



**SOCIAL AND
LABOUR PLAN
MINING
COMMUNITY
TOOLKIT**

Introduction

Social and labour plans are just one of the ways our parliament is trying to address South Africa's long history of inequality in the mining sector. The Mineral and Petroleum Resources Development Act (or MPRDA) says that the mineral resources of the country are the common heritage of all who live here. The state's role is to oversee how these resources are used and make sure that this benefits everyone. This means that it is up to the state, especially the Department of Mineral Resources, to manage mining rights.

According to the MPRDA, if there is a mine near your community, then it must contribute to development in the community. Any application to mine has to include a social and labour plan (or SLP) to explain how the mine plans to benefit communities. The purpose of the SLP is to promote employment, advance social and economic welfare, contribute to transforming the mining industry and ensure that mining companies contribute to the development of the areas where they operate.

Despite having strong laws in place, the reality is that the SLP system has been in force for over 12 years and most communities affected by mining still live in extreme poverty. This is partly because SLPs are often designed without consulting the people who should benefit from them, and so they may not effectively respond to the challenges experienced by people in the communities. It is also partly because not everything that is promised in an SLP is delivered, and the Department of Mineral Resources does not always follow up to check that these promises are kept. This means that affected communities and mine workers remain at a social and economic disadvantage. We need an urgent shift in how SLPs are designed and implemented to achieve social justice.

This Toolkit aims to provide mine workers and mine-affected communities with the information they need to understand the social and labour plan system, critically analyse an SLP, and take part in monitoring whether a mine is complying with its commitments. The Toolkit can assist in planning how to engage with mining companies and government to play an active role in making sure that companies do what the law requires in terms of their SLP obligations. The Toolkit is divided into three parts. Part 1 looks what should be included in an SLP design. Part 2 describes who should be included in the SLP process and how you can get involved. Part 3 provides a guide for how to access to an SLP, how to analyse it and how to use this information to track if a mine is complying with its commitments. The diagram on the next page shows the different stages of a mining operation and how they relate to the social and labour plan process.

1

THE MINE ARRIVES

When a mining company seeks to mine, it must:

- Apply to the Department of Mineral Resources for a mining right with details about the mine's environmental impact
- Design and include in its application a social and labour plan which outlines how the mine will benefit communities affected by the mining operation
- Consult with communities about its application

2

THE MINE OPERATES

Once the Department has approved the application, a mine can begin its operations. The documents submitted in the application become legally binding. The mining company must now:

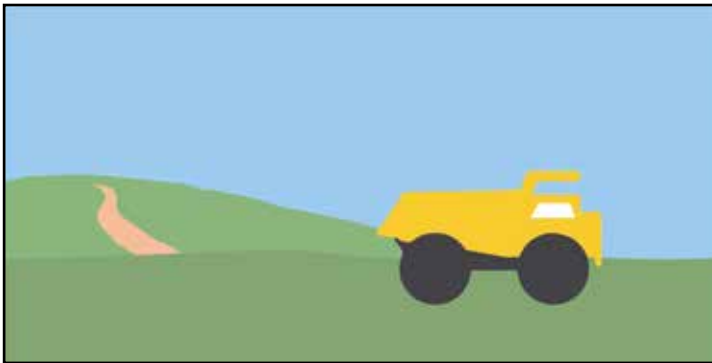
- Fulfil the promises made in the social and labour plan
- Submit annual reports on its progress in fulfilling these commitments
- Submit a new social and labour plan every five years

3

THE MINE CLOSES OR SCALES DOWN

When a mine closes or the operation is scaled down, this is not the end of the mine's responsibilities to its workforce or the communities nearby. By now, the mining company should:

- Fulfil all its SLP commitments, creating a sustainable economy in the community and providing skills to its workforce
- Begin to rehabilitate the land where mining has taken place so it can be used for agriculture



Part 1

WHAT IS A SOCIAL AND LABOUR PLAN?

A social and labour plan is a document that mining companies are required to submit to the Department of Mineral Resources as part of their applications for mining rights. It is basically a collection of promises the mine makes which become legal commitments once the application is approved by the DMR. The SLP sets out both what the company will do for communities and workers and how and when the company will do this.

For example, the company might commit to providing a community service centre. The SLP would detail where the company intends to build the centre, the services that would be housed at the centre, how much money the company is putting aside for the construction, when they plan to begin building the centre and when they intend to finish it.

By reading their SLP, you can get a good understanding of what the company has committed to in law. You then have an important part to play because, as a member of the community, you can tell whether the community centre is being built or not. Apart from being a list of plans, an SLP is also a contract between the company and the public. If the company is not keeping its promises, a community can approach the DMR with a complaint. For more information about how to monitor compliance with SLPs, see Part 3.

WHAT SHOULD BE INCLUDED IN A SOCIAL AND LABOUR PLAN?

The MPRDA Regulations specifically set out that an SLP must contain a number of sections. These sections are described below.

① LOCAL ECONOMIC DEVELOPMENT PROGRAMME

The local economic development section of SLPs is designed to ensure that mining contributes to the development of communities in the areas where mining takes place, as well as the areas where mine workers are recruited. In this section of the SLP, you will find the greatest number of programmes that exist to benefit the broader community. Two of the most important programmes involve infrastructure development and poverty eradication.

Infrastructure programmes refer to projects where mining companies contribute towards providing basic services like water, sanitation, housing and roads (over and above what government plans to supply).

