

Corporate Social Responsibility: Bridging the Gap Between Wealth and Welfare in South Africa

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Abstract

This article investigates the persistent socio-economic marginalization of mining communities in South Africa despite the industry's significant contribution to national GDP and employment. It explores how Corporate Social Responsibility (CSR), when underpinned by legislation such as the Mineral and Petroleum Resources Development Act (MPRDA) and the Mining Charter, can be a viable mechanism to bridge the gap between mining-generated wealth and community welfare. The article outlines the historical and contemporary conditions of mining communities, marked by poverty, underdevelopment, environmental degradation, and systemic inequality. Through case studies, human rights reports, and legal analysis, it exposes the dissonance between the legislative intent of community upliftment and the lived realities of affected populations. Central to this discussion is the role and failure of Social and Labour Plans (SLPs), which are legally mandated but poorly implemented, monitored, and understood. Government inaction and weak regulatory enforcement exacerbate the failures of mining companies to honour their CSR obligations. The article calls for a reimagined CSR framework that is enforceable, participatory, and transparent, emphasizing that meaningful consultation, sustainable development, and socio-economic rights must guide future mining operations. Ultimately, it advocates for an integrated approach that aligns corporate accountability with constitutional mandates to foster equity, dignity, and development in historically marginalised communities.

Keywords : Corporate Social Responsibility (CSR); mining communities; Mineral and Petroleum Resources Development Act; South Africa; socio-economic inequality; sustainable development; Social and Labour Plans (SLPs); environmental justice; mining charter; human rights violations.

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1. Introduction

The mining sector plays a significant role in South Africa’s economic

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development.³ It contributes significantly to the Gross Domestic Product (hereunder referred to as GDP),⁴ and it serves as the economic backbone of several towns around the nation.⁵ It has had tremendous impact on mining communities and carries with it economic, environmental and social consequences on a local level, provincial and national level.⁶ The plight faced by these communities is multifaceted and includes failure of development, and the violation of human rights that are enshrined in the Bill of Rights.⁷ South Africa is one of the most unequal societies in the world, and challenges faced by mining communities are made more blatant and vulgar by the fact that the areas within which they are located have significant mineral wealth.⁸ Despite the existence of such mineral wealth, the economic benefits of these mining operations do not seem to trickle down to the impoverished communities.⁹ There is prevalence of unemployment, underdevelopment and poverty.¹⁰ The existence of these challenge post the 1994 dispensation, the enactment of the Mineral and Petroleum Resources Development Act 22 of 2008 (MPRDA) and mining charters is a cause for concern. This article will focus primarily on the provisions of the MPRDA that aims to address the socio-economic development of mining communities and the challenges and issues faced by mining communities. It will further consider whether the legislative framework regulating mining is sufficient to protect the socio-economic interests of mining communities. This article explores the concept of Corporate Social Responsibility (hereunder referred to as CSR) and its relevance to the South African mining landscape and how CSR can be used to address some of the challenges faced by mining communities and attempts to find a solution premised primarily on CSR.

2. Socio-Economic Conditions of Mining Communities

The mining industry operates in a manner that is invasive and can have detrimental impact on mining communities.¹¹ The picture painted of mining

³ Cole, Megan J., and Jennifer L. Broadhurst. "Sustainable development in mining communities: the case of South Africa's West Wits Goldfield." *Frontiers in Sustainable Cities* 4 (2022): 895760.

⁴ Statista Research Department (2023), <https://www.statista.com/statistics/1121214/mining-sectors-value-added-to-gdp-in-south-africa>, accessed on 10 March 2025.

⁵ PJK Leeuw "Determination of an Employment Estimator Formula in Upstream Industries Due to Mining Technologies in South Africa" (Doctoral Thesis University of the Witwatersrand 2021) 2, <https://wiredspace.wits.ac.za/server/api/core/bitstreams/384d0db8-b471-4229-bc6c-a7039c2c355a/content>, accessed on 10 March 2025.

⁶ Dikgwatlhe, P., and F. Mulenga. "Perceptions of local communities regarding the impacts of mining on employment and economic activities in South Africa." *Resources policy* 80 (2023): 103138.

⁷ One only needs to go to areas where mining operations are carried out to see the horrible conditions under which mining communities and communities affected by mining endure.

⁸ Dikgwatlhe, P., and F. Mulenga, *op. cit.*

⁹ Ibid.

¹⁰ Anri Heyns, "Empowerment Through Mine Community Development: How the Politics of Development Perpetuates Poverty in Mining Communities." (Doctoral thesis University of Cape Town), <https://open.uct.ac.za/items/76a06e74-3c93-4ce4-9c96-1323b95ec02b>, accessed on 10 March 2025.

¹¹ Selo, Pl, and Vm Ngole-Jeme. 2022. "Community Perceptions on Environmental and Social Impacts of Mining in Limpopo South Africa and the Implications on Corporate Social Responsibility." *Journal of*

communities appears to be in contrast with the fact that the mining industry contributes significantly to the economy of South Africa. In 2023, the industry contributed an added value of approximately 202.05 billion South African Rands (around 11.18 billion U.S. dollars) to the country's Gross Domestic Product (GDP).¹² The mining trade provided direct employment to almost half a million people in South Africa.¹³ Despite this figures, there is seemingly a gap between the sector and the communities from which mining operations are carried out.¹⁴ This is because the tale of mining communities is characterised by impoverishment and exploitation.¹⁵ This requires a thorough examination of whether there are inadequacies in the legislative framework and the regulations of mining operations within South Africa.

