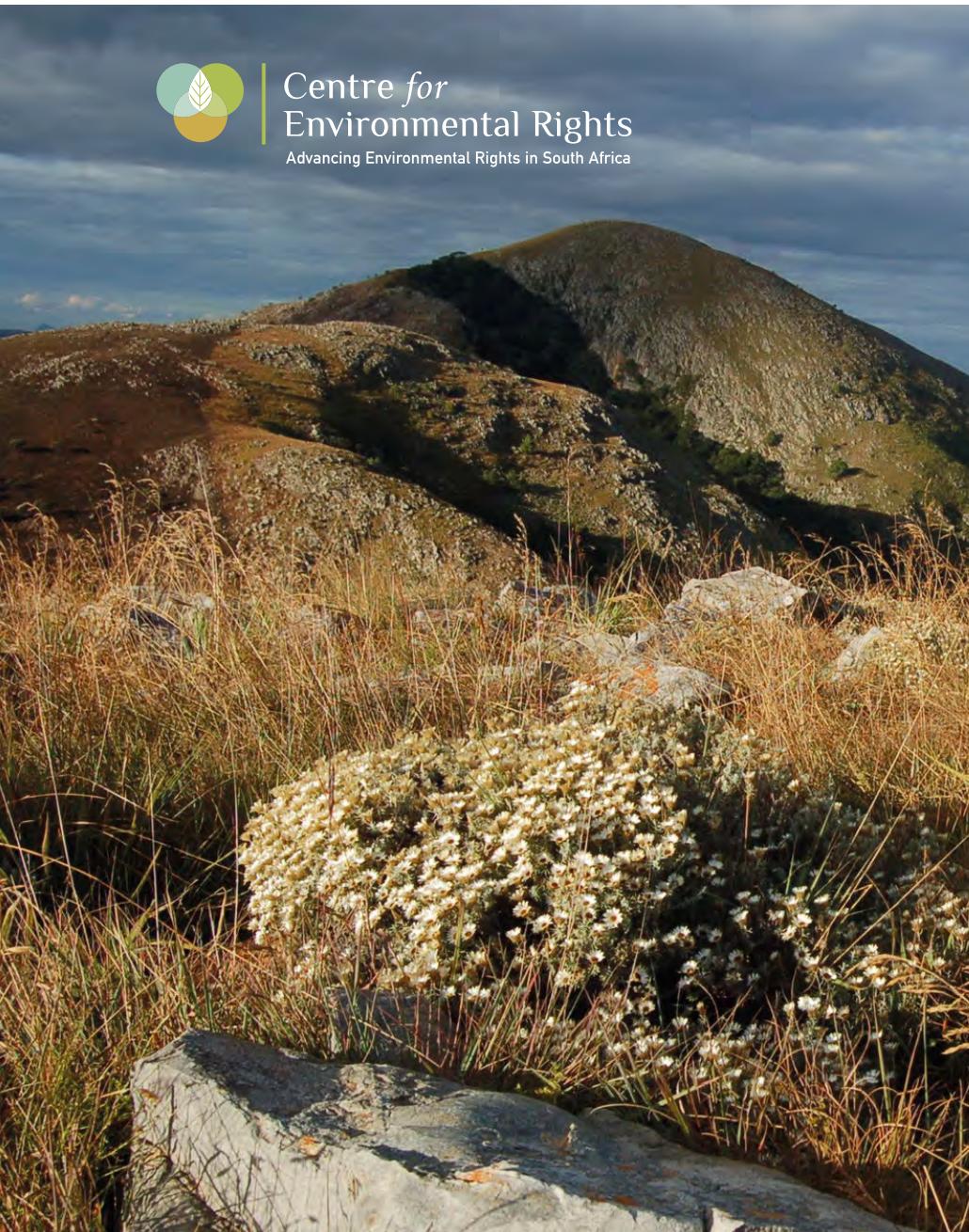




Centre for
Environmental Rights
Advancing Environmental Rights in South Africa



ZERO HOUR

**Poor Governance of Mining and
the Violation of Environmental
Rights in Mpumalanga**

May 2016

PG VII

EXECUTIVE SUMMARY



Mining is a destructive activity that poses significant threats to the environment, health and livelihoods. Managing these threats to avoid the violation of Constitutional rights requires strong, well-resourced and principled regulation.

For the past fourteen years, Mpumalanga has experienced a proliferation of prospecting and mining right applications, particularly for coal. Regulation by the two departments with primary responsibility for mining – the Department of Mineral Resources (DMR) and the Department of Water and Sanitation (DWS) – has been poor. Communities and the natural environment are paying an indefensibly high price as a consequence of such poor governance and failure by these departments to ensure that mining companies comply with the law.

Alarm bells are ringing in Mpumalanga. Civil society organisations, communities, researchers, farmers and other government agencies have expressed concern about the detrimental impacts of mining on water security, soil and food security, and the health, well-being and development prospects of communities in Mpumalanga. Many have implored the DMR and DWS to stem the tide by refusing to authorise mining and water use that will cause unacceptable pollution and degradation.

South Africa is a water-scarce country which is experiencing its worst drought in thirty years. Yet while Mpumalanga contains areas of immense hydrological importance – areas that are strategic for the country's water supply – the DMR and DWS continue to grant mining and water use rights in these areas, risking water security.

This report was compiled using an in-depth review of evidence spanning more than five years, including academic studies, reports, litigation and pre-litigation cases, access to information requests, portfolio committee submissions, and parliamentary questions and answers. It entailed field work in the province, community meetings and consultations, meetings with local government officials, and meetings with mining companies. Repeated attempts to engage the DMR's Mpumalanga Regional Office were unsuccessful.

