

A Practical Guide for Mining-Affected Communities



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Legal Resources Centre

Established in 1979, the Legal Resources Centre is an independent, non-profit public interest law clinic. The objectives of the LRC have been to fight injustice and to promote equality, development and democracy. The LRC opposes all forms of abuse of power and strives to contribute to the realisation of human rights for all those living in South Africa.

The social, economic and environmental priorities of the LRC are shaped by the communities we serve. As a client-focussed and responsive organisation, the LRC has an extensive track-record of successful litigation.

While litigating in South Africa remains the primary activity for LRC lawyers, the organisation also engages with community-based advice offices, community organisations and other civil society networks. In addition to developing and advocating for policy and legislation that reflects Constitutional values, the LRC also provides advice, training and publications.

The LRC uses these strategies within South Africa, the African continent and at the international level. Our work has directly benefitted hundreds of thousands of clients and, indirectly, has laid the basis for bringing justice, relief and remedies to millions more.

In order to promote equality, development and democracy, the LRC works within the following focus areas:

- Environmental Justice and Land
- Housing and Evictions
- Children's Rights and Education
- Equality, Non-Discrimination and Disability
- Migration
- Openness and Accountability
- Access to Justice and Non-Profit Organisation Support



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List of acronyms

AMD	Acid Mine Drainage
DEA	Department of Environmental Affairs
DMR	Department of Mineral Resources
DWS	Department of Water and Sanitation
EAP	Environmental Assessment Practitioner
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EMPR	Environmental Management Programme Report
HDSA's	Historically Disadvantaged South Africans
MAC	Mining-Affected Communities
MEC	Member of Executive Council
MPRDA	Minerals and Petroleum Resources Development Act 28 of 2002
NEMA	National Environmental Management Act 107 of 1998
NEMWA	National Environmental Management Waste Act 58 of 2008
NHRA	National Heritage Resources Act 25 of 1999
NWA	National Water Act 36 of 1998

PAIA	Promotion of Access to Information Act 2 of 2000
PAJA	Promotion of Administrative Justice Act 3 of 2000
SLP	Social and Labour Plan
SALA	Subdivision of Agricultural Land Act 70 of 1970
WSA	Water Services Act 108 of 1997
WUL	Water Use Licence



Introduction

This guide seeks to highlight the steps that concerned parties and communities can take to address the challenges that mining poses on communities.

Coal mining, and mining in general, are activities central to South Africa's economy. The Government regulates the mining of minerals through the law, which mining companies have to obey. Mining, by its nature, is invasive, causes a large amount of pollution and affects large areas of land. Companies are always looking for new places to mine, and at times, the places they identify are already occupied by communities or used by communities for farming and grazing. A community living close to a mine might experience these problems:

- Grazing land may be taken by the mine;
- Water in the rivers and boreholes may become polluted;
- If the water is polluted, wildlife and fish may be poisoned;
- Dust and smoke from the mine may pollute the air; and
- People or animals could be in danger of falling into the open pits and shafts in the ground.

This guide seeks to give communities the tools they need to understand the law that governs mining and to protect their rights.

Mining rights and permits

The Department of Mineral Resources and the Minister of Mineral Resources are responsible for making sure that the mineral resources in the country are properly managed. The Minister and Department decide who is allowed to mine and where they are allowed to mine. Before any of the activities associated with mining can start, a mine has to get permission from the Minister or Department by getting a right or permit to carry out the activity. The granting of rights and permits associated with mining is governed by the Minerals and Petroleum Resources Development Act 28 of 2002 (MPRDA).

What are the different stages of mining?



Prospecting: Before a mine starts mining in an area, it first needs to find out if there are minerals to mine. It will do this by digging into the ground and testing the earth to see what minerals (such as coal or platinum) lie under the surface. This process is called "prospecting".

Prospecting Right: Before it can start prospecting, a mine needs to get permission from Government to prospect. It can do this by applying online to the Minister of Mineral Resources for a "prospecting right". The right gives the company or person permission to take samples of earth and rock for testing over a specified period of up to 5 years.

Mining: After a mining company finds minerals and decides that it wants to mine in an area, it can apply to the Minister of Mineral Resources for either a mining permit, to do small scale mining, or a mining right, to do large scale mining.

Mining Permit: A mining permit gives a company or individual permission to mine a small area of land (not more than 1.5 hectares) for a specified period of up to 2 years.

