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COLLABORATIVE THOUGHT LEADERSHIP SERIES

ENVIRONMENTAL LIABILITY IN MINING: LEGAL RISKS BEYOND MINE CLOSURE

Executive Insight

Environmental liability does not necessarily end when mining operations cease. South Africa's environmental regulatory framework imposes ongoing obligations on mining right holders and provides multiple mechanisms through which accountability may be enforced.

Introduction

South Africa's mining industry remains a significant contributor to the national economy, accounting for approximately 6% of the country's nominal GDP.¹ The country possesses substantial mineral resources, including some of the world's largest platinum group metal reserves and a globally significant mining sector.² While mining continues to play an important role in economic development, employment creation and industrial growth, mining activities may also result in environmental impacts that require careful management and regulatory oversight.³

Environmental degradation, water contamination, air pollution, land disturbance and inadequate mine closure practices can negatively affect surrounding communities and

¹ Department of Mineral and Petroleum Resources "South Africa's Mining Sector Performance 2024"

<https://www.dmpr.gov.za/Portals/0/Resources/Publications/Mineral%20Economics/Mineral%20Economic%20Reports/R141%20-%202025%20SA%20Mining%20Performance%202024.pdf?ver=1yW2yVauFXTxg05W874hRg%3D%3D>.

² Tshikovhi "South Africa's Natural Mineral Resources and their Impact on the Economy" Journal of Global Economics Volume 12:06, 2024; Minerals Council South Africa "National Platinum Strategy for South Africa"

<https://www.mineralscouncil.org.za/component/jdownloads/?task=download.send&id=766&catid=37&m=0>.

³ Centre for Environmental Rights "The environmental and socio-economic impact of mining on communities" <https://cer.org.za/programmes/mining/environmental-issues/the-environmental-and-socio-economic-impact-of-mining-on-communities>.

ecosystems.⁴ In recognition of these risks, South Africa has developed a comprehensive legislative framework aimed at promoting sustainable development, protecting environmental rights and ensuring accountability within the mining sector.⁵

For mining companies, environmental compliance extends beyond obtaining regulatory approvals. Environmental obligations can continue throughout the life of a mining project and, in certain circumstances, may persist beyond mine closure through rehabilitation and post-closure responsibilities.⁶

This article examines the legal framework governing environmental accountability in South Africa's mining sector, the mechanisms available to enforce compliance, and the practical implications for mining companies, investors, regulators and affected communities.

Environmental Risks Facing Mining Operations

Mining activities inevitably impact the natural environment. While these impacts can be managed through responsible environmental planning, rehabilitation programmes and regulatory compliance, environmental harm may arise where mining operations fail to meet the standards prescribed by South Africa's environmental legislation.⁷

Common environmental risks associated with mining include water contamination, air pollution, land degradation, deforestation and habitat destruction.⁸ These impacts may affect surrounding communities, local ecosystems and economic activities that depend on environmental resources.

Environmental degradation resulting from mining operations can also expose mining companies to regulatory intervention, litigation and ongoing rehabilitation obligations.

⁴ Centre for Environmental Rights "The environmental and socio-economic impact of mining on communities" <https://cer.org.za/programmes/mining/environmental-issues/the-environmental-and-socio-economic-impact-of-mining-on-communities>.

⁵ *The Constitution of the Republic of South Africa*, 1996.

⁶ National Environmental and Management Act 107 of 1998: Sec.24R; Mineral and Petroleum Resources Development Act 28 of 2002: Sec.43

⁷ Centre for Environmental Rights "The environmental and socio-economic impact of mining on communities" <https://cer.org.za/programmes/mining/environmental-issues/the-environmental-and-socio-economic-impact-of-mining-on-communities>.

⁸ Centre for Environmental Rights "The environmental and socio-economic impact of mining on communities" <https://cer.org.za/programmes/mining/environmental-issues/the-environmental-and-socio-economic-impact-of-mining-on-communities>.

Consequently, environmental compliance should be regarded not merely as a regulatory requirement but as a fundamental component of responsible mining practice.

