

Compensation

Although the current practice of mining companies and the Department of Mineral Resources does not require a community's consent in order to mine on their land, section 54 of the Mineral and Petroleum Resources Development Act states that a mining company must compensate landowners and occupiers that experience any form of hardship from mining. So if a community is relocated and they lose agricultural land or their houses are damaged or they experience any other losses, the mining company must compensate them for this loss.

However, there is a large problem with the current method of compensation.

A mining company does not have to finalise compensation before it starts mining.

Compensation processes only begin in two situations, in terms of the legislation. Both situations require the initiative of the community:

The first situation is where a community is blocking the mining company from accessing the land. The mining company can then notify the Regional Manager in the Department of Mineral Resources that the community is blocking their access. If the Regional manager believes that the community has suffered or is likely to suffer damage as a result of mining, the manager will order the community and mining company to negotiate compensation.

In the second situation, the community notifies the Regional Manager that they have suffered or are likely to suffer any loss or damage resulting from mining. The Regional Manager will investigate the situation and, if they believe that damage has or will occur, they will order the community and mining company to negotiate compensation.

So that is the process laid out in the law but how does it actually work on the ground?

Most compensatory deals do not go through the legislated process; Department officials are not normally involved. The mining company and community negotiate, on their own, at the same time that the mining company begins operations on community land, without the community being able to stop the mining company. This process predominantly takes place on unequal footing, where the mining affected community feels that it must accept what the mining company is offering or risk losing compensation altogether. The community may also feel pressured to accept inadequate compensation because the mining company cannot encroach

The South African Human Rights Commission has found that "There are no formal guidelines or oversight provided for the calculation of compensation and the finalisation of compensation agreements... Relocations are often carried out before compensation agreements are reached on surface land leases, livestock, crops or housing."

The government should make sure that compensation is required before a company can start mining. This would allow communities to negotiate with mining companies on a more equal footing.

For instance, Parliament could amend the Mineral and Petroleum Resources Development Act to state that relocations and adequate compensation must occur before mining may start, so that communities are able to negotiate without mining encroachment on their land. The Executive could

also get involved by amending the Regulations to the Act or by writing policy which states that a condition must be included by the Department of Mineral Resources in every mining right and/or environmental authorisation that relocation and compensation must occur before any mining commences.