICE WORDS, BUT WHAT DO THEY MEAN?

For starters, in Shabangu's hands the MPRDA and the Mining Charter – which performs the role of a directive to the legislation – isn't an end in itself. She speaks of "not having these quotas" forever but for a mining industry that naturally transforms. As such, the 26% ownership target is a false one; for Shabangu, a naturally functioning industry wouldn't settle on any particular figure, although it needs an initial target in order to create momentum.

"So 26% can't be the end goal in SA on its own. We want to see more than that in 2014. If we achieved 36% that would be good for SA, as it would be a reflection of a mature industry," she says.

There's no intention of lifting the transformation target right now, says Shabangu, particularly since the interim 15% transfer of ownership target hasn't been achieved. However, the ultimate goal – or success of empowerment in the mining industry – is "based on willingness". "I don't like to



Matthew van der Want

pull and drag companies with me. I want them to be willing participants. Success of the industry depends on the willingness of the companies. Thresholds and quotas are an issue, an albatross around companies' necks if they don't want to participate. But if there's willingness and positivity and trust it will be different," he says.

To be honest, that was the notion that informed the framing of the original MPRDA, in which mining assets would be transferred on "a willing seller, willing buyer" basis. But difficulties arise when questions are posed as to how such commercial deals are to be structured. Unfortunately, Shabangu raises some unresolved complexities.

In terms of Government's stance on a renegotiated mining law empowerment companies need to have deals that don't lock them into debt forever. Commenting on the recent correction in metal prices from the time of the financial crisis in September 2008 to, say, end-2009, Shabangu says too many empowerment deals broke down and too many empowerment companies suffered, owing to indebtedness.

"Ownership is still the key issue for me," says Shabangu, adding that in terms of the review of the Mining Charter and MPRDA too many empowerment firms weren't able to survive the financial crisis. "If you create perpetual debt, that doesn't help. The debt needs to clearly come to an end. The debt must have an end."

Her view reflects a clause in the Mining Code gazetted in Parliament in April 2009, which suggested mining compa-

nies with empowerment partners still in debt two years after a deal's consummation would lose State recognition for their transforming efforts.

Quite how that would be achieved on commercial terms is anyone's guess, but Shabangu does recognise providing "free carry" financing for empowerment companies isn't going to wash with the private sector.

It certainly won't. Matthew van der Want, an attorney at Bell Dewar who specialises in mining law, doesn't believe the law has to be tinkered with at all – which isn't to say it's well written law. "And if you're going to change the law, then it needs not to be in a piecemeal fashion," says Van der Want.

Says Shabangu: "We have to make sure loans can show returns (repayment with interest). We can't create a free ride environment with no responsibilities. I do recognise the fears of banks, but we need to have transactions that transfer assets to black ownership."

Currently there isn't meat on those bones. That's the task of various committees expected to take the findings of the Mining Summit in March and work out a means by which Government, the private sector and labour can find each other.

The Mining Summit was the culmination of several years' work involving Government, labour and industry amid a realisation that owing to internal policy divisions SA's mining industry had excluded itself from the commodity bull run between 2005 and mid-2008. At the heart of the summit was an interest in positioning the mining industry so it could become more competitive.

Perhaps for the first time the question of international competitiveness and empowerment were being addressed together. The work was undertaken by Migdett, the Mining Industry Growth, Development and Employment Task Team. Migdett helped produce the bulk of the first draft strategy document Shabangu's department and industry used to instigate initial debate at the summit.

For Migdett, getting competitiveness right in SA's mining sector converts into a high road scenario in which 200 000 more direct employment opportunities

are created, R240bn in additional direct GDP contribution is made by the industry and R160bn in extra direct export earnings.

Shabangu thinks the summit was a success even though Government's chief takeaway was that empowerment in SA hadn't been a success. A major gauge of its true success will surely be gleaned from an international road show planned by Government for September, possibly using the Down Under conference in Australia as a starting point. In addition to visits to China, where Government is hopeful of drumming up investment support, Shabangu says her department will also

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be visiting the "financial powerhouses" in London to "review the outcomes of the Mining Summit".