Environmental incidents may also result in project delays, increased compliance costs, reputational harm and prolonged engagement with regulators. Effective environmental management therefore contributes not only to legal compliance but also to the operational sustainability of mining projects.

The Constitution of the Republic of South Africa provides that everyone has the right to an environment that is not harmful to their health or well-being and requires legislative measures to protect the environment for present and future generations.[5] This constitutional foundation has informed the development of South Africa's environmental and mining legislation, which seeks to balance economic development with environmental protection.

The legal framework discussed below establishes the mechanisms through which environmental accountability is enforced within the mining sector.

South Africa's Legal Framework for Environmental Accountability

National Environmental and Management Act 107 of 1998 (NEMA)

NEMA sets out environmental management principles that deal with sustainable development, which are essential to consider in the decision-making process with respect to pollution-prevention, precautionary measures, public participation, and environmental justice.⁹ Furthermore, NEMA provides an extensive provision on environmental authorisations, which effectively provides that without environmental authorisation in accordance with the Act, mining-related activities cannot be carried out.¹⁰ Moreover, before environmental authorisation can be granted to applicants in relation to mining, applicants must make financial provision with respect to rehabilitation, management and closure.¹¹ NEMA also provides that holders of mining

⁹ National Environmental and Management Act 107 of 1998: Sec.2(4).

¹⁰ National Environmental and Management Act 107 of 1998: Sec.24.

¹¹ National Environmental and Management Act 107 of 1998: Sec.24P.

rights will continue to carry out their environmental responsibilities even after the closure of the mine.¹² The significance of this provision is that environmental liability does not necessarily end when mining activities cease. Mining companies may remain responsible for rehabilitation and environmental management obligations long after operational closure has occurred. This reinforces the principle that environmental compliance must be considered throughout the entire lifecycle of a mining project. In terms of the duty of care, NEMA imposes obligations on parties that are responsible for the pollution or degradation of the environment.¹³ An interesting feature of NEMA is that it provides legal standing for individuals and public interest groups to institute legal action on behalf of communities that suffered environmental harm as a result of mining activities.¹⁴ Another interesting feature of the Act is that it allows interested parties to institute private prosecutions for the contravention of the provision of NEMA.¹⁵

Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA)

The MPRDA incorporates environmental considerations into the regulation of prospecting and mining activities by providing that the environmental management principles contained in NEMA apply to the interpretation, administration and implementation of the Act.¹⁶ The MPRDA sets out provisions pertaining to closure certificates which provide that mining right holders are responsible for environmental liabilities until a closure certificate is issued.¹⁷ Mining, prospecting rights, and permits may be cancelled or suspended due to contravention of environmental obligations.¹⁸ The suspension or cancellation of mining rights has significant operational implications for mining companies. Environmental compliance therefore serves not only as a legal requirement but also as an important factor in ensuring operational continuity and maintaining the viability of mining projects.¹⁹

¹² National Environmental and Management Act 107 of 1998: Sec.24R.

¹³ National Environmental and Management Act 107 of 1998: Sec.28.

¹⁴ National Environmental and Management Act 107 of 1998: Sec.32.

¹⁵ National Environmental and Management Act 107 of 1998: Sec.33.

¹⁶ Mineral and Petroleum Resources Development Act 28 of 2002: Sec.37.

¹⁷ Mineral and Petroleum Resources Development Act 28 of 2002: Sec.43.

¹⁸ Mineral and Petroleum Resources Development Act 28 of 2002: Sec.47.

¹⁹ Mineral and Petroleum Resources Development Act 28 of 2002: Sec.47.

Climate Change Act 22 of 2024

Although not yet fully operational, the Climate Change Act 22 of 2024 represents a significant development in South Africa's environmental regulatory framework.²⁰ The Act seeks to facilitate effective responses to climate change, support a just transition and establish mechanisms for emissions management and public participation.²¹ As the regulatory framework develops, mining companies will need to remain cognisant of potential climate-related compliance obligations.²²

Enforcement and Accountability Beyond the Regulator

While regulators remain primarily responsible for enforcing environmental legislation, accountability within the mining sector increasingly involves multiple stakeholders. Civil society organisations, advocacy groups and affected communities frequently utilise public participation processes, administrative appeals and litigation to challenge environmental non-compliance. These mechanisms create an additional layer of oversight and reinforce the importance of maintaining environmental compliance throughout the lifecycle of a mining project.