Mining Right: A mining right gives a company or an individual permission to mine for a specified period of up to 30 years.

What is important to know is that these different mining activities can only be done if the mining company has been given permission. Depending on what stage the mining company is at, they should apply for a "prospecting right", a "mining permit" or a "mining right".

Prospecting Right	Mining Permit	Mining Right
<ul style="list-style-type: none"> Allows the holder to survey or investigate an area for the purpose of identifying a probable mineral deposit. The right is valid for up to 5 years, but may be renewed once for an additional 3 years. 	<ul style="list-style-type: none"> Allows the holder to conduct small-scale mining operations in an area that does not exceed 1.5 hectares. The permit is valid for the period specified on the permit not exceeding a period of 2 years but may be renewed for 3 times for up to one year each time. 	<ul style="list-style-type: none"> Allows the holder to mine minerals within a certain area. The right is valid for specified period of up to 30 years Financial and other provisions compatible with the mining operation for environmental management and social and labour plan have to be made.

What do the rights and permits allow a mine to do?

Once a right or permit has been granted, the holder of the right or permit can go ahead and carry out the activity that the right or permit was granted for. So a holder of a mining right or permit can mine, and the holder of a prospecting right can prospect. But the law also allows for other activities to be carried out. The holder of a prospecting right, mining permit, or mining right may also:

1. enter the land specified in the permit with his or her employees;
2. bring machinery or equipment required for mining onto the land;

3. build the surface and underground infrastructure necessary for mining;
4. use water from the lakes, rivers, or streams on the land; and
5. build boreholes.

Note: This law comes from Section 5(3) and section 27(7) of the MPRDA

How do you find out whether a mine has been granted a prospecting right, mining permit or mining right?

The Regional Manager (an employee of the Department appointed by the Minister) must within 14 days of accepting the application from the mining company put up a notice in the regional office of the Department and publish it in a local newspaper, gazette or pin it up at the Magistrate's court. The notice must invite interested and affected persons to send comments, concerns and objections to the Department within 30 days of the notice. This guide has more detail on the notice and on consultation in the "Consultation and Public Participation" section below.

Note: This law comes from Sections 10 of the MPRDA

Appeal and review – challenging the decision to grant a right or permit

If the community is not happy with the government's decision to grant permission to a mine, the first step to challenging a decision to grant a permit or right is to appeal the decision to the Minister or the Director General at the Department of Mineral Resources. If that is unsuccessful, the next step is to take the decision on review to the Court. This section sets out the steps to appeal and review the granting of prospecting rights, mining rights and mining permits.

Appeal

The MPRDA allows “any person whose rights or legitimate expectations have been materially and adversely affected or who is aggrieved” by a decision taken by the Minister, such as the decision to grant a right or permit, to appeal the decision. This means that if the community is unhappy, or has been badly affected by mining, they can ask the Department of Mineral Resources to reconsider the Minister's decision to grant the right or permit. The process of asking for reconsideration is called an “appeal”. The appeal is an internal process within the Department of Mineral Resources that doesn't involve the courts.

How to Appeal

1. Lodge a notice of appeal with the Minister of Mineral Resources within 30 days of hearing about the right or permit being awarded. The notice of appeal must state:
 - o The action of the Minister or Department being appealed against. (E.g the granting of a mining right to the specific mining company in the specific area.)
 - o The grounds on which the appeal is based. (E.g the mine did not consult with the community and the water from the mine is leaking into the river and making the community's cattle sick.)
2. Pay the fee for lodging an appeal (R500.00 as of January 2016)
3. Wait to be sent reasons for the decision.
4. Provide a written response to the reasons for the decision and / or a written response to any replying submission from affected parties within 21 days of being asked to respond.
5. Wait 30 days for the outcome of the appeal.



The law comes from Section 96 of the MPRDA and Regulation 74 of the MPRD Regulations

If the appeal is successful, the Minister or the Director-General will set aside decision to grant the permit/right, or amend the terms of the permit or right. If the appeal is unsuccessful, the Minister or Director-General will confirm the decision. You can't go to court if you haven't first done an internal appeal.

Going to Court

If your community is unhappy with the outcome of the appeal, you might be able to go to the High Court and ask a judge to review the Minister or DG's decision to refuse the appeal.

An application to review a decision must be lodged not later than 180 days of the outcome of the appeal and must be done in line with the Promotion of Administrative Justice Act 3 of 2000.