In 2016 the South African Human Rights Commission (SAHRC) published a report which painted the dire conditions within which mining communities and communities affected by mining find themselves in.¹⁶ The report indicated that despite the existence of regulations and legislation, mining communities continue to experience high levels of poverty and systematic inequality, which, in turn, reinforces the notion that mining operations only benefit mining companies and the State, to the detriment of these communities.¹⁷

The report further indicated that the current legislative and policy framework has the potential to foster social and economic development through mining; however, there is a discord between the legislative position and the lived reality of South Africans in mining communities.¹⁸ The report also highlighted that the current position is that mining companies and corporations enjoy the biggest slice of the cake, while mining communities have to rely on mere crumbs for survival.¹⁹ As such mining communities continue to experience significant levels of poverty and systematic inequality.²⁰ The report does not place the blame solely at the feet of mining companies, but also extends the blame to the government and its failure to properly regulate the sector.²¹

The report identifies a number of challenges faced by mining communities,²² including the failure of municipalities in zoning mining activities. It is common to see

Integrative Environmental Sciences 19 (1): 189–207, p. 190, doi:10.1080/1943815X.2022.2131827.

¹²<https://www.statista.com/statistics/1121214/mining-sectors-value-added-to-gdp-in-south-africa/>, accessed 17 January 2025.

¹³<https://www.statista.com/statistics/1121214/mining-sectors-value-added-to-gdp-in-south-africa/>, accessed 17 January 2025.

¹⁴ P.F Ledwaba and N Mutemeri “Institutional Gaps and Challenges in Artisanal and Small Scale Mining in South Africa.”, *Resource Policy*, Volume 56, June 2018, pp. 141-148, p. 142, <https://doi.org/10.1016/j.resourpol.2017.11.010>.

¹⁵ Cronjé, Freek, and Charity S Chenga. 2009. “Sustainable Social Development in the South African Mining Sector”, *Development Southern Africa* 26 (3): 413–27, p. 414, doi:10.1080/03768350903086788.

¹⁶ National Hearing on the underlying Socio-Economic Challenges of Mining Affected Communities in South Africa. A report by the South African Human Rights Commission 13 -14 September 2016.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

mining communities residing dangerously close to the mines, which can be hazardous to their health, safety, and well-being. This is in violation of their environmental rights as enshrined in section 24 of the Constitution of the Republic of South Africa, 1996.²³

The Commission also found that mining companies restrict compensation for reallocation to the physical structure.²⁴ There is continuous exploitation of mining communities and the fault lies not only with the mining companies, but also with the government itself.²⁵

The picture was reflected as direr in 2023; in 2022, Centre of Legal Studies (CALs) investigated how mining activities affect mining communities in the Sekhukhune area, Limpopo Province.²⁶ The focus of the report was to examine compliance with the Social and Labour Plans (hereunder referred to as SLPs) of the three mining companies operating in the area and how failures of these companies to comply with SLPs has led to the violation of human rights such as the right to access to healthcare, the right to water, education and livelihood.²⁷ The companies involved in the report were Twickenham mine, owned by Anglo-American, Marula mine, owned by Impala Platinum Holding and Sefateng Chrome mines. The report further examined the failure by the Department of Mineral Resources (DMER) to adequately regulate the planning, licencing, compliance, monitoring and enforcement of SLPs.²⁸ The investigation found that the mining operations in the area affect the mining communities to an extent that the lived realities of these communities is directly linked to the mining operations in the area.²⁹ The lived experiences of these communities presented an undesirable picture of negative environmental, social and economic impact. It highlighted the social ills associated with mining and how it perpetuates gender inequality.³⁰ All these challenges exist in spite of the MPRDA and the Mining Charter which have the objective of improving the socio-economic development of mining communities and communities affected by mining.

3. Legislative Framework for Mining and Community Development

The MPRDA is a comprehensive piece of legislation that provides a legal framework for the exploration and exploitation of mineral and petroleum resources in South Africa. This part of the article is not aimed at providing a critical appraisal of the

²³ Section 24 (a) of the Constitution provides that "everyone has the right to an environment that is not harmful to their health or well-being".

²⁴ National Hearing on the underlying Socio-Economic Challenges of Mining Affected Communities in South Africa. A report by the South African Human Rights Commission 13-14 September 2016.

²⁵ Sethulego Matebesi, Lochner Marais, "Social Licensing and Mining in South Africa : Reflections from Community Protests At a Mining Site." *Resource Policy*, Volume 59, December 2018, pp. 371-378, p. 373. <https://doi.org/10.1016/j.resourpol.2018.08.009>.

²⁶ *Unearthing the Truth: How Mine-Field Communities in the Sekhukhune Region of South Africa*. Centre for Legal Studies (CALs) 2022 11.

²⁷ *Ibid*.

²⁸ CALs 2022 11.

²⁹ CALs 2022 7.

³⁰ CALs 2022 10.

Act in its entirety. Rather, it deals with those provisions that speak to responsible mining and can form the basis for CSR for mining companies. Notwithstanding this stated aim, where necessary, incidental provisions are referred to.

From the beginning, the MPRDA makes reference to the importance of promoting the development of mining communities and the responsibilities of mining companies.³¹ It recognises that mining companies have a duty to take CSR initiatives to improve South Africa and the communities affected by mining. Section 2(f) of the Act provides that the object of the Act includes, but is not limited to promote employment and advance the social and economic well-being of all South Africans; Give effect to Section 24 of the Constitution by ensuring that the mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development; and ensure that the holder of mining and production rights contributes towards the socio-economic development of the area or communities in which they operate.