Private Prosecutions: A Growing Enforcement Mechanism

The case of *Uzani Environmental Advocacy CC v BP Southern Africa (Pty) Ltd*²³ serves as a landmark precedent in South African jurisprudence due to being the first successful prosecution under *National Environmental Management Act* (NEMA). In this case BP Southern Africa (Pty) Ltd was convicted for contravening the Environmental Conservation Act by engaging in activities without the requisite authorisation. The significance of this precedent is that it highlights the court's recognition of private prosecutions by public interest groups in enforcing

²⁰ Climate Change Act 22 of 2024:Sec.2.

²¹ Climate Change Act 22 of 2024:Sec.3.

²² Climate Change Act 22 of 2024:Sec.24.

²³ *Uzani Environmental Advocacy CC v BP Southern Africa (Pty) Ltd (Costs)* (CC 82/2017) [2025] ZAGPPHC 263.

environmental laws. This development demonstrates the efficacy of the accountability mechanism that is embedded in our environmental law framework.

The court held that successful private prosecutors are entitled to costs on the-attorney-and-client scale. This position enforces the importance of the constitutional protection of the environment as stipulated in section 24 of the *Constitution* as well as the role of section 33 of NEMA, which allows for private prosecutions. Civil society organisations are therefore empowered to hold contravening parties to account where the state may fall short or where affected communities lack the resources to call for accountability. This case serves as a reminder that environmental compliance failures may expose mining companies and other regulated entities to enforcement action not only from regulators, but also from private actors empowered by environmental legislation.

Practical Lessons for Mining Companies

The legal framework governing environmental accountability in South Africa provides several important lessons for mining companies and mining right holders.

First, environmental obligations continue throughout the life cycle of a mining project and may extend beyond operational closure through rehabilitation and post-closure responsibilities.²⁴

Second, environmental non-compliance may result in regulatory intervention, litigation, private prosecution and, in certain circumstances, the suspension or cancellation of mining rights.

Third, public participation and community engagement have become increasingly important components of environmental governance. Mining companies should therefore adopt proactive engagement strategies and ensure that environmental concerns are addressed before disputes arise.

²⁴ National Environmental and Management Act 107 of 1998: Sec.2(4); National Environmental and Management Act 107 of 1998: Sec.24; National Environmental and Management Act 107 of 1998: Sec.33.

Finally, environmental compliance should not be viewed solely as a legal obligation. Effective environmental management contributes to the long-term sustainability of mining operations and assists companies in maintaining stakeholder confidence and regulatory compliance.

Conclusion

Environmental accountability has become a central feature of South Africa's mining regulatory framework. Through legislation such as NEMA, the MPRDA and the Climate Change Act, mining companies are required to prevent environmental harm, provide for rehabilitation and comply with ongoing environmental obligations.²⁵

The availability of enforcement mechanisms, including regulatory action, civil litigation and private prosecutions, demonstrates the importance that South African law places on environmental protection and sustainable development.

The decision in *Uzani Environmental Advocacy CC v BP Southern Africa (Pty) Ltd* further illustrates the growing role that interested and affected parties may play in enforcing environmental legislation and holding non-compliant entities accountable.²⁶

For mining companies, environmental compliance should not be regarded as an isolated regulatory exercise. It forms part of responsible mining practice and contributes to the long-term sustainability and success of mining operations.

In an increasingly regulated operating environment, environmental compliance is no longer simply a legal requirement - it is a strategic component of responsible and sustainable mining.

²⁵ Mineral and Petroleum Resources Development Act 28 of 2002: Secs 37, 43 and 47.

²⁶ *Uzani Environmental Advocacy CC v BP Southern Africa (Pty) Ltd (Costs)* (CC 82/2017) [2025] ZAGPPHC 263.