NOTE: Lodging an appeal and going to Court can be difficult and complicated. Appendix B has the contact details for a number of NGOs and law clinics that offer free help to communities that need to appeal or review a decision.



Other applications and plans

In addition to the permits and rights granted by the Department of Mineral Resources, the mine may also need to get licences and permits from other departments in accordance with other legislation. The mine may also need to come up with plans to show how they are going to contribute to the community. Here are some documents you should be aware of:

Social and Labour Plans (SLPs). SLPs detail the mining company's plans to contribute to the development of surrounding communities in terms of the MPRDA;

Land use rights for development and plotting of land in a municipality according to specified zonings and town planning (provincial legislation). This includes applications for rezoning, departures, and consent uses which allow the mining company to use the land for the authorised purpose;

Environmental Impact Assessments (EIA) are required in terms of the *National Environmental Management Act 107 of 1998* (NEMA) for certain activities listed in the that Act. EIAs are used to evaluate the possible environmental impacts of a proposed project, taking into account inter-related socio-economic, cultural and human-health impacts;

Environmental Authorisations. Certain projects, depending on their scope, require environmental authorisation in terms of NEMA;

Environmental Assessments in terms of the *National Heritage Resources Act 25 of 1999*. If the project will impact cultural and heritage site, an environmental assessment in terms of the *National Heritage Resources Act 25 of 1999* (NHRA s38) is required;

Water use licence (WUL) or authorisation. In terms of the National Water Act 36 of 1998 (NWA s39-40) every mine must have a WUL from the Department of Water Affairs and Sanitation in order to regulate and minimize the detrimental impacts on the water resources.

Permission to subdivide agricultural land in terms of the *Subdivision of Agricultural Land Act 70 of 1970* (SALA).

The community has the right to ask the mining company to see any of these documents. In section 2, this guide explains how to go about requesting information if a mine is reluctant to provide it.



Consultation and public participation

When a mining company wants to prospect, or build a new mine, the law requires the company to engage with the community and other people that will be affected by the project before mining begins. They will usually do this by sending representatives to meet with the community. This discussion is referred to as “public participation” and allows the community and others to influence the decisions made by the company.

Why is public participation important?

The process of public participation makes sure that the potential impact of a prospecting right, mining permit or mining right on you and your community is considered. This process also helps the community understand the company’s plans to mine in the area, how to manage harm to the environment, and what benefits the community will receive for accepting the risk. Public participation is important as it:

- Highlights the different needs of the community and encourages the community to contribute meaningfully to decision-making processes that affect you.
- Allows for transparency in the process and can give communities a way to follow the process and stay informed about what is being planned. Your ability to raise concerns exists even after the mine has closed.
- Gives communities opportunities to request any development plans from the mine, and monitor its delivery.

- Finally, it allows community members to share a platform with their traditional leaders or to identify their own representatives; this stops arbitrary decisions from being made or illegitimate representatives from claiming that they speak for communities.

Who can take part in Public Participation?

If the land that your community lives on is affected by mining, each member of your community is known as an “interested and affected party” (I&AP). I&APs can also include individuals, groups, or institutions, and Government departments that have influence in a decision-making process or project. Any I&AP can take part in public participation. Examples of I&APs are:

- (i) Host Communities
- (ii) Landowners (Traditional and Title Deed owners)
- (iii) Traditional Authority
- (iv) Land Claimants
- (v) Lawful land occupier
- (vi) The Department of Land Affairs,
- (vii) Any other person (including on adjacent and non-adjacent properties) whose socio-economic conditions may be directly affected by the proposed prospecting or mining operation
- (viii) The Local Municipality,
- (ix) The relevant Government Departments, agencies and institutions responsible for the various aspects of the environment and for infrastructure which may be affected by the proposed project.

As an I&AP, the community can choose to elect one or more people to represent them during consultations. Examples of representatives are people who are considered leaders in the community, or people

who might have influence or political power (such as government officials, political or religious leaders).

What should happen during public participation?

Adequate public participation should:

- Identify the scope and procedures for the entire project and discuss the procedure and approach. This includes water, closure, royalties, skills development, mitigation, relocations, compensation, etc.;
- Identify additional interested and affected parties, such as farmers, relevant government departments, small businesses, etc.;
- Provide information to the community on the project. This is information relevant to allow the community to influence the decision maker. It must also be given to communities timeously in order for them to make meaningful input;
- Obtain relevant data. This includes demographics of the community;
- Discuss alternatives and identify issues and challenges;
- Provide feedback on the findings of the assessment made on the impact on the environment; and
- Allow the community to comment on development plans and assessments.
- Often, mining companies not only fail to facilitate, but actively avoid or delay giving a community or its representatives information required to exercise their environmental and other rights. It is very important that you, as the community, use this initial and subsequent meetings and communications with mining companies to get all the needed information before making any decision regarding prospecting or mining operations in your community.