Our conclusion is that Mpumalanga faces environmental threats that will have dire consequences for South Africa's future prosperity. These are some of the reasons:

- By 2014, 61.3% of the surface area of Mpumalanga fell under prospecting and mining right applications. Mining involves the removal of huge quantities of topsoil, essential for cultivation. A mere 1.5% of SA's soils are considered high potential, and 46.6% of these are found in Mpumalanga. If mining continues at its current rate, around 12% of SA's total high potential arable land will be ruined.
- On the Mpumalanga Highveld, air quality is among the worst in the world. Air pollution from mining can be caused by particle emissions from activities such as processing, blasting, wind erosion of overburden, and dust entrainment

from haul trucks. With 5 000 coal trucks using Mpumalanga's roads daily, dust from mine haul roads contributes an estimated 49% of the nitrogen dioxide in the Highveld Air Pollution Priority Area.

- Mpumalanga occupies 6% of the country's land surface, but it holds 21% of its plant species. Nearly a quarter of its vegetation types are nationally gazetted as threatened. Nevertheless, 76% of Mpumalanga's grasslands have been targeted by mining and prospecting applications.
- In 2015, there were 239 operating mines and 788 derelict and ownerless mines in Mpumalanga, yet only 5 officials in the DMR were designated to monitor compliance with and enforcement of environmental laws at these mines. In 2015 the DWS employed 2 officials in Mpumalanga to perform both compliance monitoring and enforcement functions.
- As at the first quarter of the 2014/2015 financial year, mining contributed only 4.8% to the province's employment.

Mining-affected communities are exposed to water, soil, noise and dust pollution – causing ill health – and almost always experience social disruption ranging from increased crime to forced resettlement. Often the most vulnerable communities suffer the worst of these consequences: settlements are frequently located in close proximity to mines; houses crack from blasting operations; and some settlements are perilously situated above or close to abandoned mines, and collapse when subsidence occurs. With environmental non-compliance left unchecked, mines can continuously leach toxic water into ground and surface water, on which many depend in the absence of piped water.

Key findings

The Constitution confers on everyone the right to an environment not harmful to their health or well-being, and to have the environment protected for future generations. The Constitution also guarantees rights that include the right to life, to sufficient water and food, to just administrative action, to access to information, and to dignity. In this report, we provide evidence in support of our overall allegation that the DMR and the DWS are violating constitutional rights in Mpumalanga, and allow the violation of rights by mining companies.

Some of this report's main findings are listed below. While the evidence for these relate to mining in Mpumalanga, many are also true for other provinces in South Africa where extensive mining takes place:

- The DMR ignores comprehensive spatial planning and designation of sensitive, vulnerable and important areas. This has placed South Africa's "water factories" or strategic water source areas at risk.
- The DMR grants rights without having regard to cumulative impacts on water resources, biodiversity, air quality, and food security, nor to the health or well-being of affected communities, despite the consideration of these factors being required by law.

- The DMR has failed to take steps to use existing law to demarcate sensitive and critical areas, or to refuse prospecting and mining in these areas.
- The DMR unlawfully grants rights to companies already in violation of mining legislation.
- Appeals, lodged by interested and affected parties against the granting of rights and licences in inappropriate areas, are not being decided in accordance with the law. This places an enormous burden on communities and public interest organisations to challenge these poor decisions in court.
- There are not enough qualified and experienced officials in the DMR and the DWS to ensure the enforcement of legislation and the protection of rights. Moreover, officials are not incentivised to make decisions responsibly in compliance with the Constitution and empowering statutes.
- Water use licence conditions are often weak and inappropriate and enforcement by DWS is negligible.
- The DMR and the DWS perpetuate the legacy of pollution and degradation at derelict and ownerless mines by not securing adequate financial provision for rehabilitating damage to the environment and water resources.
- As a result of inadequate enforcement, mining companies face few or no consequences for their environmental crimes, committing violations with impunity, and transferring the cost of those crimes to the taxpayer.
- The culture of secrecy plaguing the mining industry, facilitated by regulators, hides noncompliance by mining companies with the law and allows them to misrepresent their compliance status to investors. It also disempowers affected communities who need that information to defend their rights.
- The mining industry continues to benefit from a special regulatory regime implemented by the DMR rather than environment authorities, like other industries. The conflict of interest in the DMR's mandate, to promote mining, and to regulate its environmental impacts, fundamentally compromises effective regulation of the detrimental impacts of mining.

Key recommendations

1. Remove responsibility for environmental regulation of mines from the DMR, and have mining governed by environmental authorities — as is the case for all other industries.
2. Implement legal protection for areas in which mining would be too harmful, giving legal certainty to licensing authorities, mining companies, communities and civil society organisations. Priority should be given to protection of South Africa's "water factories".
3. Commit to licensing decisions that are informed by science, that are responsive to the views and concerns of environmental authorities and affected communities, and that take into account the compliance history of mining companies.

4. 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 the transparent reporting of results.
5. Elevate the legal status of communities affected by mining so that their rights and custodianship of the environment, on which their livelihoods depend, are respected by mining companies, the DWS and the DMR.
6. Ensure that communities and other I&APs are given opportunities to participate in water use licence application processes, by aligning the National Water Act, 1998 with the national environmental management principle that all I&APs should be given an opportunity to participate in environmental decision-making.
7. Adopt a transparent approach to information about mining, including publication of all licences and compliance data by the DMR and the DWS, and by mining companies themselves.

Immediate action must be taken to avoid the ultimately disastrous consequences for the province and the broader South African public. It is time for the DMR and the DWS to act decisively, to prioritise the people and environment in Mpumalanga, and to hold mining companies liable for their actions.