



# Centre for Environmental Rights

## Advancing Environmental Rights in South Africa

Mohamed Shafie Ameermia  
Commissioner  
South African Human Rights Commission  
Braamfontein  
Johannesburg  
2198

By email: [khardy@sahrc.org.za](mailto:khardy@sahrc.org.za)  
[ydiko@sahrc.org.za](mailto:ydiko@sahrc.org.za)  
[eeesterhuizen@sahrc.org.za](mailto:eeesterhuizen@sahrc.org.za)

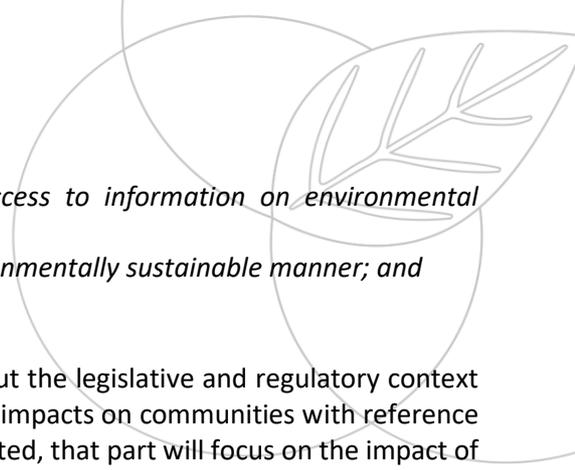
Your ref: Kathleen Hardy; Eden Esterhuizen; Yonela Diko  
Our ref: MF/CH/MK  
Date: 26 August 2016

Dear Commissioner Ameermia

### **WRITTEN SUBMISSIONS TO THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION FOR THE NATIONAL INVESTIGATIVE HEARING ON THE UNDERLYING SOCIO-ECONOMIC CHALLENGES IN MINING-AFFECTED COMMUNITIES IN SOUTH AFRICA**

1. We refer to the South African Human Rights Commission's (SAHRC) invitation to the Centre for Environmental Rights (CER) to make written submissions for its forthcoming National Investigative Hearing on the Underlying Socio-Economic Challenges in Mining-Affected Communities in South Africa (Hearing) dated 4 August 2016 (invitation). In this document, the CER makes written submissions to SAHRC in anticipation of the Hearing.
2. The CER is a registered law clinic with the mission to advance the realisation of environmental rights as guaranteed in the Constitution of the Republic of South Africa, 1996 by providing support and legal representation to civil society organisations and communities who wish to protect their environmental rights, and by engaging in legal research, advocacy and litigation to achieve strategic change. We have been active in the South African mining sector for the past 6 years. In those 6 years, we have litigated on behalf of mining-affected communities and civil society organisations, made submissions on key legislation and policy and have engaged with various key roleplayers in the sector, including mining companies and relevant organs of state. In the process, we have gathered information that is relevant for the Hearing.
3. In the invitation, the CER was requested to focus its submission on the South African compliance monitoring and enforcement system, including discussions of the following:
  - 3.1. *The efficacy of the environmental compliance monitoring and enforcement system, challenges identified in this regard and measures to address these challenges;*
  - 3.2. *The conducting of Environmental Impact Assessments (EIAs) and the design and implementation of Environmental Management Plans (EMPs);*
  - 3.3. *The extent to which EIAs and EMPs are incorporated into Social and Labour Plans (SLPs) as well as local government Integrated Development Plans (IDPs);*
  - 3.4. *The impact of mining on water resources, water quality and threatened ecosystems;*

2<sup>nd</sup> Floor, Springtime Studios,  
1 Scott Road, Observatory, 7925  
Cape Town, South Africa  
Tel 021 447 1647, Fax 086 730 9098  
Email [info@cer.org.za](mailto:info@cer.org.za), [www.cer.org.za](http://www.cer.org.za)

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- 3.5. *The extent to which communities are consulted and/or have access to information on environmental management and impacts;*
  - 3.6. *Measures to ensure that mining activities are conducted in an environmentally sustainable manner; and*
  - 3.7. *Any other relevant information.*

4. Our submission is broadly divided into four parts. **Part 1** cursorily sets out the legislative and regulatory context for our submissions. In **Part 2**, we broadly define specific environmental impacts on communities with reference to a case study relating to the XYZ community in Mpumalanga. As requested, that part will focus on the impact of mining on water resources and threatened ecosystems. In **Part 3**, we address issues relating to environmental governance of mining with a particular focus on monitoring of compliance with and enforcement of environmental laws in the mining sector, but will also include discussions on the EIA regime, public participation and access to information, the incorporation of EIAs and EMPs into SLPs and IDPs and measures to ensure mining in an environmentally sustainable manner. In **Part 4**, we endeavour to make specific recommendations on how to address the problems with the South African environmental governance regime applicable to the mining sector.
5. Many of the statements in our submission are drawn from our May 2016 report, *Zero Hour: Poor Governance of Mining and the Violation of Environmental Rights in Mpumalanga* (Zero Hour). A copy of *Zero Hour* is attached, marked “**Annexure A.**” Although, *Zero Hour* looks at governance issues around mining in Mpumalanga, most of the problems identified with governance in Mpumalanga are also relevant to KwaZulu-Natal and Limpopo Provinces. Much of the evidence in *Zero Hour* in support of its allegation that the State, and more particularly, the Department of Mineral Resources (DMR) and the Department of Water and Sanitation (DWS), are facilitating environmental rights violations in Mpumalanga through the poor regulation of mining is applicable to other provinces too, as the DMR and the DWS are national departments. The specific sections from *Zero Hour* from which the statements in this submission are drawn will be referenced.

#### **Part 1: The legislative and regulatory context**

6. The three framework acts governing environmental management of mining in South Africa are the Mineral and Petroleum Resources Act, 2002 (MPRDA), the National Environmental Management Act, 1998 (NEMA) and National Water Act, 1998 (NWA). The Environmental Impact Assessment Regulations, 2014 (EIA Regulations), read with the three Listing Notices<sup>1</sup> (Listing Notices) govern the environmental impact assessment regime under South African law.
7. Broadly, the MPRDA mandates the Minister of Mineral Resources (or his delegates) to consider and take decisions on applications for mining and prospecting rights.<sup>2 3</sup> In terms of NEMA, the Minister of Mineral Resources (or his delegates) is also the competent authority to consider and take decisions on environmental authorisation applications for mines<sup>4</sup>. The NWA provides that the Minister of Water and Sanitation, or her delegates, must consider and make decisions on water use licence applications (WULs).<sup>5</sup>
8. NEMA makes provision for the designation of DMR officials as environmental mineral resource inspectors (EMRIs) by the Minister of Mineral Resources to monitor compliance with and enforce NEMA in as far as it relates the environmental management of mining.<sup>6</sup> It also makes provision for the designation of officials of DWS or other organs of state as environmental management inspectors (EMIs) responsible for monitoring compliance with and

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<sup>1</sup> GN R984, 985 and 986 in GG 38282 of 8 December 2014

<sup>2</sup> See sections 17, 23 and 27 of the MPRDA

<sup>3</sup> In terms of the MPRDA, the Minister responsible for mineral resources must take decisions on applications for mining rights, prospecting rights, exploration rights, productions rights, mining permits, reconnaissance permission and co-operation permits. For the purposes of this submission the term “mining” shall include mining and prospecting. “Mining right” shall include mining rights, mining permits and prospecting rights. “Mine,” shall refer to both prospecting and mining operations.