What should I ask?

During your meetings with a mining company it is useful to ask these questions:

- Is the mining company applying for a prospecting permit, a mining permit or a mining right?
- When will they apply? Have they applied? Can the community see the application before it is submitted? Who will the application be submitted to? What will be in the application?
- What will the distance of the project's area be from the community?
- Who is the land owner or the land occupier of the project's area? What are their contact details?
- What information does the mine have about the size, personal circumstances and income of the communities?
- Who will be adversely affected by potential environmental and social impacts in the project's area of influence? How will they control dust? What will trucking affect traffic on local roads?
- Who are the most vulnerable among the potentially impacted, and are special engagement efforts necessary? Are persons with disabilities accommodated? Are elderly people included in the engagements?
- At which stage of project development will parties be most affected (e.g. prospecting, extraction, decommissioning, and rehabilitation at all stages)?
- How will the project be done in a manner that prevents the pollution of water resources?

- How many times a day does the mine plan on blasting and how will this impact the community? What will the noise levels be? Will roads, cropping and grazing land be diminished? Will this have a negative impact on infrastructure and services?
- What are the various interests of project stakeholders and what influence might this have on the project and the community?
- How will the benefit the local communities? (This information should be contained in the Mine's Social and Labour Plan (SLP) which you can ask to look at). When can communities have access to the plan? When can communities make comments on the plan?
- Does the mine plan on relocating people to a different area?

What if they don't answer my questions?

If the mining company does not answer your questions or you are not happy with the answers they give you, you can write a complaint to the Department of Environmental Affairs (DEA) or call their hotline number. You can also contact one of the organisations listed in Appendix B who might be able to assist you engage with the Mine.

What does the law and other policies say about public participation?

Public participation is a requirement in national policies. To give effect to these policies, the law requires that the mining company consult with affected people and communities at the various stages of mining. It is helpful to be able to tell mining companies that according to the following policies and laws they are required to engage in public participation with you.

Minerals and Petroleum Resources Development Act

Sections 10(1)(b), 16(4)(b), 22(4)(b), 27(5)(b) and 39 of the *Mineral and Petroleum Resources Development Act 28 of 2002* (MPRDA) require Government and the mine facilitate public participation or consultations with the community.

Section 10 notice and submitting comments to the Department of Mineral Resources

According to section 10 of the MPRDA and regulation 3 of the MPRD Regulations: 14 days after a mine applies for a mining permit, mining right or prospecting right, the Regional Manager must put up a notice which says that the application has been accepted and asks people to comment on the application. This is the first chance a community has to tell Government what they might be worried about if a new mine comes to the area.

Who is the Regional Manager?

The Regional Manager is an employee of the Department of Mineral Resources appointed by the DG to oversee the area where the mine is. Regions are decided on by the DG. You can find out from the Department of Mineral Resources which region the mine is in, and who the regional manager for that region is.

Where can I find a section 10 notice?

Regulation 3(1) and (3) of the MPRD Regulations says that the notice must be put on a public notice board at the Regional Manager's office; and must also be put up or published in at least one of the following ways:

- in the applicable Provincial Gazette;
- in the local Magistrate's Court; or
- in an advertisement in a local or national newspaper circulating in the area where the mine is going to be situated.

What must the notice say?

Regulation 3(4) of the MPRD Regulations says that the notice must:

- Invite members of the public to submit comments in writing;
- Specify the date up till when the comments can be submitted (the date has to be at least 30 days from when the notice is put up or published);
- Give the name and title of the person who the comments must be sent to;
- Give the work phone number, postal address, work address, street address, and if possible, email address and fax number of that person.

Consultation with the Mine

Sections 16(4)(b), 22(4)(b), and 27(5)(b) all require the Regional Manager to notify the mine that it must consult with the community once a prospecting right, mining permit or mining right is granted to the mine.

If either a **prospecting right** or a **mining permit** is granted to the Mine, the Regional Manager must notify the mine to consult with the land owner or lawful occupier and any other affected party and submit the result of the consultation within 30 days from the date of the notice.