Poverty eradication or income generating projects refer to support mining companies intend to provide to community businesses. This can include funding, technological support and training. All infrastructure and poverty eradication programmes need to be aligned with the Integrated Development Plan in place in the municipality the programme targets. The MPRDA Regulations set out that this must include:

a)	The social and economic conditions in the area in which the mine operates and communities where workers are recruited
b)	The main economic activities of the area in which the mine operates and in communities where workers are recruited (such as agriculture, tourism or food processing)
c)	The impact that the mine would have on communities living near to the mine and communities where workers are recruited (for example, the possibility that people will need to relocate, the number of people that may arrive in the area)
d)	Infrastructure and poverty eradication projects that the mine would support in line with the Integrated Development Plan of the areas where the mine operates and communities where workers are recruited
e)	The measures to address the housing and living conditions of the mine workers
f)	The measures to address the nutrition of the mine workers
g)	The mine's plan to make sure it meets the Mining Charter targets for procuring goods and services from historically disadvantaged South African companies. This must include targets for procuring goods, services and consumables from these companies and the names and details of these companies

② HUMAN RESOURCES DEVELOPMENT PROGRAMME

The human resources development programme must lay out how the mine intends to develop the skills of workers and also community members. This must include both skills relevant to mining as well as skills that can be used in other sectors (these are known as portable skills). The types of projects that may be found in this section include adult basic education and training, artisan training, learnerships, bursaries and other training initiatives for people in the community. The MPRDA Regulations set out that this must include:

a)	A skills development plan for the workforce. This must set out the numbers of workers and their skills levels. It must also provide 'hard to fill vacancies' which are positions the company has been unable to fill over a period of at least 12 months
b)	A career progression plan which is a plan to ensure workers are able to progress to more senior positions
c)	A mentorship plan where workers are paired with mentors to make sure they can plan for the progress in their careers
d)	The employment equity statistics of the mine, as well as the mine's plan to ensure that 10% of the people participating in mining are women, and 40% of management positions are occupied by historically disadvantaged South Africans within 5 years from when the mining right is granted

③ MANAGING DOWNSCALING AND RETRENCHMENT

The MPRDA Regulations set out that this section must include:

a)	Plans to save jobs and avoid job losses and a decline in employment
b)	Plans to provide alternative solutions and procedures for creating job security where job losses cannot be avoided
c)	Plans to minimise the social and economic impact on individuals, regions and local economies where retrenchment and closure of the mine is certain

④ FINANCIAL PROVISION

The SLP must state the sums of money budgeted for the following sections:

a)	The human resources development programme
b)	The local economic development programme
c)	The process to manage downscaling and retrenchment

Part 2

HOW CAN YOU GET INVOLVED?

The legal framework does not clearly state when and how workers and communities must be involved in the design and implementation of a social and labour plan. This is one of the reasons why workers and mine-affected communities are often excluded from participating in the SLP process. But, you can actively get involved in the process at a number of different points.

The SLP has a life-cycle of five years, and then a mining company has to submit a new one. The first point in this five year process when you can get involved is at the initial stage before an application for a mining right is submitted to the DMR. At this stage, the mining company will still be in the process of designing the SLP and must consult with communities about their application.

The second point where you could participate is after the right has been granted. You can still request access to the SLP so that you can monitor whether the mining company is complying with its promises. Finally, you can also use your knowledge of the SLP and information about the company's compliance record to engage with the mining company when a new SLP is drafted. This may happen at the end of the five year period, or when the mining company applies to DMR to amend its current SLP.

WHAT IS THE PUBLIC PARTICIPATION PROCESS?

The SLP guidelines say that mining companies must consult with the public before finalising their SLPs. But, guidelines do not have the same legal status as the MPRDA and Regulations which are silent on this issue. For this reason, mining companies do not always follow the guidelines and do not consult directly with communities on their SLPs.

However, when companies are applying for a mining right, they are required by the MPRDA to consult affected communities on the application as a whole (even though consultation on SLPs are not specifically mentioned). During the public participation process for the mining right, communities can ask for separate and formal consultations on the SLP. This separate consultation is important because the SLP is a complex document and communities may have a number of issues to raise about the projects listed.

WHY SHOULD YOU ATTEND A COMMUNITY CONSULTATION?

SLPs contain information about programmes the mine plans to implement to benefit the communities in the area where it operates. These programmes may include plans to expand local infrastructure, support local businesses or train community members. If these plans are well designed and implemented, they could shape development in local communities. SLP budgets vary according to the size of the mining operation, so SLPs for large mines are the most important for the community. If you can influence what goes into these SLPs, you may be able to get the real benefits that you want from mining. For a list of suggested questions to ask at these consultations, see Annexure A at the end of the Toolkit.

Be aware that mining companies do not always listen to the voices of communities and the law does not require communities to approve design of SLPs. But, participating in the SLP process can strengthen a community's position when engaging with a mining company in the future. These sessions offer the chance to get more information about the mining operation. You can also get a sense of how the company views communities, and you may be more likely to be included in future consultations. If at any point you wish to bring a legal challenge against the company, your attendance at these meetings will show that you took every opportunity to engage with them.

WHO SHOULD BE INVOLVED IN THE PROCESS?

① THE DEPARTMENT OF MINERAL RESOURCES

The DMR is a national government department that is meant to apply and enforce the laws around mining, including playing a central role in overseeing the SLP process. When a company applies to mine, the DMR must decide if their application should be granted based on a number of documents including an SLP. The regional manager of the area where the company wants to mine reviews this application and assesses their SLP. They must then inform the company if they approve the SLP and if not then they explain the changes the company should make to their application. The regional manager must then send the SLP to the Minister of Mineral Resources, who gives the company their final decision about the mining application. The DMR must also see to it that the public is able to participate in the mining application process. While the law does not directly say this, communities should be invited to participate in the SLP process.

The DMR is also responsible for monitoring if the mining companies comply with the MPRDA and deliver the promises made in their SLPs. The Department reviews the mine's Annual SLP Implementation Plan and their annual reports on how they are complying with their commitments. The DMR is also able to conduct on-site inspections to check on the mine and if it finds that the mine is not complying with its SLP, the DMR may use

its powers of enforcement. The Department has a number of options, from issuing notices to companies to even suspending or cancelling their mining rights, though this is not common. The DMR needs to partner with others, using future forums and other bodies set up to make sure SLPs are implemented.