<sup>4</sup> Section 24C(2A) of NEMA

<sup>5</sup> See sections 40-41 read with the definition of “responsible authority” in Section 1 of the NWA

<sup>6</sup> Section 31BB of NEMA

enforcing the provisions of the NWA (and other environmental laws, where appropriate).<sup>7</sup> EMRIs and EMIs are afforded powers to, *inter alia*, conduct investigations, seize items and issue compliance notices.<sup>8</sup>

## Part 2: Specific environmental impacts of mining

9. The detrimental environmental impacts of mining on communities are both direct and indirect. Mining can lead to the loss of natural resources on which communities rely for their livelihoods and well-being, including water resources,<sup>9</sup> agricultural land<sup>10</sup> and important biodiversity.<sup>11</sup> The pollution of the air, soil and water caused by mining furthermore results in pernicious impacts on the health of communities and the socio-demographic changes brought by mining can lead to social conflict.<sup>12</sup> The industrialisation of a landscape through mining can also result in an impact on the psychological well-being of especially rural communities. Indirect impacts may include food insecurity<sup>13</sup> and climate change impacts.<sup>14</sup>
10. This part will focus on the impacts of mining on mining-affected communities' environmental rights, but it will start by broadly setting out the impacts of mining on water and threatened ecosystems.

### The impact of mining on water resources

11. Water use is required for most mining operations. These mining operations use large quantities of water and have the potential to severely pollute water resources, including rivers, streams, dams and groundwater aquifers.
12. Where such mines are located far from a significant surface water resource, such as a river, they typically extract groundwater for mining purposes. Significant extraction of groundwater, causes groundwater levels to drop resulting in a so-called "cone of depression," the radius of which depends on the size and location of a mine. The significant abstraction of water for mining operations can dewater (drain) aquifers and wetlands, significantly impacting on the availability of water to local people and ecosystems. In this regard we refer you to our examples in paragraph 23 and the case study below paragraph 34 of where mining has caused underground water resources on which communities rely to dry up.
13. Mining can also result in the pollution of water resources. The most pernicious form of water pollution from mines is acid mine drainage (AMD). AMD is most commonly associated with gold and coal mining in South Africa. When AMD is released into the environment, it can pollute both groundwater and surface water. Its effects are devastating as it leaches into aquifers or flows into rivers and streams. It sterilises soils and contaminates food crops, puts fauna and flora at risk, and is dangerous to human health.<sup>15</sup>
14. Some mines are required in terms of their water use licences to pump AMD water to facilities where it can be treated to safer levels before it is released into other water resources or supplied to municipalities. Pumping and treating uses vast amounts of electricity. When mining operations cease or when mines are abandoned, water is no longer pumped and treated and AMD is allowed to decant into other water resources. The risk of AMD decant is therefore bigger with closed or abandoned mines than it is for operational mines.

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<sup>7</sup> Section 31BA of NEMA

<sup>8</sup> See sections 31H to 31L of NEMA

<sup>9</sup> Zero Hour p2-5

<sup>10</sup> Zero Hour p7-10

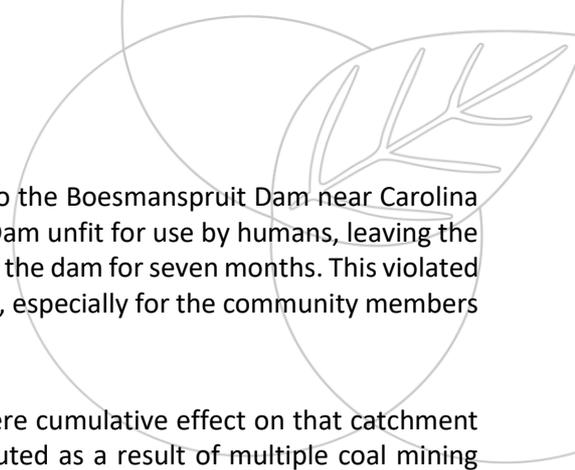
<sup>11</sup> Zero Hour p10-11

<sup>12</sup> Zero Hour p11-15

<sup>13</sup> Zero Hour p7-10

<sup>14</sup> Zero Hour p16-17

<sup>15</sup> Zero Hour p4

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15. In 2012, AMD from run-off ponds at coal handling facilities decanted into the Boesmanspruit Dam near Carolina in Mpumalanga. The AMD rendered the water from the Boesmanspruit Dam unfit for use by humans, leaving the people of Carolina and the Silobela Township without a water supply from the dam for seven months. This violated the human rights of and caused great hardship in the Silobela community, especially for the community members who could not afford to pay for water from an alternative source.<sup>16</sup>
16. Many individual mining activities in one river catchment can have a severe cumulative effect on that catchment area. The upper part of the Olifants River, for instance, is severely polluted as a result of multiple coal mining operations in its vicinity. In 2004, when the MPRDA came into operation, an estimated 50 000m<sup>3</sup> of polluted mine water was being released into the Olifants River every day while a further daily 64 000m<sup>3</sup> coursed into it from ownerless and abandoned mines.<sup>17</sup> Owing to the mining boom after the coming into operation of the MPRDA, those figures are likely to have significantly increased.

#### The impact of mining on threatened ecosystems and strategic water source areas, and consequences for communities

17. Mining, and particularly coal mining, has a severe and long-lasting impact on ecosystems. Mining activities invariably result in impacts on biodiversity that cannot be rehabilitated. Soil degradation as well as the pollution of soil, water and air (including light and noise pollution) destroy the ecological conditions on which ecosystems are reliant. The activities ancillary to mining, such as the construction and maintenance of roads and other infrastructure, and the increase in human population densities in mining areas, also contribute to ecosystem losses.
18. South Africa's ecosystems that are threatened and in need of protection have been identified by the Minister of Environmental Affairs. Yet mining rights are still being granted in respect of those areas, sometimes where ecosystems are classified as "irreplaceable" due to their threatened status.<sup>18</sup> Even important and sensitive ecosystems occurring in protected areas are not adequately protected from mining.<sup>19</sup>
19. Similarly, South Africa's strategic water source areas (SWSAs) were first mapped by the NFEPa Project, funded by the Water Research Commission (WRC), Council for Scientific and Industrial Research (CSIR), South African National Biodiversity Institute (SANBI), DWS and DEA. These maps were recently refined by the CSIR and World Wide Fund for Nature -South Africa (WWF-SA) in a comprehensive scientific mapping process which identified 21 SWSAs. These areas make up about 8% of South Africa, Lesotho and Swaziland's land surface yet they provide more than 50% of our surface runoff. For this reason, they are known as strategic water resources, as they are invaluable and important for our water security.
20. Unfortunately, a very small portion of the total land area size of these SWSAs is currently protected in terms of the National Environmental Management: Protected Areas Act, 2003 (NEMPAA)<sup>20</sup> in the form of national parks, nature reserves, mountain catchment areas, etc. Yet even within those formally protected SWSAs, mining rights are also still being granted. For example, the Mabola Protected Environment in Mpumalanga is home to the Enkangala Drakensberg SWSA. It is also of immense biodiversity importance based on numerous classifications, and has been declared as such. Nonetheless, 8 months after being declared a protected environment in terms of NEMPAA, the Minister of Mineral Resources granted a mining right to Atha-Africa Ventures (Pty) Ltd for an area of land – a considerable amount of which fell within the protected environment.<sup>21</sup>