Equally important to this discussion is the Mining Charter that has the MPRDA as its foundational legislation and critical to the issue of rights and responsibilities in the extractive industry. As stated already, the MPRDA was enacted in 2002 to regulate the exploration and exploitation of minerals and petroleum resources. The objectives of the MPRDA, include promoting equitable access to the country's mineral and petroleum resources, and ensuring that these resources are exploited in a sustainable manner that benefits all South Africans. In terms of Section 3(1) of the MPRDA, the mineral and petroleum resources of the country are the common heritage of the people of South Africa. The Minister³² is empowered by the Act to grant or refuse rights relating to the exploitation and exploration of mineral resources.³³ In exercising these powers and duties, the Minister must ensure the sustainable development of South Africa's mineral and petroleum resources within a framework of national environmental policies, norms, and standards and promoted, while promoting economic and social development at the same time.³⁴ This section advocates for the rights of mining communities to economic and social development in a sustainable manner.

It is argued that in the context of CSR, and the rationale of this article, section 25 of the MPRDA is important as it provides duties and obligations to those who hold mining rights. The duties include, but are not limited to, the following:

- a) The duty to comply with the provisions of the MPRDA and any other relevant legislation;
- b) The duty to comply with the requirements of the approved environmental management plan;
- c) The duty to comply with the requirements of the social and labour plan (SLP);
- d) Pay state royalties;
- e) The duty to submit prescribed annual reports detailing their compliance with

³¹ Section 2 (i) Provides that the act is meant to ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.

³² Section 1 of the MPRDA defines Minister as the Minister of Minerals and Energy.

³³ Section 3 (2) of the MPRDA.

³⁴ Section 3 (3) of the MPRDA.

the SLP;

- f) The duty to comply with the requirements of the social and labour plan (SLP);
- g) Pay state royalties;
- h) The duty to submit prescribed annual reports detailing their compliance with the SLP.

It is submitted that the requirement on SLP fosters CSR. The SLP is a requirement under the Act for mining companies to implement CSR initiatives in the communities in which they operate. There are several cases in South Africa that have dealt with the relationship between MPRDA and CSR. In *Xstrata Alloys (Pty) Ltd v SFF Association and Others*,³⁵ for example, Xstrata mining company was challenged for failing to comply with its obligation to develop and implement SLP under the MPRDA. The court ruled that Xstrata had not complied with its obligations under the MPRDA and ordered the company to revise its SLP and implement the necessary CSR initiatives. This must be read with the case of *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Ltd and Others* where the court considered the obligation of mining companies under the MPRDA to consult with affected communities before starting operations, and concluded that the mining company in question had failed to consult adequately with the affected communities and had not implemented sufficient CSR initiatives to address the concerns of the communities.

Despite the case law and provisions on SLP above, a report by ActionAid South Africa paints a very grim picture of the conditions of mining communities.³⁶ The report indicates that 91% of the community members interviewed did not know what an SLP is. About 85 percent did not know of any community structure that engaged mining companies on matters relating to SLP. Almost 95 percent of the community has never seen an SLP.³⁷ The report gets worse by indicating that 79 percent of the population in the mining communities involved in the study was of the view that mining has been a negative endeavour in their community and they have not received any rewards.³⁸ A further 8% indicated that mines only brought negative benefits, which included sickness, dispossession of their land, and damage to their environment.³⁹ Only 13% were of the view that there were some positive benefits in having mines in their communities.⁴⁰ Such benefits included roads, clinics, and employment. The most prudent question is where the problem lies. The post-democratic position of mining communities remains virtually the same as pre-democracy. Environmental damage, lack of socioeconomic development, and sickness remain the order of the day. According to the report, an estimate of 5.9 billion dollars that was earmarked for the development of

³⁵ *Xstrata Alloys (Pty) Ltd v SFF Association and Others* [2012] ZASCA 20.

³⁶ Mining in South Africa 2018 “Whose Benefit and Whose Burden”. ActionAid South Africa Social Audit Baseline Report p. 12, <https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/environment/resources/Social%20audit%20report.pdf>, accessed on 5 March 2025.

³⁷ Ibid, p. 12.

³⁸ Ibid, p. 13.

³⁹ Ibid, p. 13.

⁴⁰ Ibid, p. 13.

mining communities did not reach the community.⁴¹

Mining communities also have the rights to SD. The concept of sustainable development is defined by Section 1(xxix) of NEMA, which provides that sustainable development is an integration of social and economic and environmental factors into planning, implementation, and decision-making to ensure that development serves the present and future generations. It has also been defined as a concept that is multipolar, multidimensional, and multiscalar.⁴² SD includes several competing factors, such as economic development, environmental protection, and equity.⁴³ Therefore, the mining community has a right to sustainable development. In terms of Section 5 (4) (c), no person may prospect for or remove, mine or conduct a technical cooperation operation, reconnaissance operation, explore or produce any mineral or petroleum resources or the commencement of any work incidental thereto in any area without notifying or consulting with the landowner or the lawful occupiers of the land in question. This requirement is echoed in several sections of the MPRDA. The preamble of the Mining Charter indicates that the primary objectives of the MPRDA are to ensure the achievement of the government's objectives to address historical socioeconomic inequalities, to ensure broad economic empowerment and meaningful participation of historically disadvantaged people (HDP) in the mining industry. The Act provides for equitable access to the mineral resources of the country and sustainable development of South Africa's mineral resources. These rights were viewed as a transformative constitutional object of advancing equality, dignity, and freedom.⁴⁴