② LOCAL GOVERNMENT

Local and district municipalities have a central role to play in the SLP system. Each municipality is tasked with drawing up an integrated development plan (or IDP), which is meant to be an inclusive and strategic plan for development in the municipality. These plans list the municipality's priorities and the programmes they outline should reflect the needs of the communities they serve. So, it is vital that communities participate when these plans are being developed. To make sure that this happens, municipalities have to establish local economic development (or LED) forums where everyone interested can come together to share ideas and resources. Municipalities should encourage communities and civil society groups to participate on these forums, and also need to engage with mines so that their SLPs can take the integrated development plans and projects into account.

While there is no formal role for local government to play in monitoring how a mine complies with its SLP, they can assist the DMR greatly with this. Because they have local knowledge, municipalities are well placed to check if the promises made in an SLP are being kept and particularly if the mine is working on local economic development projects.

③ MINING COMPANIES

Mining companies are required to design and implement programmes to ensure mineral wealth is used for the development of communities and workers. As we have seen, they need to draw up and submit an SLP as part of their application to mine. They are also legally required to deliver on all of the promises made in their SLP after it has been approved. The mining company then needs to provide reports on how they are delivering on these promises in the form of annual reports and implementation plans submitted to the Department of Mineral Resources.

If a company wishes to make any changes to the programmes listed in its SLP, it can only do so with the approval of the Minister of Mineral Resources. It is vital that communities and workers have a meaningful role in the decisions around these changes to make sure that the mining companies do not use this programme to decrease their commitments. The mine, government and communities should engage throughout the life cycle of an SLP. There is a framework which guides mines on consulting with communities affected by mining, called the Guideline for Consultation with Communities and Interested and Affected Parties. But, this does not explain when or how mines should include communities in the SLP process specifically.

Areas that are rich in minerals will often host many different mining projects and companies. The environmental, social and economic impacts of mining will be felt across the whole area and will sometimes be difficult to trace to a single mine or project. If there is no effort to co-ordinate companies' SLPs, it is more likely that the people in some communities near mines will be left out of the SLP process and may not see the benefits of the SLPs. Mining companies in the same area should co-operate and government should ensure that this happens. We have found though that there is much competition, secrecy and suspicion between large mining houses and some of the newer mines, and they tend not to co-operate effectively.

4 COMMUNITIES

Along with mine workers, the main beneficiaries of the SLP system are supposed to be the communities who live in the areas where mining takes place. There are also other communities who may be far away from the mine who are also affected because many of the mine workers have to travel from these areas to find work. These communities, often in the Eastern Cape or Kwa-Zulu Natal, should also be included as beneficiaries of the SLPs.

Communities are affected by the negative impacts of mining and need to be compensated for this. To have justice in the mining sector, communities must get more benefits from mining than harms. Social and labour plans and integrated development plans must be based on the actual needs that are voiced by communities. Mining companies and local government must involve communities in making these plans, and also in monitoring the projects and discussing any changes to the plans.

Unfortunately, in the communities where we have worked, mines and municipalities tend to consult with only a small group of community members. Most people in the community have never seen or heard about the SLP. It is crucial that community organisations know about their rights under the MPRDA and the SLP system. Where a community is divided, companies and government must engage with all the different parts of the community.

5 TRADITIONAL AUTHORITIES

Traditional authorities play an important role when mining takes place on communal land. At these times, there may be conflict between traditional authorities and community members. This is because it is becoming more and more common for traditional leaders to keep other community members in the dark when they negotiate agreements for the mining companies to use communal land. Communities around the country are reporting that these agreements mostly benefit traditional leaders rather than the broader community, even removing community members from the land.

There have also been times when communities have reported that SLP benefits, including bursaries intended to support community businesses, are going to traditional leaders and their families rather than those most in need of them. This creates an unstable situation where communities living in poverty see wealth flowing only to traditional leaders and the mining company.

⑥ TRADE UNIONS

Unions represent mine workers, who are part of mining communities and should also be the main beneficiaries of the SLP system. Unions like the National Union of Mine workers (NUM) and the Association of Mine workers and Construction Union (AMCU) are able to voice the concerns and needs of their members. They can also play an important role in designing SLPs, and in monitoring how the mines comply with their obligations to benefit the workers through, for example, developing their skills and building housing. Worker representatives also sit on the future forum which plans for the impacts of a mine closing or scaling down.

⑦ MINING CONTRACTORS

Many mine workers are not employed directly by the mining company, but rather by contractors. Contract workers should have the same benefits as permanent workers as they are still contributing to mining. But, in practice, contract workers don't always enjoy the benefits of the SLP system.

The law is clear: mining companies cannot get away from their SLP commitments by employing contractors to do the work. But there is nothing to regulate how mining companies and their contractors should co-operate to implement SLPs. A submission to the Marikana Commission of Inquiry by a consultant says that different mining companies vary a lot in their approach to contractors. The mining sector does not have a consistent approach to incorporating contractors into the SLP process.

Part 3

HOW CAN YOU GET ACCESS TO AN SLP?

If you have not been part of the SLP process from the beginning, you can still play an important role in analysing the document and helping to ensure that the mine complies with it. First, you will need access to the SLP. Because SLPs are public documents and meant to benefit communities and workers, mining companies and the Department of Mineral Resources should be proactive in providing SLPs and you should not need to request them. A number of organisations are campaigning for SLPs to be made available to the public automatically. However, at the moment most SLPs are not made available to communities, so it is important to know how you can request access to them. Copies of SLPs are held by both the DMR and the mining company and you can approach either of them to request access.