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<sup>16</sup> Zero Hour p5

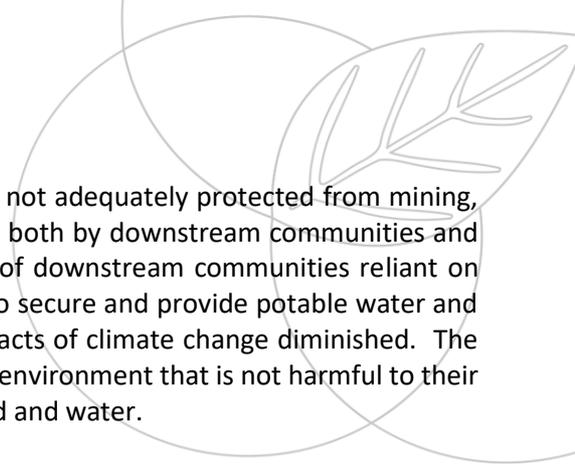
<sup>17</sup> Zero Hour p2-4

<sup>18</sup> Zero Hour p23-31

<sup>19</sup> *Ibid*

<sup>20</sup> As at 2013, only 16% of our SWSAs enjoyed formal legal protection. See *An Introduction to South Africa's Water Source Areas* accessible on [http://awsassets.wwf.org.za/downloads/wwf\\_sa\\_watersource\\_area10\\_lo.pdf](http://awsassets.wwf.org.za/downloads/wwf_sa_watersource_area10_lo.pdf)

<sup>21</sup> Zero hour p28



21. These violations are not just relevant for natural systems – if SWSAs are not adequately protected from mining, amongst other activities, direct and indirect impacts will be experienced both by downstream communities and the country at large. Direct impacts include an increased vulnerability of downstream communities reliant on these water sources for water supply; and indirectly, the State’s ability to secure and provide potable water and food for people will be undermined, and our ability to adapt to the impacts of climate change diminished. The impacts of mining on SWSAs therefore impact on everyone’s rights to an environment that is not harmful to their health or wellbeing, and everyone’s right to have access to sufficient food and water.

#### The loss of natural resources through deprivation, degradation and pollution

22. In terms of the Mineral and Petroleum Resources Development Act, 2002 (MPRDA), the holders of mining rights have the right to use land in respect of which their rights have been granted exclusively for the purposes of mining.<sup>22</sup> This often entails the cordoning off land that had been used for agricultural production, housing and other purposes. In this way communities, especially those residing in rural areas, are deprived of the use of their land for other purposes. As communities do not have the right to veto mining rights issued in respect of their land, communities are often forced to give up land for mining when it is not their preferred use of land.<sup>23</sup> Access to land has been held by the Constitutional Court as being essential for the promotion of the environmental rights of previously disadvantaged communities.<sup>24</sup>

23. Water use licences issued to mining companies by the DWS in terms of the NWA often give mines precedence over mining-affected communities for the use of water resources on which communities depend for their daily source of water. This deprivation can restrict communities’ access to water in times of drought. The Somkhele Mine, owned by Petmin (Pty) Ltd, for example, accessed an underground water resource when all other water resources in its surrounds had dried up during the 2015/2016 drought. The community had to rely on water being brought to it in trucks by the Mtubatuba Local Municipality, at a cost to the community.

24. Although mining is a temporary land use, the impacts of mining are often long-term, if not, permanent. Mining has the potential to degrade the productive capacity of land as it requires the removal of topsoil and, in the case of underground mines, can result in the subsidence of soil.<sup>25</sup> Important biodiversity which provides ecosystem services to communities is also destroyed by mining operations when vegetation is stripped, soil is degraded through mixing and compaction and wetlands are drained or excavated, for instance.<sup>26</sup> Wetlands perform important functions such as the mitigation of flood damage and the purification of water in streams and rivers. They also ensure a source of freshwater throughout the year even when there is no rain fall as they can hold and gradually release water into streams and rivers. Moreover, biodiversity also benefits communities by providing a sustainable source of resources, such as wood for fuel and specific indigenous plants for medicinal purposes. Natural areas are often also used by communities for spiritual and cultural practices. In Madadeni in Mpumalanga, for instance, a wetland of significant cultural and spiritual value to the Madadeni community was destroyed in the construction phase of the Nkomati Anthracite Mine without the community being consulted prior to the commencement of construction.<sup>27</sup>

25. Pollution emanating from mines sterilises land and renders water resources unfit for water provision services. Therefore, even when mining ceases and communities regain access to land and other resources, those resources are often polluted and cannot be utilised by those communities. The biggest direct impact of mining-related pollution on communities, however, is its adverse health and well-being effects.

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<sup>22</sup> Section 5 of the MPRDA

<sup>23</sup> See for example the short film, *A Deep Wound* at <http://cer.org.za/programmes/mining/mining-environmental-justice-community-network-south-africa>

<sup>24</sup> *Land Access Movement of South Africa and others v Chairperson of the National Council of Provinces and others* [2016] ZACC 22 at para 63

<sup>25</sup> Zero Hour p7-10

<sup>26</sup> Zero Hour p10-11

<sup>27</sup> See FN 24

## The impact of mining-related pollution on the health and well-being of communities

26. The detrimental impacts of mining on the health and well-being of communities are established. These impacts lead to a poorer quality of life long after mines have been closed or abandoned. Surrounding communities are exposed to water, soil, noise and dust pollution, and also experience social disruption — in the form of increased crime, for example — or socio-demographic changes that lead to tensions over natural resources. Communities are also relocated to accommodate mining operations, usually with no choice as to where they are to be moved.<sup>28</sup>
27. Often the poorest and most marginalised communities suffer the worst of these consequences, because informal settlements are frequently located in close proximity to mines. Houses crack from the blasting operations of active mines, and some settlements are perilously situated above old abandoned mines. These collapse when subsidence occurs or, if left unrehabilitated, continuously leach toxic water into ground and surface water. They also release dust into the atmosphere. People face significant health risks from exposure to such pollution. The toxins can be ingested by drinking water, eating contaminated food, or even absorbed through the skin. Mining as a result leads to many chronic health problems and premature deaths, particularly among children, pregnant women, and those with pre-existing health conditions and compromised immune systems.<sup>29</sup>
28. Although research on the state of public health in mining-affected communities is pitifully scarce, there is ample international research on the health impacts of mining, particularly coal mining, on host communities – and clear evidence of the detrimental health impact of coal mining of the exposure to polluted water and high levels of particulate matter.<sup>30</sup> Locally, research is currently being conducted by the International Agency for Research on Cancer (an arm of the World Health Organisation which researches the causes of cancer) in collaboration with the Federation for a Sustainable Environment and the University of the North West, into a causal link between the uranium mine dumps (mine dumps from operational and abandoned gold and uranium mines that contain high levels of uranium) in the Witwatersrand area and the unusually high number of incidences of cancer, mental retardation and nephrotoxicity in the communities who live in close proximity to those dumps.
29. One of the main ways in which people get in contact with uniferous material in those areas is through the inhalation of dust originating from the uniferous mine dumps. Uniferous material can also be ingested through by the consumption of crops that have been contaminated by uniferous materials from uniferous mine dumps. It is estimated in the environmental management framework for the West Rand District Municipality that 42.24 tons of dust from uranium mine dumps enter the West Rand per day.
30. South Africa's reliance on coal as the primary source of energy exacerbates the health impacts of coal. It is estimated that as many as 2 200 to 2 700 premature deaths are caused each year by the air-pollution emissions from Eskom's coal-fired power plants, including the deaths of 200 young children and that Eskom's emissions are also continuously making us less intelligent: current emissions of mercury are associated with the loss of 45 000 IQ points each year. These impacts are already estimated to cost South Africa R30-billion each year.<sup>31</sup>
31. groundWork<sup>32</sup> also published a report on the health effects of coal in a 2014 publication which established that:

