

Residential, Agricultural and Grave Relocation

Mining operations are often intrusive and impact heavily on the land which is being mined. Mining often involves massive explosions, large-scale removal of land as well as water, air and noise pollution. The homes of people living near or on land that is being mined often become uninhabitable. As a result, mining companies choose or are ordered to relocate people severely affected by mining. As we covered in another video, the current practice by the government and by mining companies does not require communities' consent in order to begin mining.

There are no South African guidelines that speak directly to the relocation of households and compensation for loss of agricultural land. However, environmental law requires that mining companies research and consult with affected parties in order to identify the social impacts of mining operations, which would include any resettlement that must occur. The mining company must then produce a plan which shows how it intends to deal with the relocations. The Mineral and Petroleum Resources Development Act also states that mining companies must compensate land owners and lawful occupiers for any loss or damage resulting from mining operations. It is clear that consultation and compensation for residential and agricultural relocation are compulsory obligations for mining companies to carry out.

The 2010 Mining Charter requires that mining companies engage with communities in a manner that is consistent with international best practices, such as the International Finance Corporation guidelines. International law and international best practice requires community consent. The Interim Protection of Informal Land Rights Act also requires communities' consent if their informal rights to land are to be deprived. Mining companies should get the informed consent of residents before they are relocated. However, obtaining residents consent does not always happen. Residents are often coerced into relocation agreements, which does not constitute free, prior and informed consent. They feel that they cannot stop mining from happening on or near their land and their livelihoods have are being severely impacted by the mine. Therefore, they often accept low compensation and do not resist being resettled.

When residential relocation is necessary, grave relocation is often necessary as well. Grave relocation is, therefore, a frequent side-effect of mining. An application for environmental authorisation must include an evaluation of the impact of ancestral grave relocation and the method of relocation must be approved. Thus, environmental authorisation must be approved before ancestral graves can be moved. If graves are older than 60 years and are situated outside a formal cemetery, then additional authorisation is required. A mining company will then have to obtain a permit granted by the South African Heritage Resources Agency, who must be satisfied that the mining company has "made a concerted effort to contact and consult communities and individuals" connected to the graves. The law is contradictory, at this point.

The National Heritage Resources Act requires consent of the individuals connected to the graves in order for the South African Heritage Resources Agency to approve an application to relocate graves. However, the related regulations do not require such consent, only requiring that agreement consent is sought, not that it is granted. The regulations should be amended to align with the legislation that they come from.

There is a lot of legal authority that affected peoples' consent is required. However, companies' practice often seems to disregard this. It is questionable whether free and informed prior consent is often obtained. The government needs to play a greater role in ensuring that people are not coercively removed from their homes.