① REQUEST ACCESS FROM THE DMR

The Department of Mineral Resources should have records of all companies' SLPs. In order to access the records from the DMR, you need to follow the process laid out in the Promotion of Access to Information Act (known as PAIA). In this case, you will need to complete a form called DMR 131 Request of Access to Records and submit this to the DMR in Pretoria. You can find a copy of this form at the end of the Toolkit in Annexure B. You should get a response from them within 30 days either granting or denying access to the documents. If you are granted access to the documents, you may be directed to a local DMR office where you can make a copy of the SLP. If you are not granted access, you can appeal this decision internally with the DMR.

② REQUEST ACCESS FROM THE MINING COMPANY

In our experience, it is easier to access SLPs from the DMR, but you can also approach the mining companies themselves. A request to the company can be made informally, but these requests are often unsuccessful. You also have the option of once again using the Promotion of Access to Information Act and completing a form requesting information held by a private body. You can find a copy of this form at the end of the Toolkit in Annexure C. You will see that you are required to show that the document you are requesting is needed to exercise or protect your rights. There is still a high risk that the request will be denied. Unlike when approaching the DMR, you will not be able to appeal this decision with the mining company and instead you would need to go to court.

HOW CAN YOU HELP TO ENSURE THAT A MINE COMPLIES WITH ITS SOCIAL AND LABOUR PLAN COMMITMENTS?

Once you have access to the SLP of the mine in your community, you can critically engage with the content of the plan. The first step is to go through the SLP thoroughly, asking the questions in the SLP fault checklist in Annexure D. This will help you to learn whether there are any problems with the design of the SLP. You can also use the targets set in the SLP to monitor whether the mining company is delivering on its promises. You can use a table, such as the one in Annexure E, to help you monitor and record if a mine is meeting the targets set in its SLP. You can begin by listing the targets from the SLP, when the mine was supposed to meet these targets, and if the mine has achieved them or not.

WHAT IF A MINE DOES NOT COMPLY WITH ITS COMMITMENTS?

Once you begin the process of recording the mine's SLP compliance, you may realise that the promises the company has made have not been delivered. You can get further evidence by requesting access to the company's annual report. If you think the mine is not complying with its legal obligations, you can approach the Department of Mineral Resources to report the mining company. See Annexures F and G for sample letters you can use.

In most cases, there will be mine workers in the communities affected by mining and workers may be afraid they could lose their jobs if they report the mine. This is completely understandable. The Protected Disclosures Act prevents companies from intimidating or threatening workers for reporting conduct that is against the law. This includes reports to the DMR that the company is not delivering on the promises in its SLP.

The promises a mining company makes in its social and labour plan are legally binding. If the mine does not comply with the SLP, then the DMR can suspend or even cancel their mining right. However, in practice this is very unlikely. Part of the problem is that the DMR does not currently have enough inspectors to monitor how all mines comply with their SLPs, and another part is that there is not much motivation to undertake this monitoring. Pressure by community members and workers is crucial as you are the role players with the greatest interest in seeing mines comply with their SLPs.

For this reason, rights training for communities and workers is very important. Many organisations like Ndifuna Ukwazi have successfully tracked government performance and used this information as a tool to pressure them to fulfil their obligations to communities. There is the potential for SLPs to be used similarly. The more you know about SLPs, the more effectively you will be able to observe and record whether mining companies are delivering on their promises. You can then challenge them armed with recorded facts.

Another motivation for mines to comply with their SLPs is the threat of having their reputations damaged. A key tool in fighting for social justice for mine-affected communities and workers is to raise awareness when a mine is not fulfilling its promises. Once you have analysed an SLP and found that the mine is not complying with it, you can send a strong message that mining companies are in breach of their legal obligations.

WHAT ARE THE POSSIBLE REMEDIES AVAILABLE?

① COMPLIANCE MONITORING

If you have reason to believe that a mine is carrying out activities without authorisation or is not complying with the conditions of its licences, including its SLP, you can approach the Department of Mineral Resources. They have the power to investigate and even force the mine to stop unlawful activities or withdraw licences. The contact details for the Department can be found in Annexure C.

② LITIGATION

If you know that a mining right has been granted but wish to challenge this decision, you have the option of taking the mine to court. Litigation can be a long process and there is no certainty it will succeed. Deciding to go to court should only be done after careful thought and discussion within the community. You can then reach out to lawyers such as those listed in Annexure C. Our law allows a number of options for you to exercise your rights if mining has had a negative and unwelcome impact on your environment. This process usually begins with lodging an appeal with the Minister of Mineral Resources, Environmental Affairs or Water and Sanitation depending on the nature of your complaint. It is important to lodge the appeal within the correct timeframes. If the relevant Minister has refused your appeal, you can then go to the High Court where a judge will review the decision and may instruct the Minister to reconsider the decision.

It is also possible to lay a criminal charge against the mine or the directors of a mining company. There are a number of environmental offences which include mining without the proper permits or licences, or mining outside of the area of a mining right. It can also be a criminal offence not to comply with the conditions of an SLP. If there is serious pollution of your land, water or air, a mine might be operating in the area illegally.

Another option available is to lodge a civil claim. If you have suffered bodily or other harm and you can prove that this is from mine pollution, you can claim damages against the mine. It is important to note that these claims can only succeed if you can show that you suffered harm, that the mine acted wrongfully, and that the harm you suffered was as a result of this wrongful action. You will need the assistance of experts to show a court that this harm was caused by a mine.

CONCLUSION

As we have seen, the law now requires that mining companies develop social and labour plans to benefit communities as part of any application for mining rights. Despite having these laws in place, the SLP system has so far largely failed to deliver on its promises. Most communities impacted by mining have experienced only the negative impacts on their environment, and received none of the benefits. The voices of mining communities and workers are often ignored where they should be central to the SLP system in order for it to work well.

This Toolkit aims to give community members and mine workers some practical information on how the SLP system should work, as well as some steps to follow to ensure that they are involved in and benefit from the process. On the pages that follow, you will find some examples of the scenarios or situations you may face when dealing with mining in your area. After this, you will see the six Annexures referred to in the Toolkit.