If a **mining right** is granted to the Mine, the Regional Manager must notify the mine to consult with interested and affected parties within 180 days from the date of the notice. In terms of regulation 49(2) read with regulation 49(1)(c) and (f), the results of this consultation should be included in a scoping report submitted within 30 days of the notice. However, consultation is supposed to continue until after the scoping report is submitted.

Department of Mineral Resources Guideline for Consultation

The Department of Mineral Resources (DMR) has released what it calls a "Guideline for Consultation with Communities and Interested and Affected Parties" to provide clarity on implementing the sections of the MPRDA that require consultation.

The guideline calls for a Consultation Report that must be submitted after a consultation process and requires that the mining company:

- Identifies, notifies and retains proof of notifying interested and affected parties;
- Informs them in sufficient detail of what the prospecting operation would entail (this appears to be limited to prospecting in the guideline);
- Consults with a view to reach an agreement about the existing environment and possible impacts of the proposed operations;
- Record the outcome of meetings in the form of minutes or recordings;
- Describe the information provided to interested and affected parties; and
- List the views or concerns of interested and affected parties.

Where I&APs include rural or historically disadvantaged South Africans (HDSAs) or people with special needs (e.g. illiteracy or disability), the following should be considered to facilitate their participation or overcome potential constraints:

- Announcing public participation process on local radio in a local language, at a practical time;
- Using participatory learning and action approaches by explaining concepts and raising environmental awareness to build the capacity (meaning: existing ability of the community to increase involvement, decision-making and ownership of issues) of the I&APs to engage and participate more effectively;

- Respecting existing community structures, committees and leaders by allowing them to lead the engagements and control the pace of the meetings;
- Holding participation meetings at times and locations suitable for the community;
- Holding additional meetings with vulnerable and marginalised groups;
- Providing easily readable and understandable access to information; and
- Providing reasonable assistance to people with special needs by making venues accessible and simplifying the information.

Can I get the guideline?

The guideline is freely available on the Department of Environment's website. It can be accessed here: https://www.environment.gov.za/sites/default/files/docs/dmr_consultation_guideline.pdf

Constitution of the Republic of South Africa Act 108 of 1996

The Constitution of South Africa as the supreme law of the land, sets out the role of the public in the three spheres of government. Chapter 10 of the Constitution provides that the basic values and principles governing public administration include encouraging public participation in policy-making and responding to public need.

National Environmental Management Act 107 of 1998 (NEMA)

NEMA was enacted to promote the Constitutional right to a clean and healthy environment. Chapter 1 of NEMA sets out the principles that guide the implementation of environmental legislation. The principles include:

- 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. Women and the youth must also participate.
- 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.
- Workers' rights to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected.
- Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.

There are several NEMA principles that focus on achieving sustainable development, in which public participation is essential.

Environmental Impact Assessment Regulations

Before a mining company starts operating it must tell the DMR what impact mining will have on the environment and on affected communities. The mining company must first look at what the environment is like before mining starts and describe how the environment will change once mining begins. The mining company must also look at how it can protect the environment and reduce the impact of mining. This is done through an Environmental Impact Assessment (EIA). Communities directly affected by mining should be given the opportunity to participate in environmental impact assessment studies at the planning stage. EIA Regulations are published in terms of the National

Environmental Management Act 107 of 1998 (NEMA). Public participation is the most important process in environmental impact assessment. The EIA Regulations provide comments on all written submissions to the decision-making authority. In the mining context, the requirement is that the mining must appoint an Environmental Assessment Practitioner (EAP) that must "consult" with the landowner and other I&APs. The extent of this process has been developed in case law, regulations and guidelines.

- Public participation must be done after the submission of an application for either scoping or environmental impact report. However, the requirements may differ depending on the type of application process.
- Depending on the type of application process, the mining company must give notice to all potential I&APs of the application.
- I&APs must be provided with an opportunity to make representations on proposed applications and all written submissions must be considered by the relevant state department.
- I&APs must be notified of the Department's decision and the reasons for the decision, and draw their attention to the fact that an appeal may be lodged against the decision.



Relocation

"Relocation" is when a mine moves people away from where they are living to somewhere else. People should agree to be moved, and cannot be forced to move. If people are going to move away from the mine, it should be to an area that is safer.

What does the mine have to do if they want you to relocate?