3.1. Mining Communities Rights to Consultation and Participation

Notwithstanding the overarching importance of the MPRDA and the Constitution on CSR, it is worth noting that other legislation such as NEMA and other sector-specific legislation⁴⁵ deals with the issue of public participation and broad consultation in environment-related activities. Worth noting from the onset is the Constitutional Court's appreciation of consultation and participation in environmental issues or matters that affect communities and their environment when it's stated that: *One of the more positive features of our nascent democratic order is vibrant, vigilant and vociferous civil society participation in public affairs. In a truly broad based participatory democracy characterised by that kind of active participation, our Constitution's aspirations and values find meaning in the lives of the populace for*

⁴¹ Ibid, p. 13.

⁴² AA Du Plessis, „The "brown" environmental agenda and the constitutional duties of local government in South Africa: a conceptual introduction”, *Potchefstroom Electronic Law Journal*, vol. 18, no. 5, 2015, p. 1846-1880, DOI: 10.4314/pelj.v18i5.20

⁴³ Ibid, p. 1847.

⁴⁴ Humby T., „The Bengwenyama Trilogy: Constitutional Rights and the Fight for Prospecting on Community Land”, *Potchefstroom Electronic Law Journal*, 2012, vol. 15, no. 4, pp. 166-231, p. 168, doi: 10.4314/pelj.v15i4.5.

⁴⁵ For example, the National Water Act 36 of 1998; the National Environmental Management Waste Act 59 of 2008; Biodiversity Act 10 of 2004; the National Environmental Management: Protected Areas Act 57 of 2003; and the Air Quality Act 39 of 2004.

whose benefit the Constitution was ultimately enacted. *Voices is that of the environmental interests lobby.*⁴⁶

The MPRDA has granted the State the custodianship of mineral resources in the Republic of South Africa.⁴⁷ This means that the State has the right to grant the rights to exploit the mineral resources of the country to individuals and corporations who apply and meet the requirements as provided by the MPRDA. One of these requirements is that mining companies must have the consent of landowners and those affected by mining operations before such rights are granted. Mining companies must have the consent of the mining communities before engaging in mining operations.⁴⁸ The section regulates mineral resources in such a way that the state is responsible for administering rights related to the exploitation of minerals to the benefit of the nation and the people of South Africa.⁴⁹

The concept of consultation is defined as two-way communication between the applicant and the community or the interested parties and affected, where the first seeks, listens, and considers the response of the latter, allowing openness in the decision-making process.⁵⁰ Consultation begets consensus and/or consent. The concept of consent is considered problematic within the context of an international law that was framed from colonial lenses.⁵¹ Adumosu-Ayanu argues that there must be free, prior, informed consent before mining operation commences within a community, including indigenous communities. The right to give free, prior, informed consent talks about the rights of indigenous people to self-determination. This right is recognised by international law. It has the potential to ensure that the rights of mining communities are protected and not violated.⁵²

⁴⁶ *Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others* 2023 7 BCLR 779 (CC) 1.

⁴⁷ Section 3 of the MPRDA.

⁴⁸ See section 5(4)(c) of the MPRDA, which provide that “no person may prospect for or remove, mine, conduct technical co-operation, reconnaissance operations, explore for, and produce any minerals or petroleum or commence with any work incidental thereto on any area without... notifying and with the land owner and lawful occupiers of the land in question” Section 10 of the MPRDA which provides that “within 14 days of accepting an application lodged in terms of section 16, 22 or 27, the Regional Manager must in a prescribed manner (a) Make known that an application for a prospecting right, mining right or mining permit - has been received in respect of the land in question and (b) Call upon interested and affected persons to submit their comments regarding the application within 30 days from the date of notice”. Section 16 (4)(b) provides that “any person who wishes to apply to the Minister for a prospecting right must lodge the application. If the Regional Manager accepts the application, the Regional Manager must within 14 days from the date of acceptance, notify the applicant in writing... to notify in writing and consult with the land owner and land occupier and any other affected party and submit the results the consultation within 30 days from the date of notice.” Section 22 (4)(b) of the MPRDA indicates that “if a Regional Manager accepts the application, Regional Manager must within 14 days from the date of acceptance notify the applicant in writing to notify and consult with interested and affected parties within 180 days from the date of the notice”.

⁴⁹ H. Mostert *Mineral Law Principles and Policies* 2012 Juta, p. 134.

⁵⁰ Guideline for Consultation with Communities and Interested and Affected Parties as Required in terms of section 10 (1) (b), 16 (4) (b), 22 (4) (b), 27(5)(b) and Section 39 of the MPRDA.

⁵¹ Ibironke T. Odumosu-Ayanu, „Indigenous Peoples, International Law and Extractive Industry Contracts”, *AJIL Unbound*, Vol. 109 (July 2015-May 2016), pp. 220-225, p. 220.

⁵² *Ibid*, p. 220.