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<sup>28</sup> Zero Hour p11

<sup>29</sup> Zero Hour p12

<sup>30</sup> Zero Hour p14

<sup>31</sup> Greenpeace, 2014. *Health impacts and social costs of Eskom's proposed non-compliance with South Africa's air emission standards*, available at

<http://www.greenpeace.org/africa/Global/africa/publications/Health%20impacts%20of%20Eskom%20applications%202014%20final.pdf> (last viewed on 24 August 2016)

<sup>32</sup> groundWork, 2014. *The health impact of coal: the responsibility that coal-fired power stations bear for ambient air quality associated health impacts* at p2-3

*Local studies on health impacts of pollution indicate that poor communities reliant on burning coal or other fuels in their homes, experience increased disease burden with 24% of childhood (under five years old) deaths due to acute respiratory infections were estimated to be from indoor air pollution (Norman 2007b). However, more recently, with an increase in industrial activity, mining, coal-fired power stations returning to service and new ones being built and the related increase in transport vehicles (emitting various pollutants into the air) the health of people living in the Mpumalanga Highveld has significantly deteriorated (Scorgie 2012, Myllyvirta 2014, Burt et al 2013). Environmental health studies in urban areas of South Africa have estimated that outdoor or ambient air pollution caused 1.1% of child (under five years old) mortality due to acute lower respiratory infections (Norman et al 2007a).*

#### The indirect impacts of mining on communities: food insecurity and climate impacts

32. Mining rights are often granted in respect of high potential agricultural land. As already mentioned, mining can sterilise the productive capacity of agricultural land through pollution, soil degradation and subsidence. The loss of agricultural land drives up food prices in South Africa owing to increase reliance on imports. This, in turn, can result in food insecurity for poor and marginalised communities who are unable to afford food at higher prices.<sup>33</sup>
33. What is more, the mining of fossil fuels, such as coal, contributes directly and indirectly to climate change. Coal mining can result in the direct release of methane (a greenhouse gas that has a global warming potential of 23 times higher than carbon dioxide, but only persists in the atmosphere for 12-17 years) particularly from underground mines. It is estimated that coal mine methane contributes 8-10% of human-made methane emissions worldwide.<sup>34</sup> Coal is primarily used for the purposes of generating electricity. Emissions from coal-fired power stations is the main contributor to global warming worldwide.
34. Climate change projections suggest that the north-eastern South Africa will most likely become hotter and more prone to climatic extremes, such as prolonged droughts and intense storms that result in floods putting poor communities in that area at significant risk.<sup>35</sup> The impact of future climate events will be exacerbated if ecological infrastructure that is key for adaptation to future climate change is destroyed by mining.

#### **Case study: the XYZ<sup>36</sup> community in the Mpumalanga Highveld**

XYZ is a small township in the Mpumalanga Highveld. Geographically, it is relatively isolated from the other urban centres, which means that its residents do not all have access to municipal services, such as piped water and electricity. XYZ's residents are abjectly poor and mostly reside in rudimentary mud structures. The township of XYZ is surrounded by three opencast coal mines, two of which have been operating for decades and the remaining mine, the closest to the community of the three mines, was established in 2010.

When the most recently established coal mine became operational, the aquifer on which the community relied as their only water supply dried up. As many of the community members do not have access to municipal water supply, many now have to rely on alternative water resources, such as rain water harvesting in water tanks and collecting water from distant water resources for water supply. The mines only sporadically provide the community with some water.

The community is furthermore exposed to significant amounts of dust from the mine dumps, disturbed areas in the mining area, roads and during blasting from the mine. It is possible that some of the dust is contaminated with heavy metals and therefore toxic.

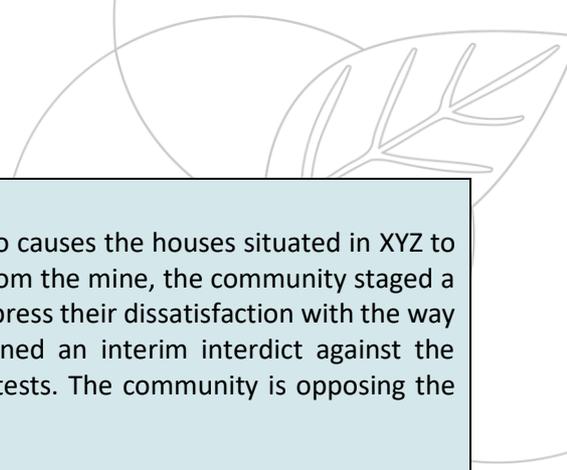
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<sup>33</sup> Zero Hour p7-11

<sup>34</sup> Zero Hour p16

<sup>35</sup> Zero Hour p16-17

<sup>36</sup> Name changed for the protection of the community



Blasting from the mines not only releases dust into the atmosphere, but also causes the houses situated in XYZ to crack. Earlier this year, after more houses cracked after blasting incidents from the mine, the community staged a peaceful demonstration outside of the most recently established mine to express their dissatisfaction with the way in which mining is being conducted by that mine. The mine since obtained an interim interdict against the community on an *ex parte* basis prohibiting it from organising further protests. The community is opposing the granting of a final interdict in the High Court.

The mines erratically provide the community with coal for domestic use. Typically, coal is dumped where community members can collect it. This is resulting in the contamination of soil in the areas where the coal is dumped, and dust. When the community complained about the manner in which coal is dumped, the mines threatened to cease their provision of coal to the community, which caused significant conflict within the community, particularly since this happened in winter. A stark example of the complexity of a damaging dependency in circumstances of extreme inequality.

### Part 3: Environmental Governance of Mining

35. In our experience, poor environmental governance of mining in South Africa is one of the chief causes of the violation of environmental rights in the mining sector in South Africa. Some of the governance problems are related to the regulatory regime itself, and others relate to implemented failure to implement the law. In the paragraphs that follow, we identify our chief concerns about the environmental governance of mining in South Africa with a focus on the issues we were requested to discuss.

#### Efficacy of the environmental compliance monitoring and enforcement systems

36. The efficacy of the environmental compliance monitoring and enforcement system in the mining sector is severely hampered by the lack of capacity in both the DMR and the DWS. Licencing decisions are poor and inappropriate and both of those departments have failed to take strong, decisive enforcement steps against offenders.