Annexure A provides a list of possible questions to ask at early community consultations so that you can ask the mining company's representatives directly about the design of their SLP and how it will benefit your community. Annexure B contains two sets of forms for requesting access to a record (such as an SLP) from either the Department of Mineral Resources or the mining company itself. Annexure C provides a checklist which you can use when analysing the design of an SLP. Annexure D is a table for tracking a mine's compliance with its SLP targets. Annexure E contains contact details for the main government offices, Chapter 9 institutions, public interest lawyers and mining companies that you may need. Finally, Annexure F provides two sample letters that you can use to draft letters of complaint to mining companies and government officials.

1

SCENARIO: YOU HEAR RUMOURS OF A NEW MINE ARRIVING IN YOUR AREA

- If there are large trucks in the area, you can simply ask the drivers for the name of the mining company
- If you find the name of the mining company, you can try to find contact details by looking at the end of the toolkit, searching online or asking community leaders or NGOs
- If you know the contact details, you can ask questions about the project, who gave the company permission to mine, if the company already has a mining right or is still applying for a mining right
- If the company is applying for a mining right, you can ask about how to get involved in the public participation process and request a meeting about the SLP

2

SCENARIO: A MINE IS GOING AHEAD EVEN THOUGH YOU HAVEN'T BEEN CONSULTED

- If you have not done so already, you can call a community meeting to decide how to move forward, and form an organisation or structure to advance community interests
- If you need some advice, you can contact other mining communities and networks
- If you decide to pursue legal action, you can contact public interest lawyers who work with mining communities to challenge the mining right

3

SCENARIO: YOU CANNOT ACCESS AN SLP

- If you have not yet done so, you can complete one of the forms in Annexure B requesting access from either the mining company or the Department of Mineral Resources
- If you have tried this but been unsuccessful, you can approach public interest lawyers for legal assistance

SCENARIO: YOU THINK THERE IS A MINE IN YOUR AREA THAT HAS NOT COMPLIED WITH ITS SLP OBLIGATIONS

- If you have access to the SLP, you can complete an audit using the compliance recording table in Annexure D and comparing the promised targets with the results so far
- If you conduct an audit, you can also support your claims with evidence by taking photos of areas where the mine has not complied with its SLP commitments
- If you find that the mining company has not been complying with its commitments, you can bring this to the attention of the Department of Mineral Resources by writing a letter like the sample in Annexure F
- If you do not receive a response or are not satisfied that the mining company's SLP obligations are being enforced, you can contact public interest lawyers for legal advice
- If you would like to create public awareness around this, you can contact journalists or write articles and publish photos of the impacts in your area in the media

SCENARIO: YOU HEAR THAT THE MINE IS SPENDING ON COMMUNITY PROJECTS BUT YOU HAVE SEEN NO BENEFITS

- If money is being spent through a trust, you can lodge a request to access information about how the trust is administered by completing one of the forms in Annexure B
- If you cannot access these records or are unsure of the details, you can refer the matter to the office of the Public Protector for investigation using the contact details in Annexure E
- If this process is unsuccessful and you decide to pursue legal action, you can approach public interest lawyers for advice and assistance

Annexure A

SUGGESTED QUESTIONS TO ASK AT CONSULTATIONS

1.	When will you make copies of the SLP available to us?
2.	Can we get a copy of the SLP in our preferred language?
3.	Can we get a copy of the plans for the proposed projects?
4.	How long do we have to comment on the SLP?
5.	Which traditional leadership structures have you consulted with?
6.	What agreements have been reached with traditional leaders on the use of communal land?
7.	What agreements have been reached with traditional leaders on mining benefit streams?
8.	Has the municipality been consulted as part of the infrastructure and housing plans?
9.	Is the SLP in line with the municipality's integrated development plan (IDP)?
10.	How will the needs community members have identified be addressed in the SLP?
11.	How many local jobs will be created?
12.	How will agricultural land be impacted? How do you plan to offset this?
13.	How will you address migration to the area and the impact on infrastructure and services?
14.	What qualifications will be required to work at the mine?
15.	Will a trust be formed? Who will administer the trust and how will it ensure transparency?
16.	How will local community businesses benefit from mining in the area?

17.	What is the budget for the SLP? Is it subject to change based on commodity price or other factors or is it guaranteed?
18.	What specific communities will benefit from the SLP?
19.	How will you communicate with communities about programmes such as bursaries?
20.	What further consultations will be arranged to report back on your progress with the SLP?
21.	How often will these meetings be held?
22.	If we have complaints about the SLP, who can we contact?
23.	What is the contact information of the person in charge of implementing the SLP?
24.	Will the community be consulted if the company wants to change SLP targets?

Annexure B

FORMS FOR ACCESSING INFORMATION

On the pages that follow, you will find the two forms needed to make access for information requests. From pages 24 to 27, you will find an example of the form you would need to complete to access a document from the Department of Mineral Resources. You will need to make a copy of the form, complete it and submit it to the Information Officer at the National Department in Pretoria.

From pages 28 to 31, you will find the form to complete in order to access a document from a private company. You should complete this form if you would like to access information from a mining company. You will need to make a copy and complete the form and then submit this to the Information Officer at the company.



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

REQUEST FOR ACCESS TO RECORDS

(In terms of section 18 (1) of the Promotion of Access to Information Act, 2000
(Act No. 2 of 2000)) [Regulation 6]

IMPORTANT: This request will **ONLY** be considered if the request fee of R35,00 is included.