The consultative process requires a good faith standard. The consultation takes into account the fact that mining leads to a grave and considerable invasion of the use and enjoyment of the land on which the prospecting or mining operations are about to begin.⁵³ The different notices and consultation requirements are indicative of the serious concern for the rights of the occupiers in the process of granting the rights. Humby indicates that in the case of *Bengwenyama* the Constitutional Court's (hereinafter referred to as the CC) affirmation of a good faith standard for public participation was important.⁵⁴ Good-faith consultation should require that mining applicants invest more time and money in the public participation process. Notable is that the process used in the *Bengwenyama*⁵⁵ case was grossly insufficient.⁵⁶ This failure to properly consult with mining communities is all too common. The SAHRC has identified some of the challenges faced by mining communities during the consultative process.⁵⁷ The Commission found that there are inconsistencies with the consultative processes performed by mining companies in various communities. The commission found that in some instances, the mining companies disregarded the duty to secure meaningful participation. The consultative processes were described as lacking legitimate representation, as not being sufficiently inclusive, did not accommodate the community, the information provided was not sufficient and key stakeholders were not included.⁵⁸

The MPRDA does not have guidelines on the consultation process that mining companies must comply with before embarking on mining operations. DMR provides guidelines for the consultative processes that mining companies must comply with when conducting communities and interested or affected persons.

Mining and mining operations harm land, which is sometimes irreversible.⁵⁹ The harm includes environmental harm and also affects the rights that landowners have to that property and how they relate and interact with such land. Therefore, the consultation process has to be rigorous to ensure that all stakeholders are aware of the plans of the mining companies and how they will benefit from the mining operations on their land. Taking into account the seriousness of mining operations, the DMR established guidelines for the consultation that mining companies who have an interest in mining or prospecting operations must comply with. It indicates that the rationale of the consultative process is to provide parties with information about the proposed prospecting or mining projects so that they can make informed decisions and to see whether some accommodation can be made if possible in so far as it relates to their rights to use and enjoy the affected properties is concerned. Consultations under the MPRDA require that engagements relating to the application for prospecting or mining

⁵³ Humby T., *op. cit.*, p. 177.

⁵⁴ *Ibid.*, p. 177.

⁵⁵ *Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* 2011 4 SA 113 (CC).

⁵⁶ Humby T., *op. cit.*, p. 177.

⁵⁷ SAHRC National Hearing on Underlying Socio-economic Challenges of Mining-Affected Communities in South Africa. 13-14 September 26 and 28 September, 3 November 2016 59.

⁵⁸ *Ibid.*

⁵⁹ Gavin Hilson, „An overview of Land Use Conflicts in Mining Communities”. *Land Use Policy*, Volume 19, Issue 1, January 2002, pp 65-73, p. 66, [https://doi.org/10.1016/S0264-8377\(01\)00043-6](https://doi.org/10.1016/S0264-8377(01)00043-6).

rights must be in good faith to reach accommodations that both parties find satisfactory.⁶⁰

The post-1994 mining sector and mining law, as indicated by the MPRDA and the Mining Charter, promote the participation of communities and parties affected by mining operations.⁶¹ The SAHRC has required that mining companies must provide proof of the following to prove that there was a consultative process: *i. Proof of notification; ii. Record of attendance; iii. List of issues raised by the parties ; iv. How such issues were addressed?; v. A list of affected and interested parties, vi. Identification of landowners; vii. Existence of a land claim on the property to be affected by mining operations; viii. Description of information provided by interested and affected parties, and x. Existing status of the cultural socioeconomic and biophysical environment and anticipated impact.*⁶²

According to the SAHRC, one of the issues in relation to the consultative process is that sometimes stakeholders are not involved in the consultation process. One of these challenges was that municipalities are not adequately consulted, and sometimes companies have predetermined SLP before consulting the interested and affected parties and getting information on the needs of the communities.⁶³ The SAHRC observes that although sometimes municipalities incorporate these SLPs into their Integrated Development Plans (hereinafter referred to as IDP), they do not always play an active role in ensuring that mining companies comply with their duty in terms of the MPRDA and that mining companies must consult with them. Sometimes communities are not even aware of the existence of SLPs.⁶⁴ Another challenge identified by the SAHRC was that sometimes mining companies only consult a small portion of the community or traditional authority.⁶⁵ This leads to the identification of projects that might not be in line with the needs and development goals of the community. The exclusion of a certain portion of the community caused discontent and discord within the mining community.⁶⁶

The contentious relationship between mining companies and mining communities was more evident in the long-running R14.25 million defamation suit before the Constitutional Court by Australian mining interests against six South African environmentalists and social activists. In this case, *Mineral Sands Resources Propriety Limited and Another v Reddell and Others*.⁶⁷

The main issues before the Constitutional court was whether the common law

⁶⁰ Guideline for Consultation with Communities and Interested and Affected Parties as Required in terms of section 10 (1) (b), 16 (4) (b), 22 (4) (b), 27 (5) (b) and Section 39 of the MPRDA.

⁶¹ Daniel Huizenga, „Governing territory in conditions of legal pluralism: Living law and free, prior, and informed consent (FPIC) in Xolobeni, South Africa”, *The Extractive Industries and Society*, Volume 6, Issue 3, July 2019, pp. 711-721, <https://doi.org/10.1016/j.exis.2019.01.003>.

⁶² SAHRC National Hearing on Underlying Socio-economic Challenges of Mining-Affected Communities in South Africa. 13-14 September 26 and 28 September, 3 November 2016 61.

⁶³ Ibid, p. 62.

⁶⁴ Ibid, p. 62.

⁶⁵ Ibid, p. 62.

⁶⁶ Ibid, p. 62.