It's unclear quite what its reception will be, but the department won't want a repeat of the hostility that greeted former Mines & Energy Minister Phumzile Mlambo-Ngcuka in 2003, shortly after the draft of the Mining Charter. According to internal reports, Mlambo-Ngcuka was shocked to see how badly the international community received proposed legislative changes in SA. They railed against a lack of definition in the legislative proposals and whether, in fact, social and economic change could be legislated at all. Given that investors seek economic, fiscal and political stability, the possibility of new, stricter changes to empowerment legislation won't be well met.

But of some comfort to investors is that no retrospective action is expected to existing empowerment deals.

Henk Deist, head of resources financing at Rand Merchant Bank, says around 99,5% of the mining sector had already completed its empowerment deals and he doesn't see many more required, unless it's about refinancing or another change in ownership.

So what's the worry? Well, given the evolving nature of the industry the new strictures Shabangu envisages will be applied to refinancing of existing empowerment deals and new ones. It can't be assumed the empowerment transactions consummated between 2004 and now won't be revisited, or lead to fresh ones.

"There's no intention of unravelling the past," says Shabangu. "Rather the mistakes of the old deals must inform the new deals still to be done. We're looking to create an environment where empowerment in mining is protected from economic volatility."

However, speaking at the signing ceremony for the stakeholders Declaration on Strategy for the Sustainable Growth and Meaningful Transformation on SA's Mining Industry on June 30, Shabangu set the cat amongst the pigeons by indicating that the once empowered, always empowered rule may not apply.

"Once empowered, always empowered is a slogan and you cannot have slogans in the transformation of the SA economy because they do not work. You have to have real empowerment, and the rules of the country say you have to be empowered. If the companies return to a status where they have no empowerment partner, it means an economy that is being distorted again."

Says Morne van der Merwe, at Werksmans: "The fact of the matter is the regulatory environment is still too unstable to maximise the attraction of required foreign investment. There's not an atmosphere yet of trust between labour, unions and business."

THE N WORD

It's likely Shabangu will spend a significant amount of time during the international road show fending off questions about the possibility of nationalisation of SA's mining sector.



What seemed to be the clarion call of ANC Youth League president Julius Malema's political career has now become a source a real concern among investors overseas.

Speaking to the Progressive Business Forum of the ANC in London, ANC secretary-general Gwede Mantashe outlined the passage the nationalisation debate would have to take before it became policy. "The idea of nationalisation of the mines as raised by the ANCYL will have to go through the ANC's economic transformation committee, the national general council and the policy conference before reaching the national conference in 2012," he said.

While Mantashe was attempting to soothe investors' worries by indicating there were many hurdles yet before nationalisation, he simultaneously outlined a roadmap for an economic notion that many perceive to have an independent life.

Shabangu has been opposed to nationalisation. "But it's an ANC issue." Shabangu also raises the point there's nothing new in the tripartite alliance's consideration of State-controlled mines.

Providing more details about how the debate about nationalisation is to be formed, Shabangu says that, first, the economic transformation committee will hear papers, one from the ANCYL and another from the SACP. There will also likely be presentations about why nationalisation isn't a desirable policy.

At both the economic transformation committee and at the national general council the motion can be voted down but the debate can never be finally quashed, Shabangu says. "As a debate, I'm not worried." SA's Constitution states Government can only take away the property of another if it pays for it. In other words, expropriation is, in Shabangu's estima-



Richards Bay Coal Terminal

Coal and uranium have been earmarked for ownership

tion, unconstitutional.

“But it [the nationalisation debate] won’t die. It will always be there. I can say the transformation committee will be looking to see logical reasons as to why nationalisation of the mines can take us forward as a country.”

More pertinent, however, is Shabangu’s observation there needs to be informed understanding of nationalisation and how that differs from something that’s Government policy: participation in its mining industry.

The prospect of a State-owned mining company has been much discussed but Government now needs to provide more details. Unanswered questions include which departments will exercise control and influence over such a company: for example, Energy, Minerals or Trade & Industry departments?