#### *Institutional capacity*

37. As already mentioned, NEMA makes provision for the designation of EMRIs and EMIs and affords them wide powers to investigate environmental crimes and to issue compliance notices. In May 2016, 35 EMRIs had been designated by the Minister of Mineral and Resources and 60 were in training. However, at least some of designated officials are not exclusively dedicated to compliance monitoring and enforcement functions. EMRIs are mandated to ensure compliance with environmental laws by the 1757 authorised operational mines<sup>37</sup> in South Africa as well to take enforcement action against an unknown number of unauthorised mining operations in South Africa, far too heavy a burden for even 95 designated officials, particularly given that designated EMRIs are only required to undergo a three week training programme.<sup>38</sup>

38. In 2015, the Minister of Water and Sanitation stated that the DWS had a total of 177 positions for compliance monitoring and enforcement, but that only half of those positions were filled. It is particularly concerning to note that there were only 2 officials performing compliance monitoring and enforcement functions in Mpumalanga, one of the provinces most affected by mining.<sup>39</sup>

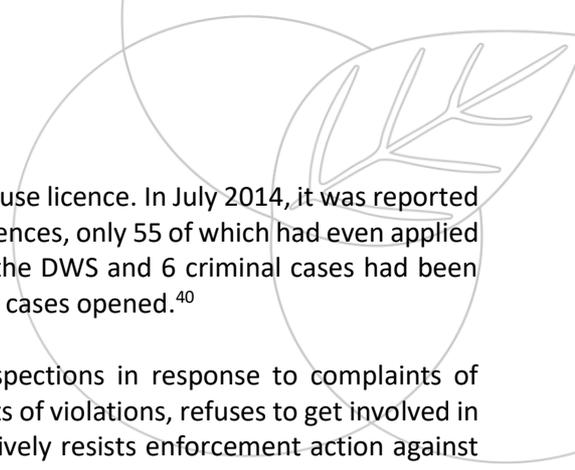
#### *Failure to enforce the law*

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<sup>37</sup> Department of Mineral Resources *Operating Mines and Quarries and Mineral Processing Plants in the Republic of South Africa* (2016)

<sup>38</sup> Zero Hour p54

<sup>39</sup> Zero Hour p54-55

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39. In terms of the NWA, it is a criminal offence to use water without a water use licence. In July 2014, it was reported that there were 103 mines in South Africa operating without water use licences, only 55 of which had even applied for a water use licence. In response, only 12 directives were issued by the DWS and 6 criminal cases had been opened. We are unaware of any convictions resulting from the 6 criminal cases opened.<sup>40</sup>
40. Both the DMR and the DWS do not undertake adequate reactive inspections in response to complaints of violations of licences, or illegal activity. The DMR either ignores complaints of violations, refuses to get involved in any enforcement action despite reports of non-compliance, or even actively resists enforcement action against mining companies in violation. The DWS is similarly unreactive.<sup>41</sup>
41. Despite widespread non-compliance with mining, environmental and water laws, very few criminal convictions for offences in terms of those laws have been reported in the media. The cases of which are aware were investigated by the DEA and the DWS. As neither the DWS nor the DMR makes information regarding compliance monitoring and enforcement available in the public domain, it is difficult to extract relevant information in this regard. The Minister of Water and Sanitation told Parliament in 2015 that only 6 cases involving an offence in terms of the NWA had been successfully prosecuted since the commencement of the NWA in 1999. In 2013, the Minister of Mineral Resources ignored questions asked to her by Parliament regarding criminal convictions.<sup>42</sup>
42. When the DWS issues directives or orders to non-compliant water users, those directives or orders are often of poor quality and do not withstand court challenge.<sup>43</sup>

#### The conducting of EIAs and the design and implementation of EMPRs

43. EIAs and environmental management programmes (EMPRs) form the basis of decisions relating to applications for the required environmental authorisations for mines, regulated under NEMA. It is essential that the EIA process ensures that the right information is given to communities affected by the proposed development, and to decisions-makers to enable them to take informed decisions. Based on our experience, CER has expressed concerns about the content of EIA Regulations and the way in which the EIA Regulations are being implemented by industry and government. Our concerns relating to public participation and access to information in the EIA Regulations are discussed under a separate section below.

#### *The EIA Regulations*

44. Our main concern with the EIA Regulations is that the timeframes provided for in the EIA Regulations for conducting EIAs are woefully insufficient for meaningful public participation and for scientifically sound impact assessment, and they are impractically rigid. It can be argued that they limit the environmental right enshrined in section 24 of the Constitution. On 29 September 2014, the CER made comments on the Draft EIA Regulations to the Department of Environmental Affairs (DEA) (CER comments), a copy of which is attached as “**Annexure B**” for your information. Our arguments for longer and more flexible timeframes are set out in detail in paragraphs 5-19 on pages 2-4 of the CER comments. Importantly in this context, however, what these short timeframes mean is that not only are local communities given very little time to participate and comment on proposed prospecting and mining developments, to share local expertise that could improve the project, or to appeal against mining rights granted, but they also have no time to take steps to prepare themselves for this new development proposed and then usually authorised – often literally on their doorsteps. In addition to all other Constitutional rights affected, such an invasion violates the right to dignity.
45. Furthermore, the EIA Regulations do not explicitly require the inclusion of assessments of climate change impacts and risks in EIAs. In our experience, the climate change impacts and risks are not screened during EIA processes

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<sup>40</sup> Zero Hour p57-58

<sup>41</sup> Zero Hour p58-60

<sup>42</sup> Zero Hour p62-63

<sup>43</sup> Zero Hour p61

and therefore not taken into account at decision-making phase. A more detailed argument for the inclusion of such assessments can be found at paragraphs 20-26 on pages 4-5 of the CER comments.

46. The EIA Regulations also do not provide any guidance on identifying and formulating conditions related to remediation of and compensation for negative impacts on water, air and biodiversity that will be caused by a proposed project and offsetting such damage. Remediation and offsetting are complex processes that need to be guided. Please see our argument for the inclusion of guidance on identifying and formulating conditions related to remediation and compensation measures at paragraphs 32-35 on pages 5-7 of the CER comments.

#### *The implementation of the EIA Regulations*

47. EIAs are conducted, and EMPRs are designed, by environmental assessment practitioners (EAPs) on behalf of applicants for environmental authorisations. EAPs are required in terms of the EIA Regulations to be independent. However, as EAPs are paid by applicants, they are not always incentivised to be objective. In at least one instance, where lack of independence of an EAP has been reported to the DMR, the regional office simply responded by forwarding us the (inadequate) response of that same EAP to the complaint. EIAs are often worded very subjectively and make almost invariably, in our experience, recommendations in favour of the applicant even when specialist studies appended to EIA Reports suggest otherwise.
48. Consultation required by the EIA Regulations is not only extremely time-constrained, but is frequently hopelessly inadequate or does not take place at all. In our work, the story of a mine that “appears” one day, without any consultation or notice, is a common refrain from affected communities. Where consultation does take place, it happens around highly technical documents, often not translated into any local languages, and any comments or objections received are simply recorded in a table, with no changes made to the proposal as a result.

#### The extent to which EIAs and EMPRs are incorporated into SLPs and IDPs

49. As far as we are aware, EIAs are generally undertaken and EMPRs developed in isolation from the SLP process. This is despite the fact that EIAs for mining generally include an assessment of the socio-economic impacts of the proposed development. There is no legal requirement for these processes to be integrated.
50. With regard to IDPs and the power of municipalities in regulation of impacts of mines:
- 50.1. The *Maccsand* decision of the Constitutional Court<sup>44</sup> recognised the powers of local government to determine land use for mining within municipal boundaries. This decision confirmed that municipalities have the power to determine where mining can take place, and where it cannot. IDPs should identify areas where mining does and can occur, but do not in our experience incorporate the terms of EIAs and EMPs. However IDPs are often referred to in EIA reports, and information from IDPs should assist the decision-maker to assess the need of desirability of proposed mines. However, in our experience, records of decision seldom reflect that an IDP was taken into account.
- 50.2. Every municipality’s air quality management plan (a requirement of the National Environmental Management: Air Quality Act, 2004 (NEMAQA)) is required to be incorporated into that municipality’s IDP. Particularly in those municipalities where mining is prevalent, the AQMPs should provide for the management of the air quality impacts of mining. However, few municipalities comply with these requirements of NEMAQA.
- 50.3. Despite the foregoing, municipal officials are, in our experience, loath to get involved in the regulation of the environmental impacts of mining. At best, they will deal with any complaints relating to mining as a

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<sup>44</sup> *Maccsand (Pty) Ltd v City of Cape Town and others* [2012] ZACC 7

“nuisance” issue under municipal bylaws. Many mines operate without the requisite zoning approval, and yet enforcement action against such illegal activity is extremely rare.