⁶⁷ *Mineral Sands Resources Propriety Limited and Another v Reddell and Others* 2023 7 BCLR 779 (CC)

doctrine of abuse of process currently provides for a SLAPP suit defence and, if not, whether the law ought to be developed.⁶⁸ The Constitutional Court upheld the appeal and set aside the order of the High Court in favour of mining companies, the case is used in this study to demonstrate the challenges and controversies in the extractive industry.⁶⁹

It is submitted that it is concerning that SLAPP suits may become a favoured approach to silence mining communities and environmental protection interest groups.⁷⁰ As convincingly stated by Murombo and Valentine, consultation and participation is an essential tool to ensure that decisions that may significantly affect the environment are scrutinised and made from an informed point of view that is “recognised internationally as a core component of sustainable development.”⁷¹

When mineral resources are discovered in an area, the quality of life of the community is generally expected to be affected by the mining operation in the area.⁷² However, the opposite seems to be the case. Mining communities are synonymous with poverty, marginalization, and exclusion from the formal economy.⁷³ Many mining and mining-affected communities are plagued by several issues. Makua and Odeku state that mining can have the impact of devastating local ecosystems and destroying the culture and livelihood of mining communities.⁷⁴

Farrell *et al.* identified several issues that seem to be a common thread in mining communities.⁷⁵ The authors mentioned above conducted a study on a specific mining community, which is located in the Mogalakwena municipality, in Limpopo Province. There is a platinum mine operating in the area, under the RPM Mogalakwena section, which is owned by Anglo Platinum.⁷⁶ In 2009 the mine gained profits to the tune of R4 billion, while the community affected by mining operations has a socioeconomic context of poverty and historical exclusions, the remnants of the segregation perpetuated

⁶⁸ Ibid.

⁶⁹ Ibid. The Constitutional Court held that the SLAPP suit defence forms part of South African law and the defence requires more than what the Activists pleaded. The Court also held that the Mining Companies’ exceptions held good, as the Activists’ special pleas lacked the necessary averments to make out the SLAPP suit defence”.

⁷⁰ Murombo, Tumai, and Heinrich Valentine. 2011. “Slapp Suits: An Emerging Obstacle to Public Interest Environmental Litigation in South Africa.” *South African Journal on Human Rights* 27 (1): 82–106. doi:10.1080/19962126.2011.11865006.

⁷¹ Ibid, p. 86.

⁷² Farai Mtero, „Rural livelihoods, large-scale mining and agrarian change in Mapela, Limpopo, South Africa”, *Resources Policy*, Volume 53, September 2017, pp. 190-200, <https://doi.org/10.1016/j.resourpol.2017.06.015>.

⁷³ Heyns, Anri. "Mining Community Development in South Africa: A Critical Consideration of How the Law and Development Approach the Concept “Community” " *Law and Development Review*, vol. 12, no. 2, 2019, pp. 561-593. <https://doi.org/10.1515/ldr-2019-0022>.

⁷⁴ Makua M. Pretty, Kola O. Odeku, „Harmful mining activities, environmental impacts and effects in the mining communities in South Africa: a critical perspective”, *Environmental Economics*, Volume 8, Issue 4, 2017, p. 14-24.

⁷⁵ Leanne A. Farrell, Ralph Hamann, Eric Mackres, „A clash of cultures (and lawyers): Anglo Platinum and mine-affected communities in Limpopo Province, South Africa”, *Resources Policy*, Volume 37, Issue 2, June 2012, pp. 194-204, <https://doi.org/10.1016/j.resourpol.2011.05.003>.

⁷⁶ Ibid, p. 196.

during apartheid South Africa are still glaringly obvious in the area.⁷⁷ The area is characterized by a lack of social facilities, a high unemployment rate, and a lack of infrastructure development.⁷⁸ The major mining operations in the area began in 1993 when the mine entered into a lease agreement with the community that was signed by the traditional leaders of the community.⁷⁹ The terms and conditions of the lease agreement included but were not limited to the provision that, in exchange for the right to use the surface portion covered by the lease for mining operations, the mine will pay an initial lump sum amount, establish a trust for community development with an amount to the tune of R95 million and that the workforce must comprise 30% of the local population.⁸⁰

It was found that none of these promises have been complied with, despite the existence of legal frameworks that require mining companies to contribute to the socio-economic development of the areas in which they operate.⁸¹ There were allegations that if Anglo Platinum paid the money into the trust account, then these funds were used to enrich traditional leadership, as the community did not enjoy the benefits of the money, leading to tensions between the community and tribal leaders.⁸² The 30% employment rate was also not achieved, this was blamed on the low education levels in the Mogalakwena area.⁸³

An investigation by the SAHRC found that one of the challenges related to mining was that mining operations often begin before formal land use agreements are concluded. This has several disadvantages for the mining communities. The mining community loses bargaining power amongst others. In other instances, the mining communities withheld payment for surface rentals, while others paid the communities pending approvals.⁸⁴ Therefore, there is no consistency, and this disadvantages mining communities. Another challenge in mining communities is the issue of housing. SAHRC indicated that mining operations attract an increased number of people to mining communities and mining towns, specifically mine workers and those seeking employment opportunities in mines.⁸⁵ The provision of inadequate housing or no housing in certain instances leads to the development of informal settlements. As a direct result of this many miners live in shacks with no lighting or electricity, no refuse collection, no water, and no adequate sanitation.⁸⁶

Challenges affecting mining communities, especially customary communities, were identified in the case of *Baleni and Others v Minister of Mineral Resources and Others* whereby the court indicated that customary communities such as the applicant

⁷⁷ Ibid, p. 196.

⁷⁸ Ibid, p. 196.

⁷⁹ Ibid, p. 197.