FOR DEPARTMENTAL USE	
File Reference number:.....	Request fee (if any): R
Request received by:..... (Full name and surname)	Deposit (if any): R.....
..... (State date)	Access fee: R
..... (State place)	
SIGNATURE OF INFORMATION OFFICER / DEPUTY INFORMATION OFFICER	

A. **Particulars of the Information Officer/Deputy Information Officer (please state if known to the requester)**.....

B. Particulars of person requesting access to the record

- (a) *The particulars of the person who requests access to the record must be given below.*
(b) *The address and/or fax number in the Republic to which the information is to be sent, must be given.*
(c) *Proof of the capacity in which the request is made, if applicable, must be attached.*

Full names and surname:

Identity number:

Postal address:

Fax number:

Telephone/Cell number:

E-mail address:

Capacity in which request is made, when made on behalf of another person:
.....

C. Particulars of person on whose behalf request is made

This section must be completed **ONLY** if a request for information is made on behalf of another person.

Full names and surname: _____

Identity number: _____

D. Particulars of record

(a) Provide full particulars of the record to which access is requested, including the file reference number if that is known to you, to enable the record to be located.

(b) If the space provided is inadequate, please continue on a separate folio and attach it to this form.

The requester must sign all the additional folios.

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

2. Any further particulars of record: _____

3. Reference number, if available: _____

E. Fees

(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after the **request fee of R35.00** (non-refundable) has been paid.

(b) The **fee payable for access** to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.

(c) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

(d) Fees can be paid in cash or by postal order. An electronic payment will **ONLY** be accepted on condition that **PRIOR ARRANGEMENTS** are made with Ms L. Viljoen at Tel: (012) 444 3880, or Gilliana Muthupei at Tel: (012) 444 3018.

Reason for exemption from payment of fees:

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 below, state your disability and indicate in which form the record is required.

Disability:.....

Form in which record is required:
.....

Mark the appropriate box with an X.

NOTES:

(a) Compliance with your request for access 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 such a case you will be informed if access will be granted in another form.

(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in written or printed form:

copy of record*	<input type="checkbox"/>	inspection of record	<input type="checkbox"/>
-----------------	--------------------------	----------------------	--------------------------

2. If record consists of visual images -

(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.):

view the images	<input type="checkbox"/>	copy of the images*	<input type="checkbox"/>	transcription of the images*	<input type="checkbox"/>
-----------------	--------------------------	---------------------	--------------------------	------------------------------	--------------------------

3. If record consists of recorded words or information which can be reproduced in sound:

listen to the soundtrack (audio cassette)	<input type="checkbox"/>	Transcription of soundtrack* (written or printed document)	<input type="checkbox"/>
---	--------------------------	--	--------------------------

4. If record is held on computer or in an electronic or machine-readable form:

printed copy of record*	<input type="checkbox"/>	printed copy of information derived from the record*	<input type="checkbox"/>	copy in computer readable form* (stiffy or compact disc)	<input type="checkbox"/>
-------------------------	--------------------------	--	--------------------------	--	--------------------------

*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?

YES	NO
-----	----

Postage is payable.

In which language would you prefer the record?

(Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.)

G. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved/denied. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

Signed atthis.....day of20.....

**SIGNATURE OF REQUESTER / PERSON
ON WHOSE BEHALF REQUEST IS MADE**

(Delete which is not applicable)

D. Particulars of record

- (a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.
- (b) If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

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

.....

.....

.....

.....

2. Reference number, if available:

.....

.....

.....

.....

3. Any further particulars of record:

.....

.....

.....

.....

E. Fees

- (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 required 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 required to search for and prepare a record.
- (d) If you qualify for exemption of the 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 are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 below, state your disability and indicate in which form the record is required.

Disability:	Form in which record is required:
Mark the appropriate box with an X .	
NOTES:	
(a) Compliance with your request for access 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 such a case you will be informed if access will be granted in another form.	
(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.	

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

*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? Postage is payable.	YES	NO
--	-----	----

G. Particulars of right to be exercised or protected

If the provided space is inadequate, please continue on a separate folio and attach it to this form.
The requester must sign all the additional folios.

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

.....

.....

.....

2. Explain why the record requested is required for the exercise or protection of the aforementioned right:

.....

.....

.....

H. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved / denied. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

.....

Signed at this day..... of year

.....
SIGNATURE OF REQUESTER /
PERSON ON WHOSE BEHALF REQUEST IS MADE

Annexure C

SLP FAULT CHECKLIST

When analysing an SLP, ask yourself the following questions:

Does the SLP clearly state which communities, villages or suburbs should benefit from its programmes?

Does the SLP say how you can qualify for benefits like bursaries and internships, how to apply for these benefits and the process the company will follow to decide who get the bursaries?

Does the SLP state specific actions and deadlines for its projects so the community can monitor if it is delivering on its promises?

Does the SLP show which communities and organisations the mine consulted when drafting the plan?

Does the SLP explain how the mine consulted with the municipality or if its projects are in line with the integrated development plan?

Is the background information on the mine provided in the SLP?

Does the background information include the method of mining?

Does the SLP explain that the projects will only be completed if the company makes a certain profit or that the plan is subject to commodity prices?

Is the physical size and footprint of the mine clearly stated?

Does the SLP explain the negative impacts of mining and not just the positive impacts?

Are all the negative impacts of mining and their extent stated in the SLP?

Does the SLP lay out a clear process for workers and community members to participate in this SLP process?

Does the SLP explain the social and economic background of the community? Is this accurate and up to date?

Is there a clear author of the SLP?

Annexure D

COMPLIANCE RECORDING TABLE

On the next page, you will find a table you can use to track a mining company's compliance with its SLP commitments. You can begin by analysing the SLP and listing the projects, or targets, that the mine has committed to delivering, as well as the communities that should benefit from these programmes and the dates they should be completed. Now you are ready to begin an audit of the targets. Note down the date that you are going to record the mine's progress and list any sign you can see that the mining company is working towards achieving its targets. If you are an intended beneficiary of the project (a member of the village or community that should benefit from the programme) then note whether you have benefited from the project so far.