## The extent to which communities are consulted and/or have access to information on environmental management and impacts

### *Public participation*

51. In our experience, consultation processes are no more than box-ticking exercises for the mining companies and substantive issues raised by communities do not have bearing on the ultimate development programmes implemented by mining companies and overseen by government. They are rarely, if ever, meaningful, *bona fide* consensus-seeking processes, the standard for consultation determined by the Constitutional Court in *Bengwenyama Minerals (Pty) Ltd and others v Genorah Resources (Pty) Ltd and others*<sup>45</sup> as required by the Constitutional Court. Where communities are traditional communities, they are often not consulted in terms of custom or traditional leaders are consulted on behalf of communities. Sometimes communities are not consulted at all.
52. The deficiency in public participation processes can be attributed to many factors, including the short timeframes for public participation in the EIA Regulations and a lack of understanding of the principles of administrative justice and customary law on the part of EAPs, mining companies and government.
53. The EIA Regulations make provision for a 30 day public participation timeframe during the EIA phase of an application. That 30 day time period may only be extended where additional information was compiled by the EAP after the completion of the public participation process. Thirty days is an inadequate amount of time to consult properly with affected communities. As pointed out already, consultation with communities can be an extremely complex exercise as it may involve determining and following a prescribed custom, communicating in a language that is not English and translating complex environmental information in way that is accessible to all community members.
54. Public notifications of proposed applications at the beginning of EIA processes are often not effective at apprising communities, particularly poor and marginalised communities, of proposed applications. Ordinarily, the conventional method of placing notifications on notice boards near the proposed site and publishing notifications in newspapers is not always effective at (a) bringing an application to the attention of communities and (b) alerting communities to the nature of the application and what their rights are regarding public participation in relation to that application. The EIA Regulations make provision for “*using reasonable alternative methods, as agreed to by the competent authority, in those instances where a person is desirous, but not able to participate in the process, due to – (i) illiteracy, (ii) disability or (iii) any other disadvantage.*” To our knowledge, that provision has not been implemented in relation to mining right application affecting a community.
55. I&APs are not always given opportunities to participate in WULA processes for mining. Under the NWA, the Minister of Water and Sanitation has a discretion to direct a WUL applicant to conduct a public participation process. The Minister very rarely exercises this discretion. Moreover, the discretionary public participation procedure prescribed in the NWA does not give an applicant and the responsible authority much guidance on how public participation should be conducted. As the NWA does not make provision for public participation for every WULA, its approach to public participation is clearly not in line with the national environmental management principle relating to public participation in environmental decision-making<sup>46</sup> or the principles of procedural fairness contained in the Promotion of Administrative Justice Act, 2000,<sup>47</sup> read with section 33 of the Constitution.

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<sup>45</sup> [2010] ZACC 26

<sup>46</sup> Section 2(4)(f) of NEMA

<sup>47</sup> See sections 3 and 4 of the Promotion of Administrative Justice Act, 2000

## *Access to information*

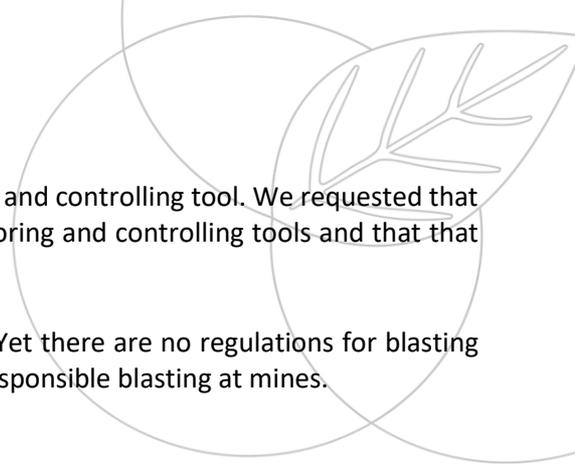
56. The EIA regulations require that draft EIA Reports and draft EMPRs be “subjected to a public participation process.” This usually entails a copy of the EIA Report being made available for download on a website and placing a hard copy of that EIA Report at a public library in close proximity to the proposed mining site for inspection by the public. In our experience, it is generally not difficult to access draft EIA Reports during a public participation phase of an application. However, it may well be more difficult for communities to access draft EIAs, particularly in rural areas where the closest public library could be a long distance away from the proposed mining activity is going to take place. It is even more of a challenge for lay-communities to understand the technical documents that form part of the EIA, which is, additionally, usually not translated into the local language.
57. Environmental authorisations, environmental management programmes, waste management licences, atmospheric emission licences, water use licences, mine rights, mining work programmes, social and labour plans and documents relating to the financial provision of mines are still difficult to access from the DMR, DWS and mining companies. Whereas licences issued by DEA and the DWS are now automatically available (i.e. without a PAIA request), the DMR has not followed suit, and official requests in terms of the Promotion of Access to Information Act, 2000 (PAIA) still need to be made in order to access any records held by the DMR and mining companies. While 30 days is the prescribed timeframe under PAIA for processing requests, these requests often take longer than 30 days to process. We have had to institute litigation on behalf of communities and civil society organisations for access to records held by the DMR when our PAIA requests were refused by the DMR. Water use licences are now automatically available from the DWS (i.e. available without the need to submit a PAIA request), but they are still not easy to access as they still need to be requested from the DWS, which creates an administrative burden for the department.

## Measures to ensure that mining activities are conducted in an environmentally sustainable manner

58. In the DMR and DWS’s annual reports and annual performance plans, the number of environmental authorisations issued or water use licences issued are typically used as performance indicators. We submit that environmental performance indicators, describing for instance the state of water resources in mining affected areas, would be more appropriate performance indicators and targets.

## Regulatory uncertainty and the interpretation of provisions in environmental laws

59. There is still legislative uncertainty in some of the environmental laws that apply in the mining sector. Some laws are also interpreted by the DWS and DMR without regard to sections 24 and 33 of the Constitution, the requirements of PAJA, and the national environmental management principles in section 2 of NEMA.
60. In this regard, we point out the uncertainty of whether or not the National Environmental Management: Air Quality Act, 2004 (NEMAQA) is applicable to mines and the absence of standards for blasting at mines. Mining has the potential to cause air pollution, both in the form of dust and the emission of greenhouse gases, such as methane. Dust, which originates from mine heaps, disturbed areas and roads, impacts directly on communities, while methane and other greenhouse gases contribute to bad ambient air quality and climate change. However, due to legislative uncertainty, mining companies do not apply for and implement atmospheric emission licences in terms of NEMAQA.
61. The Dust Control Regulations, 2013 (Dust Control Regulations) published under that Act do not effectively address dust pollution from mines. We addressed a letter on behalf of various community-based and civil society organisations to the Department of Environmental Affairs arguing that the Dust Regulations fall short of the best practice standards for dust monitoring and controlling and are therefore not effective at addressing dust pollution in areas characterised by mining and industrial activities. A copy of that letter is attached, marked “**Annexure C.**” In our letter, we point out that the Dust Control Regulations only make provision for one controlling tool – the



Dustfall Standard” – which is not always the most appropriate measuring and controlling tool. We requested that the Dust Control Regulations are amended to include a variety of monitoring and controlling tools and that that they adopt a more proactive and cautionary approach.

