

### **Mining rights & Consultation:**

In order to mine, a mining company is required to get a mining right from the Department of Mineral Resources. A mining right holder has the right to carry out any activity additional to mining, which is required for the mining operation in question. This includes freely entering the land for which the mineral right was granted, relocating owners or occupiers of the land, building anything required for prospecting or mining, or using water located on the land. But, for some of these activities, the mining company may have to get other authorisations as well.

In terms of the Mineral and Petroleum Resources Development Act, the Mineral and Petroleum Resources Development Act, a mining company does not have to own the land and a landowner or occupier cannot stop a mining company from mining on their land, as long as the company has a mining right. This is the position of the Department of Mineral Resources and mining companies. However, the Interim Protection of Informal Land Rights Act, IPILRA, states that communities have the right not to have their informal land rights deprived without their consent. If one takes this Act into account, they cannot be forced to have mining on their land without their consent. The Department and mining companies believe that the Mineral and Petroleum Resources Development Act overrides the Interim Protection of Informal Land Rights Act and, therefore, a community's consent is not needed before mining happens on their land and they are displaced.

This issue is currently being argued before South African courts. Justice and equitability would dictate that our courts find that communities must have the right to say no to mining.

Even if mining companies do not have to get the consent of a community, the mining company does have to consult with a local community as a group of landowners, occupiers or interested and affected parties. A mining company must also compensate landowners and occupiers that experience any form of hardship from mining.

Consultation means that mining companies that want to mine must hold meetings with a community that will be affected by the mining. Such meetings must include information on what the prospecting or mining operation will entail and must aim to reach an agreement that satisfies both the mining company and community. Guidelines provided by the Department of Mineral Resources do not provide adequate information on how consultations should be carried out. The SAHRC has found that the Department of Mineral Resources "has not been sufficiently involved in community consultation processes and there is insufficient time given to communities to undertake decision making processes as required by their customary law."

Often, the strategy of mining companies to secure rights to mine in the former homeland areas has involved their incorporation of "chiefs as junior partners" which has enabled them to "join the ranks of the BEE elite." Some chiefs have been co-opted by mining companies and there is a prevailing belief amongst mining companies and the Department of Mineral Resources that consulting with chiefs is sufficient for complying with consultation requirements in the legislation. However, traditional leaders do not have the "sole authority to represent rural people in negotiations with mining houses" and individual agreements with mining companies, without broader community consultation, are not valid.

The consultation guidelines must be improved to include a more extensive standardised framework for consulting with communities that takes into account the realities of consulting with traditional communities, not just traditional leaders.