	Due date target should be completed	Date the audit was conducted	People approached in conducting audit

Annexure E

CONTACT DETAILS: DEPARTMENT OF MINERAL RESOURCES

NATIONAL COMPLIANCE AND ENFORCEMENT

Department of Mineral Resources, Pretoria
Tel: 012 444 3000

REGIONAL COMPLIANCE AND ENFORCEMENT

Eastern Cape
Tel: 041 396 3900 (Port Elizabeth)
Tel: 047 532 4488 (Umtata)

Free State
Tel: 057 391 1300

Gauteng Regional Office
Tel: 011 358 9700

Kwa-Zulu Natal Regional Office
Tel: 031 335 9600

Limpopo Regional Office
Tel: 015 287 4736

Mpumalanga Regional Office
Tel: 013 653 0500

Northern Cape
Tel: 053 807 1700 (Kimberley)
Tel: 027 712 8160 (Springbok)

North West Regional Office
Tel: 018 487 9830

Western Cape Regional Office
Tel: 021 427 1000

LED PROVINCIAL AND MUNICIPAL GOVERNMENT OFFICES

PROVINCIAL OFFICES

Eastern Cape

Tel: 040 609 1519

Email: communication@ecleg.gov.za

Free State

Tel: 051 407 1100

Email: legislature@fsl.gov.za

Gauteng

Tel: 011 498 5555

Kwa-Zulu Natal

Tel: 033 355 7600

Email: info@kznlegislature.gov.za

Limpopo

Tel: 015 293 8300

Email: info@ledet.gov.za

Mpumalanga

Tel: 013 766 1219

Email: Info@mpuleg.gov.za

Northern Cape

Tel: 053 839 8000

Email: publicinfoNCPL@ncpg.gov.za

North West

Tel: 018 392 7000

MUNICIPAL OFFICES

Johannesburg

Tel: 011 407 6111

Mogalakwena

Tel: 015 491 9630

Email: Masibej@mogalakwena.gov.za

Tzaneen

Tel: 015 307 8000.

Witbank

Tel: 013 690 6911

CHAPTER 9 INSTITUTIONS

South African Human Rights Commission

Tel: 011 877 3600 (National) or 015 291 3500 (Limpopo Office)

Public Protector

Tel: 011 492 2365 (National) or 015 295 5712 (Limpopo Office)

PUBLIC INTEREST LEGAL ORGANISATIONS

Centre for Applied Legal Studies

Tel: 011 717 8600

Email: Louis.Snyman@wits.ac.za

Web: www.wits.ac.za/cals/

Centre for Environmental Rights

Tel: 011 447 1647

Email: info@cer.org.za

Web: <http://cer.org.za/>

Lawyers for Human Rights

Tel: 011 339 1960 (Johannesburg) or 015 354 2203 (Musina)

Web: www.lhr.org.za

Legal Resources Centre

Tel: 011 836 9831

Web: www.lrc.org.za

NOTABLE MINING COMPANIES

BASE METALS

Assmang

Tel: 011 779 1000 (General) or 011 779 1134 (Sustainability Unit)

Black Mountain Minerals

Tel: 054 983 9200 (General) or 054 983 9327 (Sustainability Unit)

Cronimet Chrome Mining SA

Tel: 011 958 0544 (General) or 011 958 0544 (Sustainability Unit)

Kalagadi Managanese

Tel: 011 808 2000

Kumba Iron Ore

Tel: 012 683 7000 (General) or 012 683 7169 (Sustainability Unit)

Imerys

Tel: 012 643 5880 (General) or 012 643 5937 (Sustainability Unit)

Richards Bay Minerals

Tel: 035 901 3111 (General) or 035 901 3456 (Sustainability Unit)

Rio Tinto

Tel: 035 901 3111

Samancor

Tel: 011 245 1000

South32

Tel: 011 376 9111 (General) or 011 376 2487 (Sustainability Unit)

Tshipi e Ntle Managanese Mining

Tel: 087 740 4967

Vametco Mineral Corporation

Tel: 012 318 3200 (General) or 012 318 3368 (Sustainability Unit)

COAL

ARM Coal

Tel: 011 779 1000 (General) or 011 779 1540 (Sustainability Unit)

Coal of Africa

Tel: 010 003 8000

Coastal Fuels

Tel: 011 705 2241

Exxaro Resources Limited

Tel: 012 307 5000 (General) or 012 307 4229 (Sustainability Unit)

Glencore Xstrata

Tel: 011 459 0230

Jindal Africa

Tel: 011 706 8420 (General) or 017 492 0001 (Sustainability Unit)

Ledjadja Coal

Tel: 012 345 1057 (General) or 014 940 1003 (Sustainability Unit)

Sasol Mining
Tel: 017 614 3120 (General) or 011 889 9257 (Sustainability Unit)

Total Coal South Africa
Tel: 0860 111 111

Wescoal
Tel: 011 049 8611

DIAMONDS

De Beers
Tel: 011 374 7000 (General), 015 575 2029 (Venetia) or 056 216 8632 (Kroonstad)

Petra
Tel: 011 702 6900 (General), 012 305 2213 or 012 305 2362 (Sustainability Unit)

Trans Hex Group
Tel: 021 937 2000 (General) or 021 937 2032 (Sustainability Unit)

GOLD

Anglo Gold Ashanti
Tel: 011 637 6000 (General) or 018 700 2008 (Sustainability Unit)

DRD Gold
Tel: 011 880 3924 (General) or 011 470 2600 (Sustainability Unit)

Goldfields
Tel: 011 562 9700 (General) or 011 562 9767 (Sustainability Unit)

Harmony Gold
Tel: 011 411 2000 (General) or 011 411 2180 (Sustainability Unit)

Pan African Resources
Tel: 011 243 2900 (General) or 013 712 8500 (Sustainability Unit)