62. Blasting from mines often causes houses in surrounding areas to crack. Yet there are no regulations for blasting and it is therefore difficult to hold mining companies accountable for irresponsible blasting at mines.

#### **Part 4: Recommendations**

Remove responsibility for the environmental regulation of mines from the DMR, and let mining be governed by environmental authorities – as is the case for all other industries

63. We submit that the DMR cannot adequately regulate and mitigate negative environmental impacts, while at the same time having to encourage and promote mineral development. Instead, the environment authorities — with their existing and appropriate mandates, incentives and experience — should be responsible for ensuring sustainable development in South Africa.

64. Environment authorities, though not perfect, at least have a clear mandate. They have far more existing capacity, and decades of experience regulating the environmental impacts of all kinds of industries (including important aspects of the mining industry until December 2014).

65. We therefore recommend legislative reform that would transfer the environmental management of mining to environmental authorities.

Give legal protection to areas in which mining would be too harmful, giving priority to strategic water source areas

66. Due to the crisis in compliance monitoring and enforcement, and the continued inappropriate granting of prospecting and mining rights in sensitive areas, legal protection must imperatively be given to the most environmentally significant areas, where no prospecting or mining should ever take place. This was already a national commitment under the Outcome 10 Delivery Agreement published in 2010, and is also a feature of the Mining & Biodiversity Guideline agreed to between government and the mining industry in 2013.

67. Since the Minister of Mineral Resources and the DMR have in the past granted prospecting and mining rights in parts of Mpumalanga that already have legal protection in place through declarations under NEMPAA, it is clear that only the highest level of protection will suffice. We recommend that the protection of these areas should be entrenched through multiple declarations under different legislation, including at least:

67.1. section 24(2A) of NEMA, a new section, which provides the Minister of Environmental Affairs with the powers to prohibit or restrict the granting of environmental authorisations by the competent authority — in this case the DMR — for a listed or specified activity, like prospecting and mining, in a specified geographical area. These powers may be used if it is necessary to “ensure the protection of the environment, the conservation of resources or sustainable development”. Section 24(2A) is to be used in accordance with a “risk averse and cautious approach”. The Minister of Environmental Affairs may publish a no-go area under this section for such a period and on such conditions deemed necessary; and

67.2. section 49 of the MPRDA, which provides the Minister of Mineral Resources with the powers to prohibit or restrict the granting of any reconnaissance permission, prospecting right, mining right or mining permit in respect of land identified by the Minister for such period and on such terms and conditions as the Minister may determine. The Minister may do so having regard to the national interest. Water and food security fall squarely within this ambit.

68. We further recommend the insertion of provisions in the NWA that authorise the Minister of Water and Sanitation to provide legal protection for strategic water source areas.

69. Importantly, apart from preserving environmentally and hydrologically significant areas, legal protection would provide government departments, mining companies and prospective investors with legal certainty. It would mean industry would not be able to apply for rights in these areas, saving it the considerable expense of doing so. Civil society and conservation authorities would also be spared the costly and time-consuming effort of opposing the granting of rights in inappropriate areas. It would also free up capacity in the DMR and the DWS.

Commit to licensing decisions that are informed by science, that are responsive to the views and concerns of environment authorities and affected communities, and that take into account the compliance history of mining companies

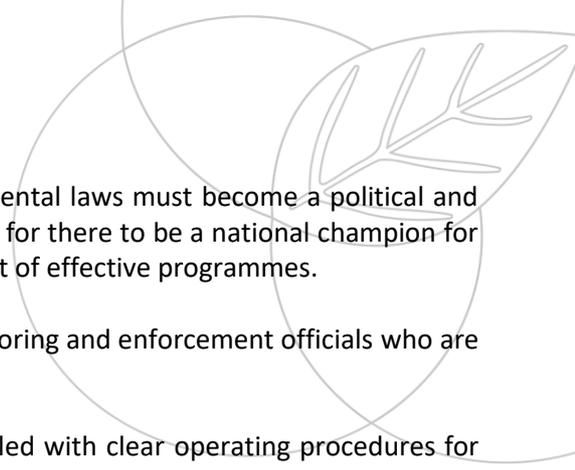
70. In these submissions, we have demonstrated how ill-informed and poor quality licensing decisions are not only facilitating the violation of rights of affected communities in South Africa, but also threatening water and food security for the country as a whole. Assuming the DMR for the time being remains the authority for granting environmental authorisations for prospecting and mining, fixing this will require:

- 70.1. experienced staff working in inter-disciplinary teams, with access to expert support, in both the DMR and the DWS;
- 70.2. compliance monitoring of all mining operations undertaken by companies applying for new rights to ensure that, as required by the MPRDA, rights are not granted to applicants in violation of the law;
- 70.3. improved data collection and processing to ensure that the compliance history of mining companies are known to licensing authorities before rights are granted;
- 70.4. upfront consultation by the DMR with environment, water and agriculture authorities upon receipt of new applications, with no applications being accepted for processing when those authorities flag major concerns (which may require amendment of sections 16 and 22 of the MPRDA). This could and should take place through the RMDEC structure, which means that those authorities must all be represented on RMDEC, and present when recommendations are made and decisions are taken; and
- 70.5. far more rigorous assessment of the nature and scope of public participation undertaken by mining companies, with I&AP comments and responses communicated directly to the licencing authority rather than through the applicant. The processing of new rights applications must be suspended when authorities are alerted to affected communities' concerns not having been addressed in applications.

Enforce the law through adequate investment in compliance monitoring and enforcement capacity; institute a comprehensive compliance monitoring and enforcement programme; implement a proper administrative penalty system; and ensure transparent reporting of results

71. Lack of enforcement undermines and perverts the regulatory regime. This means the few companies who do comply are prejudiced, while those considering compliance are discouraged from doing so. Failure to enforce legislation distorts the will and intention of parliament. This erodes not only the regulatory regime, but also our constitutional democracy.

72. Fixing the DMR and DWS' broken compliance monitoring and enforcement systems — again assuming the DMR remains responsible for this function for the time being — will take at least the following to achieve:

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- 72.1. Compliance monitoring and enforcement of water and environmental laws must become a political and management priority within the DMR and the DWS. It is also vital for there to be a national champion for CME in the national departments, to drive and support the roll-out of effective programmes.
  - 72.2. Many more trained and appropriately qualified compliance monitoring and enforcement officials who are designated with the necessary powers to fulfil this function.<sup>48</sup>
  - 72.3. A proper compliance and enforcement strategy and policy, coupled with clear operating procedures for compliance monitoring and enforcement.
  - 72.4. Real and meaningful collaboration with the Environmental Management Inspectorate, the South African Police Service (SAPS) and the National Prosecuting Agency (NPA). Historically, there has been poor collaboration between environment authorities and the DMR in particular, and much work needs to be done to repair these important relationships. This collaboration must be driven and supported by the top echelons in the DWS and DMR. It will improve the formal and informal working relationships that have developed between the Environmental Management Inspectorate, the SAPS and the NPA. The practice of reporting complaints of violations to SAPS, or even handing over files to the NPA for prosecution and “hoping for the best” is one that was proven to be totally ineffective by environment authorities more than a decade ago.
  - 72.5. Proper public reporting of compliance monitoring and enforcement activities.
  - 72.6. Increasing criminal penalties for environmental violations, particularly in the NWA, and prioritising the development and implementation of a proper administrative penalty system for environmental and water violations. Deter others from committing similar offences by instituting meaningful monetary penalties that adequately punish corporate entities which violate the law. These are an essential enforcement tool in any regulatory system. Internationally, there is a well-established and growing trend away from criminal penalties towards administrative or civil penalty systems, because criminal prosecution is frequently time-consuming, difficult and ineffective. This is particularly relevant in South Africa, where the criminal justice system is already overburdened.<sup>49</sup>