⁸⁰ Ibid, p. 197.

⁸¹ Ibid, p. 197.

⁸² Ibid, p. 197.

⁸³ Ibid, p. 197.

⁸⁴ SAHRC National Hearing on Underlying Socio-economic Challenges of Mining-Affected Communities in South Africa. 13-14 September, 26 and 28 September, 3 November 2016 14.

⁸⁵ Ibid, p. 31.

⁸⁶ Ibid, p. 31.

tend to suffer disproportionately from the impacts of mining activities as they are directly affected by environmental pollution, air pollution, airborne diseases, loss of their farmland and grazing land, forced displacement and the loss of community amongst other things.⁸⁷ What happened in the case of Baleni is that the court was confronted with a matter relating to the rights of interested and affected parties as contemplated in the MPRDA.⁸⁸ The issues related to the rights of mining community located in an area with vast mineral resources. The applicant, which was the community, held informal rights to the land in question under the Interim Protection of Informal Land Rights Act 31 of 1996. The Applicants approached the Court seeking amongst others, an order declaring the community as interested and affected parties in terms of the Act.⁸⁹ It was their further contention that they are entitled to receive of a copy of the application as envisaged in sections 10(1) and 22(4) of the Act.⁹⁰ It also sought an order prohibiting the South African Government from awarding Respondents mining rights, until such time that the application has been furnished to the applicants and the required consultation has taken place and objection as provided in section 10(1) and 22(4) of the Act are duly noted.⁹¹

The issue of challenges faced by mining communities was addressed in the case of *Bengwenyama*.⁹² A notable challenge, for example, was that the DMR and the Regional Manager had failed to grant the community and the interested and affected parties' adequate notice of Genorah's application for a prospecting right, as required in terms of s 10 of the MPRDA.⁹³ Another issues were that Genorah had failed to consult with the community in accordance with the provisions of s 16(4) of the MPRDA.⁹⁴

Several procedural and substantive issues were raised in this case, which has established an important precedent when it comes to the consultative process that mining companies must undertake before commencing mining operations. The case notes the historical context within which the mining sector in South Africa is set. Access to natural resources of the country, such as land, water, and mineral resources, was subjected to the racial politics of the country. This discrimination took place in various forms, including but not limited to corporate ownership, discriminatory practices in labour, and unequal distribution of the costs of mining pollution.⁹⁵

It is apposite to note herein also that the relationship between mine communities and mining companies has always been a tumultuous one.⁹⁶

⁸⁷ 2019 (2) SA 453 (GP) para 19.

⁸⁸ 2019 (2) SA 453 (GP) para 24-27.

⁸⁹ *Baleni and Others v Minister of Mineral Resources and Others*, 28

⁹⁰ *Ibid*, 28.

⁹¹ *Ibid*, 28.

⁹² *Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* 2011 (4) SA 133 (CC).

⁹³ *Ibid*, 68.

⁹⁴ *Ibid*, 68.

⁹⁵ Humby T., *op. cit.*, 2012, p. 167.

⁹⁶ Sethulego Matebesi, Lochner Marais, *op. cit.*, p. 372

4. CSR Within the South African Mining Industry

The concept of CSR has various definitions⁹⁷ that may cause confusion with regard to the concept itself. In fact, there are several challenges attributed to the application of CSR in Africa.⁹⁸ There are misunderstandings attached to the concepts that allow corporations, including mining companies, to take advantage of this conundrum, either intentionally or without intention.⁹⁹ The struggle with this can be located in the fact that various synonyms are used interchangeably to define CSR although such synonyms might not necessarily define what CSR entails within a South African context.¹⁰⁰ This conundrum is demonstrated in several pieces of literature that tackle the interpretation and application of CSR responsibility in South Africa; an example of this is Acker's interpretation of CSR.¹⁰¹ The author seems to be using these synonyms interchangeably; the author indicates that advocates for good corporate citizenship tend to argue in favor of a positive correlation between CSR and corporate financial performance (CFP).¹⁰² The use of CSR and corporate citizenship do not mean the same thing. This was correctly observed by Cheruiyot and Onsado¹⁰³ who indicated that the synonyms used interchangeably with CSR include terms such as corporate responsibility, corporate accountability, corporate ethics, corporate citizenship, sustainability, stewardship, triple bottom line, corporate governance, and social and environmental obligations.¹⁰⁴ The plethora of definitions of CSR leads to the concept being vague, contestable, and fluid. This can sometimes lead mining companies treating this concept as a mere philanthropic endeavour rather than an obligation that they must incorporate into their operational plans and apply before exploiting mineral resources of a particular country or community. Already, there are scholars who indicate that CSR is not a philanthropic endeavour whilst on the other hand some scholars do not distinguish between the two.

There is no universal definition of CSR, and the main reason for this is that each community or country has its own definition of what it considers important and also has its own needs that are unique to the culture of a specific area.¹⁰⁵ The concept differs significantly and considerably in different countries and even in different continents.¹⁰⁶

⁹⁷ Howard Chitimira, Tumelo Sethunyane, „A legal analysis of the regulation and use of technology to promote corporate social responsibility of mining companies in Swartruggens community”, *Perspectives of Law and Public Administration* Volume 10, Special Issue, October 2021, p. 42-56.

⁹⁸ Ndong Ntoutoume, A.G. „Challenges of CSR in Sub-Saharan Africa: clarifying the gaps between the regulations and human rights issues”. *International Journal of Corporate Social Responsibility* 8, 2 (2023). <https://doi.org/10.1186/s40991-023-00079-3>.