If a mining company tells you they want to relocate your community to another area, the mine has an obligation to:

- Consult with your community, offering you choices and options that are practical and economically suitable.
- Make sure your community is informed about your options and rights concerning the relocation.
- Provide your community with compensation for any losses to your property.
- Help with the relocation. (E.g. provide trucks to move your community's belongings.)
- Provide your community with residential housing, housing sites and / or agricultural land.
- Offer support after relocation to ensure people's livelihoods and standards of living are restored.
- Help with development within the community after relocation.
- Offer land preparation, credit facilities, training, or job opportunities.

Good questions to ask

A mining company cannot force a community to move if the community does not want to move or if the community thinks that the mining company has not satisfied the steps required for relocation. To ensure you have all the information you need to make an informed decision, you can ask the mining company the following questions:

- Where will your cattle be moved to? Will this be near your house? And if not, how far away will grazing fields be?
- Will you have access to water? Where will it be? Will you have boreholes or municipal water?
- How much land will you get for farming and growing crops?
- Will land owners be compensated for the land and loss of economic activities? Will compensation be in cash or will what is lost be replaced?
- What are the resettlement costs?
- What steps will the company take to protect and respect heritage, burial and cultural sites?
- Will the company rebuild churches, schools and other structures that were in the community?
- Will you be moved closer to or further from schools, hospitals, shops and transport routes?
- How does the relocation and resettlement policy plan on accommodating growing families? Will the mine build more homes? Will there be enough land for your children and grandchildren?
- Will the company provide transportation for people and their belongings to the new site?

- Will the community give people title deeds or will there be a communal property association? Will there be steps in place to deal with inheritance of land or property?
- Are there any rates, taxes or costs for services that that the community needs to be aware of?
- Will there be any mechanisms for grievances for bad workmanship or guarantees on new buildings?

A background image of a mining site with various structures and equipment, overlaid on an orange gradient.

Environmental offences

If the environment around where you live is being harmed or damaged by mining, the mining company responsible for the damage may be committing an environmental offence (a crime) and might be operating illegally. Offences committed by mining companies that harm the environment, may result in harm to individuals and communities through dust or polluted water.

How to tell if a mining company might be operating illegally?

A mine might be committing an environmental offence if you have noticed any of the following:

- The mine started operating near your community but your community was not notified or consulted about the mining. Notification or consultation is required by the Department of Mineral Resources (DMR), Department of Environmental Affairs (DEA) and Department of Water and Sanitation (DWS) during the application process for mining authorisations and water use.
- The mining company has been releasing mining waste outside of the mining area or in sensitive areas (such as near rivers or wetlands).
- There has been an increase in dust, bad smells or smoke in the air.
- Mine water is flowing or being piped directly into rivers, streams or dams.
- The water in the rivers, streams or dams has changed colour or smells strange.

- A white or orange crust has started to form on the sides of the rivers, streams or dams.
- The plants and trees around the rivers, streams or dams are dying or have died.
- The crops and plants in the area are not growing or are not flowering or producing fruit and vegetables.
- Rare trees and plants have been removed.
- The fish in the rivers, streams or dams are dying or are no longer breeding.
- The birds in the area have stopped laying eggs, have stopped flying or are dying.
- Other wildlife in the area is showing signs of illness or early death.
- Mining is taking place inside a national park or a nature reserve.
- The permanent buildings in the area are showing signs of cracks.
- A mine has closed down and has left the area without properly fixing or restoring the environment in the mining area or rehabilitating the land to a state that is safe and productive.
- The health of people (especially children) in the community has become worse, particularly problems with breathing, coughing and asthma, skin rashes, burning eyes, or stomach troubles.

What to do if a mine is operating illegally:

Community members should gather evidence of any of the suspected offences listed above by keeping a journal, collecting samples (e.g., soil, water) or taking pictures at the site. The offence should be reported at the nearest police station, and at the Department of Mineral Resources (DMR), the Department of Environmental Affairs (DEA) and/or the Department of Water and Sanitation (DWS). The contact information for these departments can be found in Appendix B.

- Offences in terms of the *Minerals and Petroleum Resources Developmental Act 28 of 2002* (MPRDA) can result in hefty fines, or up to ten years in prison, or both.
- Offences in terms of the *National Environmental Management Act 107 of 1998* (NEMA) can result in fines of up to R5 million, or up to ten years in prison, or both.
- Offences in terms of the *National Water Act 36 of 1998* (NWA) can result in a fine of up to R100 000, or up to five years in prison, or both.