#### Elevate the legal status of communities affected by mining

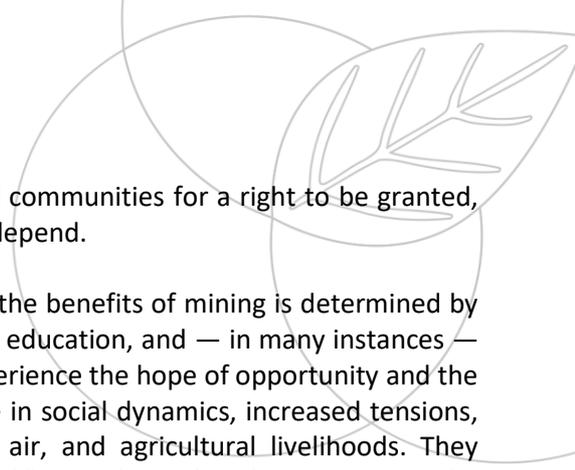
73. The current MPRDA provisions dealing with communities and mining have not been effective in protecting — or advancing the social and economic welfare of — communities from the detrimental environmental impacts of mining. Affected communities are frequently already vulnerable. This failure is at least partly attributable to mining-affected communities not having a strong enough legal status for their rights and custodianship of the environment, on which their livelihoods depend, to be respected. There is no requirement under the MPRDA for

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<sup>48</sup> In this regard, it is important to understand that an “appropriate” qualification is different for different functions. For example, an official responsible for compliance inspections requires good technical knowledge that may include chemical engineering, geology, hydrology, or environmental science; an official responsible for criminal investigations requires a background in criminal law and proceedings, and investigation skills (such as those required by SAPS detectives); an official responsible for civil enforcement requires a qualification in constitutional, administrative and environmental law and litigation.

Both the DWS and the DMR have ostensibly decided to design and implement their own training courses for compliance and enforcement. This is despite the training requirement for their officials being very similar to the training that was painstakingly developed by the DEA at great expense. Currently the DWS CME officials receive no formal training from that Department, and training is done on the job. We also know that the DMR course for EMRIs is only a three-week basic training course. It is objectively not possible to provide adequate training to officials in three weeks, and then expect them to exercise this function effectively and efficiently.

<sup>49</sup> Environment authorities have already started to explore how administrative penalties could improve compliance with environmental laws, and the DMR and the DWS should grab the opportunity to benefit from this work.



prospecting or mining right applicants to obtain the consent of affected communities for a right to be granted, even though that mining will take place on land on which they reside or depend.

74. Mining is a short-lived bounty of economic opportunities. But access to the benefits of mining is determined by factors that include existing capital, access to resources, skills training or education, and — in many instances — political connections. Communities witness the arrival of mining and experience the hope of opportunity and the promise of development. They experience an influx of people, a change in social dynamics, increased tensions, and the degradation of their natural home — of water, vegetation, air, and agricultural livelihoods. They experience unsolicited interventions and change. Perhaps some see limited financial gain, but then experience the sudden cessation of mining activities, and the abandonment and decay created by the mine. Many experience the damaged state of their natural home and livelihood forever altered.
75. Community-based organisations, civil society organisations and legal academics have called for free prior and informed consent (FPIC) by affected communities to be a prerequisite for mining. The rationale of the FPIC principle is that communities should have the right to determine their own destinies — which may or may not include mining. FPIC would also give communities better leverage to negotiate favourable and fair conditions to mining on their land.
76. It is therefore recommended that the MPRDA be reformed to require the FPIC of communities for the granting of prospecting and mining rights. The distinction drawn in the MPRDA between communities occupying communal land by custom, law or agreement, and other vulnerable communities, must also be abolished to ensure that all impoverished communities are afforded the right to meaningful negotiation with government and mining companies regarding prospecting and mining rights on their land.
77. Furthermore, it is recommended that the MPRDA and/or NEMA is amended to make specific provision for ongoing consultation by mining companies with affected communities throughout the lifecycle of a mine.

#### Ensure that communities and other IAPs are given opportunities to participate in in water use licence application processes for mining

78. As public participation is not required in terms of the NWA for every application for a water use licence, it is recommended that the NWA be reformed to make explicit provision for the right of I&APs to participate in every WULA process. It is further recommended that the NWA be reformulated to reflect the more comprehensive approach to public participation prescribed in the Environmental Impact Assessment (EIA) Regulations, 2014. Such amendments will help align the NWA with the national environmental management principle that all I&APs should be given an opportunity to participate in environmental decision-making.

#### Improving the EIA Regulations

79. We recommend that the EIA Regulations are amended to provide for longer and more flexible timeframes for conducting EIA studies and public participation. We also recommend that they are amended to require EIA studies to include a climate change risk assessment and provide guidance for designing and implementing remediation measures, such as biodiversity offsets.
80. Moreover, it is recommended that a guideline is published setting out principles relating to the independence of EAPs and objectivity in EIA Reports.

#### Adopt a new, transparent approach to disclosure of information around mining

81. Owing to the difficulty in accessing information held by the state and mining companies, we recommend the adoption in legislation of system prescribing voluntary and proactive disclosure by parties holding environmental

information. Such a system must make provision for mandatory disclosure of all authorisations, approvals, permits and licences required to lawfully conduct operations. These should always be in the public domain as minimum legal requirements, and should include: all environmental authorisations; EMPRs; any independent assessments of financial provision for rehabilitation and environmental liability; closure plans; audit reports; and all compliance monitoring reports. These should all also be made available, to anyone on request, for inspection and copying at the site of the activities, as well as on the authorisation holder's website.

#### Improving air quality regulatory regime for the mining industry

82. Owing to the substantial amount of dust that originates from mining operations and the greenhouse gases released from coal mines, it is strongly recommended that a provision explicitly requiring atmospheric emission licences for mining operations that will result in dust pollution and the release of greenhouse gases, such as methane and carbon dioxide, into the atmosphere.
83. In addition, we strongly recommend that the Dust Control Regulations are amended to make provision for a variety of tools for monitoring and controlling dust. The "Dustfall Standard" is not always the most effective tool.

#### Improving WUL application process and WULs for mining operations in close proximity to communities

The 2015/16 drought has demonstrated that when water resources become scarce, conflict may arise over access to available resources. In Somkhele and XYZ, mining companies enjoy what amounts to an exclusive right to use scarce water resources to the exclusion of communities. In order to avoid this from happening in the future, the DWS must require mining companies applying for water use licences to conduct an assessment of existing water uses by host communities and assess whether or not the volume of water used by host communities is likely to increase in future. If WULs are granted for mines in respect of an area occupied by communities, appropriate conditions must be built into those WULs that would ensure that communities have a water supply even in times of drought.

84. Thank you for the opportunity to make submissions. Please do not hesitate to contact us should you have any queries about our submissions.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**



per:

**Melissa Fourie**

**Executive Director**

Direct email: [mfourie@cer.org.za](mailto:mfourie@cer.org.za)