⁹⁹ Cheruiyot, T.K. & Onsando, P., 2016. „Corporate social responsibility in Africa: context, paradoxes, stakeholder orientations, contestations and reflections”. *Corporate Social Performance in the Age of Irresponsibility-Cross National Perspective*, p. 89–110.

¹⁰⁰ Ibid, p. 91.

¹⁰¹ Ackers, B., „Ethical considerations of corporate social responsibility - A South African perspective” *South African Journal of Business Management*, Vol 46, No 1 (2015), p. 11-21.

¹⁰² Ibid, p. 13.

¹⁰³ Ibid, p. 13.

¹⁰⁴ Ibid, p. 13.

¹⁰⁵ Ibid, p. 13.

¹⁰⁶ Ibid, p. 13.

Although there are different definitions of the concept of CSR, Klopper and du Plessis¹⁰⁷ indicate that the definition by the World Bank might be more relevant. CSR is defined as the commitment of companies to contribute to sustainable economic development, working with employees, families, local communities and society in general to improve quality of life in ways that are good for business and development.¹⁰⁸ There are, however, challenges with the interpretation of CSR for the South African context.

It can be argued that the main challenge is not necessarily the definition of CSR, but distinguishing CSR from public relations to actual strategies and performance of corporations.¹⁰⁹ There is a growing call for corporations to contribute positively to the communities in which they operate and to ensure that such development is sustainable.¹¹⁰ To this end, they must also appreciate the distinguishable three levels of CSR which are as follows:

- Basic responsibilities refer to the technical and routine obligations;¹¹¹
- Organisational responsibilities are aimed at securing the wellbeing and needs of strategic stakeholders;¹¹²
- and Societal responsibility is the involvement of the wider community by assisting in the creation of a healthy overall environment that covers several things, including the welfare and prosperity of society.¹¹³
- South Africa has various legislation that relate to CSR but do not specifically define the concept itself. These legislation include the following: BBBEE Act 53 of 2003; Mineral and Petroleum Resources Development Act 28 of 2002;
- Promotion of Access to Information Act 2 of 2000;
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000;
- National Water Act 36 of 1998; Employment Equity Act 55 of 1998;
- Skills Development Act 97 of 1998;
- National Environmental Management Act 107 of 1998;
- Labour Relations Act 66 of 1995;
- Occupational Health and Safety Act 85 of 1993;
- Mine Health and Safety Act 29 of 1996.

These Acts make reference to CSR but fail to interrogate the concept, more in particular with regards to how CSR can contribute towards the socio-economic development of mining communities.

¹⁰⁷ Kloppers, Henk and Willemien du Plessis. 2008. "Corporate Social Responsibility, Legislative Reforms and Mining in South Africa." *Journal of Energy & Natural Resources Law* 26 (1): 91–119. doi:10.1080/02646811.2008.11435179.

¹⁰⁸ Ibid, p. 92.

¹⁰⁹ Ans Kolk, Rob van Tulder, „International business, corporate social responsibility and sustainable development", *International Business Review*, Volume 19, Issue 2, April 2010, pp. 119-125, p. 123, <https://doi.org/10.1016/j.ibusrev.2009.12.003>.

¹¹⁰ Ibid, p. 119.

¹¹¹ Victor Sibusiso Xulu, "The Analysis of the Extent and Effects of Politics on Kwazulu-Natal Secondary Schools", master dissertation, University of Zululand, p. 59, https://www.academia.edu/download/43711683/influence_of_politicc.pdf.

¹¹² Ibid, p. 59.

¹¹³ Ibid, p. 59.

5. Conclusion

The MPRDA is the principal piece of legislation that regulates the exploration and exploitation of mineral and petroleum resources in South Africa. The key provisions of the MPRDA stipulates that mining operations must be conducted in a socially and environmentally responsible manner and must contribute towards the socio-economic development of the communities in which they operate. However, the legislation, in particular the MPRDA, has not been without criticism. Amongst others, the MPRDA has been criticized for its lack of clarity and consistency, particularly with regards to the granting of mining rights and the role of the Minister. The article has identified several challenges facing mining communities. The legal framework regulating mining fails to address the challenges facing the mining industry. There is a need for the status quo change.

There is a plethora of legislation that regulate other aspects of CSR, but very few that focus on the socioeconomic development and the protection of the rights of dwellers of mining communities. In terms of regulations to the Companies Act 71 of 2008, for instance, CSR has been placed on companies and boards of directors must seriously take this into account in the company's operations. The overhauled Companies Act requires a juristic entity to appoint a social and ethics committee, and the Companies Act allow the Minister of Trade and Industry to prescribe certain provisions in regulation concerning a social and ethics committee.

One would have expected a strong normative CSR influence over extractive industries in their decision-making and how they relate to mining communities, given mining as the nerve centre of the South African economy and the myriad of challenged suffered by mining communities. But that has not been the case. Perhaps it is because the South African environmental law has somewhat been permissive when it comes to duties and responsibilities of corporations towards the environment. It is here recommended that there must be legislation that regulates the socio-economic development of mining communities through CSR. The legislation must create reflexive law undergird by CSR, which will meaningfully steer the decision-making process of the extractive sector to socio-economic protection and development of mining communities. The reconsidered legislation must make clear provisions on CSR especially with regards to involuntary displacement and relocation as a result of mining activities and the resultant compensation, as well as substantive and proven contribution by mining companies to the development of mining communities.

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