Also, what does a State-owned mining company hope to achieve (see report, page 22). Shabangu says coal and uranium have been earmarked for ownership, because both minerals are deemed strategic; that is, they have relevance in the wider question of how SA intends to provide power to the rest of its economy.

Yet the instances where the State has been attempting to build mines has invariably locked it into confrontation with environmentalists as Government seeks to dig next to winelands, game parks and natural tourist attractions. It’s almost as if those are the only attractive mineral deposits not owned by the private sector – for good reason.

Shabangu says there’s still a wealth of coal deposits not claimed by the private sector that will fall under the jurisdiction of a State-owned mining firm but there’s too much theory and too little practice to convince people Government’s well-intentioned plans will amount to much.

MOVING PARTS

In a country still largely defined by its natural resources it’s no easy task holding down the Mines Minister portfolio. One wonders why (except for Pik Botha, who

was Nelson Mandela's Mines Minister) all of SA's democratically elected heads of State have since chosen a woman to run the Mines Ministry. Is it a case of reverse psychology: that the best way to transform the male-dominated mining sector is to first tame it?

Shabangu seems unconvinced about that contention – although all SA's female Mines Ministers have had something of the virago about them. But she recalls the almost exclusively white, male population of the Mines Department when she served as Deputy Minister between 1996 and 2004.

That's changed. Walking through the department, all the officials are black, with a few whites – most probably visitors, perhaps in search of mining licences. Yet for all that, employment equity continues to be a source of concern for Shabangu. "If I were to reflect on what I want my tenure to be known for it would be qualitative changes to transformation," she says. That means seeing more black people in senior mining jobs and certainly more black CEOs. "You can talk about equity but the future success of this industry has to be seen in skills."

Skills are top of mind in her efforts to improve the department's delivery in granting mining licences. Speaking at the Mining Indaba conference in February, Shabangu said the department would reduce waiting times for mining licence applications from 12 to six months, while exploration licences would take three months to process against six months previously.

That's been achieved, she says, although the industry disagrees.

"It's not terribly easy to get access to information," says Bell Dewar's Van der Want. "The test is: Can the public get access to the information?"

The CEO of a junior mining company (who wants to remain anonymous) comments: "The biggest problem with the regional offices is you don't know who is applying or has applied for certain exploration licences."

Van der Want says: "A lot of applications in the Gauteng and North West provincial offices are from the State-owned mining company for exploration permits."

However, in an effort to further improve delivery, Shabangu wants to see more senior officials in the regional licensing offices: chief directors, in fact. "We're looking at staffing and our own internal processes," she concedes.

Where there have been problems it's a case of long-standing mining licence applications. Rather than reject those applications Shabangu says regional offices are asking applicants to "fill in the blanks" and proceed with the application. But new applications are being concluded speedily. "We certainly believe we've shortened the timeframe," she says.

Werksmans' Van der Merwe says improvements of that ilk in Government departments are possible and points to efficiencies in SA's competition and tax authorities. However, current targets to reduce waiting periods in applications for mining and prospecting rights aren't set in "deeming provisions," he says.



Wessel Badenhorst

LACK OF RESOURCES

It would seem skills are Shabangu's single biggest problem in successfully implementing transformation. Take the question of health and safety, a debate that's surfaced again following recent amendments to the Mines Health & Safety Act, legislation that has potential to seriously shake up the industry on the basis of one clause which will impose strict criminal liability for mine executives in the event of a mining related fatality, although the clause has not yet come into force.

Wessel Badenhorst, an attorney at Werksmans, raises important practical problems. "There's a skills transfer issue in the department. A junior mining inspector would have rings run around him by a mining executive with 40 years in the industry," he says.

Shabangu agrees. "Our inspectors have often not actually worked in the mine, so when they're challenged by mining companies there's often a problem. We need the resources in order to apply the law," she adds.

Quite how the law can be applied in respect of prosecuting mining executives is anyone's guess. Badenhorst says there are questions as to how an investigation regarding an accident is to be conducted when mine management knows criminal prosecution is at stake. Time is also an issue. The Minerals Resources Department could take years to sign off an investigation and it could take many more years before a criminal case is made. ■