Constitutional rights

The Constitution gives South Africans the right to not have to live under conditions that negatively impact their health and livelihood. In addition, the people in your community have the right to:

- **Public Participation** – “people’s needs must be responded to, and the public must be encouraged to participate in policymaking” (Section 195(1) (e) of the Constitution).
- **Equality** – All people should be treated equally without discrimination and be given equal opportunities.
- **Accountability** – People should be able to hold the government and private bodies responsible for their actions, and make their concerns known.
- **Transparency** – The government and private bodies should be open to the public about their actions. Abuse of power can be prevented through courts of law or institutions which are established by the Constitution to protect democracy (These are called Chapter 9 institutions, e.g. the South African Human Rights Commission).
- **Rule of Law** – This means that no person is above the law. All people and institutions including the government are subject to law that is fairly applied and enforced.

In this section, this guide explains some of the laws designed to give effect to these rights, and explains how the laws can be used by a community.



Access to information

Section 32 of the Constitution gives people the right to access any information held by the state, and the right to access any information that is held by another person that is required for the exercise of rights. The Promotion of Access to Information Act 2 of 2000 (PAIA) gives effect to this right by giving the general public the tools to stay informed and participate in decision-making processes that will affect their communities. Communities can use PAIA to request information from a mine if they need the information for the protection of their rights, or they can use it to request any information from the Government. The process of asking for information under the Act is called a “PAIA application”. You can use the example of the application form to request information, found in Appendix A.

Requesting information from a mine

The right to request access to records held by private bodies is restricted to a “need to know” basis for the protection of other rights and these rights must be stated in the request. The community can make a PAIA application to request information from mining companies about:

- The changes mining has on the environment;
- Their social and labour practices that affect members of the community or employees; and
- Any file held with information about the individual, like a medical file.

Requesting information from Government

Requesting access to records from public bodies is unrestricted. Any piece of information can be requested without providing a reason.

Information on Water and Services

Many mining-affected communities in South Africa have limited access to water in their households and rely on communal taps which are usually not close by. Information on the municipality's development plan would allow the community to monitor the provision of services, such as water infrastructure, and allow them to see whether commitments made by government are being realised. A community can submit a PAIA request to the Department of Water and Sanitation (DWS), the Department of Cooperative Governance and Traditional Affairs (COGTA) and the local municipality for:

- **An Integrated Development Plan (IDP)**, that discusses the all the development plans for the communities in the municipal area, like infrastructure improvements, schools, clinics, water and electricity supply;
- Any reports on the implementation of plan;
- Details of the municipal spending in the community; or
- Details about the budget and any money spent on plans of funds already spent on the plans.



Right to fair administrative action

The community has the right to action that is lawful, reasonable and procedurally fair and the right to ask for written reasons for administrative decisions. *The Promotion of Administrative Justice Act 3 of 2000* (PAJA) provides more detail and gives effect to the right to administrative action.

What is administrative action?

Administrative action is the work that is done by all government departments at a national, provincial and local level; the police and army; and ESKOM and SABC. When these administrators make a decision, or fail to make a decision, that affects the rights of the people, this is called administrative action. PAJA encourages an administration that is fair and transparent in its decision making process, and that can be held accountable for its decisions. The Act states that all administrators must:

- Must be fair;
- Allow relevant parties to voice their concerns;
- Inform people about the reasons for decisions made; and
- Inform people of opportunities to appeal.

When government makes decisions on whether or not to grant licenses, rights, or permits to mining companies, administrators have the duty to make decisions using these general principles.



Environmental impact of mining on water

Mining operations often utilise large quantities of water and also contaminate water resources in the areas close to their operations. The contaminated water usually turns a yellow-reddish colour as a result of the iron oxide, and is often called "yellow-boy" or Acid Mine Drainage.

You will know if your water is contaminated by the following signs:

- The water changes colour and smells bad
- You might start to have skin irritations

Should you notice any of the signs above you can take the following steps:

- Collect samples of the contaminated water.
- Make contact with DMR,DWA, local ward councillor and DEA to alert them of the problem
- Ask the above authorities to test the water and provide you with a report.
- Request the DWA to provide you with alternative water until the water from the resource/tap is safe to drink and use.

Note: Should the local authorities not be able to assist you, you can contact the National Department or any of the organisations in Appendix B to assist you.