Sibanye Gold
Tel: 011 278 9600 (General) or 010 001 1152 (Sustainability Unit)

PLATINUM

Anglo Platinum
Tel: 011 638 9111 (General) or 011 373 6495 (Sustainability Unit)

Aquarius Platinum

Tel: 012 001 2001 (General) or 014 536 4000 (Sustainability Unit)

ARM Platinum

Tel: 011 779 1300 (General) or 011 779 1518 (Sustainability Unit)

Implats

Tel: 011 731 9000 (General) or 011 731 9018 (Sustainability Unit)

Ivanhoe Mines

Tel: 011 088 4300 (General) or 011 088 4333 (Sustainability Unit)

Lonmin

Tel: 011 218 8300 (General) or 014 571 2009 (Sustainability Unit)

Northam Platinum

Tel: 011 759 6000 (General) or 011 759 6032 (Sustainability Unit)

Platinum Group Metals

Tel: 011 782 2186 (General) or 014 495 0052 (Sustainability Unit)

Royal Bafokeng Platinum

Tel: 010 590 4510 (General) or 010 590 4539 (Sustainability Unit)

Wesizwe Platinum

Tel: 011 994 4600 (General) or 011 994 4637 (Sustainability Unit)

Annexure F

SAMPLE LETTERS

On the pages that follow, you will find two sample letters. The first template is designed for communities to use for making complaints to mining companies. The second is for report a mine that is not complying with its SLP commitments to the Department of Mineral Resources. A letter like this should be addressed to a number of people including the Director for Social and Labour Plans of the DMR region where the mine operates, and the Regional Manager for this region. You may also want to copy in other government role players such as the managers of the local economic development and integrated development plan in your local and district municipalities.

Name of company official

Position and name of company

Date

Dear Sir or Madam

Re: Request to participate in the formulation of SLPs

I am writing on behalf of _____ .
Name of community, organisation or structure

Our community is situated close to _____
Name of mine

operated by _____ . We are
Name of mining company

the closest community to the proposed mining operation and our lives and environment stand to be directly impacted by the mining operation.

_____ was formed on _____ ,
Name of community organisation Date

when we found out that _____
Name of mining company

was prospecting within 5km of where we live.

We attended a public consultation meeting held on _____ . At the
Date

meeting, the company presented on the environmental impacts of the operation. However, when a member of my community asked whether they could see in writing the economic benefits the mine promised to the

community, we were told by the consultant running the consultation, that the company would not consult the community on social benefits and the social and labour plan (SLP), as they were not legally required to do so.

This is, however, an incorrect interpretation of the law. First, the MPRDA provides for participation in the application for a mining right. There is no reason to assume that this excludes the development of SLPs which are one of the documents that must be submitted as part of the mining right application. Regulation 41 (c) of the MPRDA regulations, however, states that one of the purposes of SLPs is to ensure that mining companies 'contribute towards the socio-economic development of the areas in which they are operating.' They are therefore intended to help realise the development of communities. They cannot do so if they are not aligned to the needs of communities. The only way for SLP programmes to be aligned with the needs of communities is for the company to consult communities on the SLPs. For this reason, the DMR's 2010 Guidelines on SLPs provide that local economic development programmes are to be designed 'through consultation with communities and relevant authorities.'

_____ will not rest until we are afforded
Name of community organisation
an opportunity to discuss the impacts and benefits of the mining operation.

We therefore request that _____ :
Name of mining company

1. Commits to consulting the community on its proposed SLP programmes via a public meeting at which the Municipality will also be invited;
2. Provides adequate notice of the meeting, date and venue at least 30 days before the meeting to enable our participation. This must include adverts in _____ in _____
Preferred language Name of community newspaper
and on _____ ;
Name of local radio station
3. Provides copies of proposed SLP programmes to the community at least 15 days prior to the meeting so we can study and consider the proposals;
4. Discusses the programme with _____
Name of community organisation
prior to its finalisation;
5. Captures the minutes of the meeting accurately and reflects these in the final SLP;
6. Identifies the needs expressed by the community in the final SLP and explains how the programmes are addressing these needs.

I await your response.

Yours sincerely

Name

Name of community or organisation and position

Contact details

Name of government official

Position and name of department

Date

Dear Sir or Madam

Re: Non-compliance by _____
Name of mining company
with its social and labour plan for _____
Name of mine

I am writing on behalf of _____ .
Name of community, organisation or structure

The community is situated less than 5km from _____
Name of mine
operated by _____ .
Name of mining company

We are the closest community to the proposed mining operation and our lives and environment stand to be directly impacted by the mining operation.

_____ was formed on _____ ,
Name of community organisation Date
in response to the mining operations.

_____ , in its social and labour
Name of mining company
plan (SLP) for _____ , identified our community as
Name of mine
beneficiaries of the following programmes:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

List programmes in the SLP from which your community is to benefit, and provide the main targets and milestones

To date, these targets have not been met. We therefore kindly request that you use your powers under Section 93 of the MPRDA to take steps to ensure that _____ complies with its binding obligations under Section 25 (f) of the MPRDA.

Name of mining company

Do not hesitate to contact me on if you require further information. I look forward to your response.

Yours sincerely

Name

Name of community or organisation and position

Contact details

NOTES

ACKNOWLEDGEMENTS

The Centre for Applied Legal Studies wishes to thank all those who have supported our work with mine-affected communities. In particular, we would like to thank our funding partners at the Open Society Foundation for South Africa and the Raith Foundation for their insights and financial assistance.

In addition, we would like to thank the Mining Environmental Justice Community Network for their valuable feedback. As always, the inspiration, guidance and reason for this publication are the communities and individuals with and for whom we work.

This publication was written by Robert Krause, Louis Snyman, Lubabalo Mabhenxa and Lee-Anne Bruce; designed and produced by Lee-Anne Bruce.

CALS

**Centre for Applied
Legal Studies**