A Mine cannot be given a Water Use License if your community was not given:

- the opportunity to comment on the application
- all the documentation necessary to comment on the application
- enough time to comment on the application

The Water Tribunal in Pretoria can be approached in order to appeal the granting of the Water Licence. The process can often be complicated so you can contact one of the organisations in Appendix B for help.

Access to water

The Government has the responsibility to make sure all South Africans have access to sufficient food and water.

The law states this in Section 27 of the Constitution.

The "Reserve" in the *National Water Act 36 of 1998* (NWA) is the quantity and quality of water required for the essential needs of people and animals as well as the water required to protect aquatic ecosystems.

The minimum standard for water supply is:

- appropriate education in respect for water use;
- A minimum 25 litres per person per day or 6 kilolitres per household per month;
- a minimum flow rate of not less than 10 litres per minute;
- water must be accessed within Within 200 metres of a household; and
- no user should be without water for more than seven full days in any year.

Should you not have access to any water or if the water does not meet the minimum standards above, a ward councillor needs to be approached for assistance. If tapped water cannot be supplied, the local government should provide water through JoJo tanks.

If the ward councillor does not provide any assistance in this regard, please contact the National Department. You can contact any of the organisations in Appendix B for help.

Appendix A: Example of PAIA request form

6. APPLICATION FORM

(Page 1 of 5 pages)

Request for Access to Record of Private Body (Section 53(1) of the Promotion of Access to Information Act 2000

(Act No 2 of 2000))

Regulation 10

A. Particulars of private body

The Principal: _____

Address: _____

B. Particulars of person requesting access to the record

Notes:

(a) *Please give the particulars of the person who is requesting access to the record.*

(b) *Please state the address and/or fax number in the Republic to which the information is to be sent.*

(c) *If applicable, attach proof of the capacity in which the request is made.*

Full names and surname: _____

Identity number: _____

Postal address: _____

Telephone no: _____ Fax no: _____

E-mail address: _____

If this application is being made on behalf of another person, state the capacity in which you are making it: _____

C. Particulars of person on whose behalf the request is made

Note: this needs to be completed only if the request for information is being made on behalf of another person.

Full names and surname: _____

Identity number: _____

D. Particulars of record

Notes:

(a) Provide full particulars of the record to which access is requested, including a reference number (if you know of one) which will help us to locate the record.

(b) If there is not enough space on this form for all the particulars, write the remaining particulars on a separate sheet of paper, sign it, and attach it to this form..

1. Description of the record or relevant part of the record:

2. Reference number, if available: _____

3. Any further particulars of record: _____

E. Fees

Notes:

- (a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.
- (b) You will be notified of the amount to be paid as the request fee.
- (c) The fee payable for access to a record depends on the form in which access is required and the reasonable time to search for and prepare a record.
- (d) If you qualify for exemption from payment of any fee, please state the reason for exemption.

Reason for exemption from payment of fees: _____

F. Form of access to record

If you have a disability which prevents you from reading, viewing or listening to the record in any of the forms of access listed in sections 1 to 4 hereunder, please state your disability and indicate the form in which you require the record:

Disability: _____ Form in which record is required: _____

F. Form of access to record (continued)

Notes:

- (a) Compliance with your request in the specified form may depend on the form in which the record is available.
- (b) Access in the form requested may be refused in certain circumstances, in which case you will be informed if access will be granted in another form.
- (c) The fee payable for access to the record will partly be determined by the form in which access is requested.

Mark the appropriate box with an X:

1. If the record is in written or printed form:
 - copy of the record* ____
 - inspection of the record ____
2. If the record consists of visual images (including photographs, slides, video recordings, computer-generated images, sketches etc):
 - view the images ____
 - copy of the images* ____
 - transcription of the images* ____
3. If the record consists of recorded words or information which can be reproduced in sound:
 - listen to soundtrack ____
 - transcription of soundtrack (written or (audio cassette) ____ printed)* ____
4. If the record is held on a computer, or in electronic or machine-readable form:
 - printed copy of record* ____
 - printed copy of information derived from The record ____
 - copy in machine-readable form (stiffy or compact disc)* ____

If you have requested the record in any of the forms marked *, • YES • NO

Do you want it to be posted to you? If so, postage will be payable.

G. Particulars of right to be exercised or protected

If the space provided is not adequate, please continue on a separate sheet, sign it, and attach it to this form.

1. Indicate which right is to be exercised or protected: _____

2. Explain why you need the requested record to exercise or protect the aforementioned right:



[illegible]