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Balancing the Necessity of Mining Activities and Community Participation in the Pursuit of Environmental Protection

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Balancing the Necessity of Mining Activities and Community Participation in the Pursuit of Environmental Protection.

By

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Abstract

Mining activities result in a myriad of environmental and health impacts. These issues remain to be primarily ignored by mining companies and government departments. The need for public participation in relation to environmental awareness and protection must be taken into account within mining affected communities, unfortunately, most mining communities are often not aware that they are entitled to an environmental right under the *Constitution of the Republic of South Africa,* 1996 (the Constitution). Communities suffer from environmental degradation that is inextricably linked to their quality of life and their well-being. Most mining companies fail to protect mining communities from harmful environmental impacts resulting from mining activities. South Africa depends heavily on mining sectors for its socio-economic advancement to such an extent that many millions of people rely on the revenue generated from mine. It is crucial that while mining sectors are pursuing economic developments, the environment, human health and social issues must be afforded the required protection. As such, this thesis explores the environmental harms associated with mining and the importance of meaningful participation. Notably, these environmental injustices can be mitigated by implementing the already established environmental legal framework. This thesis will further critically discuss how mining companies fail to encourage and promote environmental health and wellbeing by not only enhancing public participation within mining affected communities but to also provide communities with concrete measures to promote the ecologically-centred sustainable development.

Key Words: mining communities, public participation, access to information, mining activities, environmental degradation, environmental protection, South Africa.

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1. Introduction

Mining industries have the potential to boost the socio-economic status of the country and most South Africans believe that the living conditions of mining affected communities can be improved through mining. However, it has been shown that the actions of mining companies worsen mining communities' issues because they continue to struggle to benefit from employment opportunities and the irresponsible damage of their environment.[1] South Africa has experienced a long and shameful history of environmental injustices associated with the abuse of colonialism, apartheid, capitalism and patriarchy.[2] During the apartheid era, black South Africans were forcibly dispossessed of their land to make way for mining operations at the cost of environmental injustices which increased exposure to pollution and the degradation of air and water quality.[3]

Today most mining operations still fail to adhere to the mining and environmental regulations that have been put in place to ensure that environmental health and well-being is not unjustifiably harmed and degraded during mining activities.[4] Mining communities usually experience intrusion and disruption caused by noise, access roads, dangerous equipment and water pollution, and as a result their quality of life and their well-being becomes significantly affected.[5] Mining companies are required to pursue actions like community public participation and reasonable mitigation actions to curb the harmful impacts on the environment.[6] This thesis will demonstrate that mining companies largely ignore the fact that the extraction of natural minerals should be done responsibly and sensibly, and thus courts and government departments also fail to encourage and promote public participation in relation to environmental protection safety measures within mining communities.[7]

1.1 Problem statement of the research

Environmental and health impacts are very topical at the moment with the Xolobeni matter taking centre stage.[8] The thesis will illustrate that environmental degradation is still a major

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[1] David DM 'Developing the common law of contract in the light of poverty and illiteracy: The challenge of the Constitution' (2011) *Stell LR* 845-6.
[2] Humby TL 'Environmental Justice and Human Rights on the Mining Wastelands of the Witwatersrand Gold Fields' (2013) 48 *Revue generale de driot* 71.
[3] Ibid 72.
[4] Makua M et al 'Harmful Mining activities, environmental impacts and effects in the mining communities in South Africa: a critical perspective' (2017) *Environmental Economics* 14.
[5] Ibid 17.
[6] Ibid.
[7] *Endangered Wildlife Trust and Others v Director-General of the Department of Water and Sanitation and Others.*
[8] Yebowa J 'Environmental and Health Impact of Mining on Surrounding Communities: A Case Study of AngloGold Ashanti in Obuasi' (2008) 25.

threat and concern in mining communities and that,[9] ineffective community participation, lack of environmental education and awareness creation has been one of the issues found as contributory factors to the persistent environmental devastation caused by mining activities.[10] Most mining affected communities are impoverished and live in rural settings that lack basic resources such as health care services and clean potable water.[11] Consequently, the health costs of mining operations sometimes outweigh the overall net benefit gained and furthermore, these health costs are not internalised in project costs. This paper takes recognition of the current unfavourable environmental issues within the mining industry. Notably, the purpose of this paper is not to be unreasonably critical of the mining sector nor any stakeholder of the industry, but to illustrate failure by government departments and mining companies to promote public engagement and participation with mining communities about possible environmental impacts.

1.2 Research Questions

1.1 Main research question:

What legal recourse do communities have when mining developments are taking place without acknowledging communities well-being?

1.1.1 Sub research questions:

1.1.1.1 What are the environmental and health effects of mining on surrounding communities?

1.1.1.2 Are mining companies respecting and promoting the elements of good environment governance with regard to the mitigation of adverse effects of mining activities?

1.1.1.3 Does the interpretation of the environmental legal framework give balance between the necessity of mining activities and the need to protect the environment?

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[9] Milos B 'Environmental Degradation as a Security Threat' (2008) The *Science for Population Protection* 1.
[10] Ibid.
[11] Aboka Y.E 'Reveiw of Environmental and Health Impacts of Mining in Ghana' (2018) 8 *Journal of Health & Pollution* 43.

2. South African Legislative Framework

Section 39 of the Constitution gives guidance to courts and the state that 'when interpreting legislation, the courts 'must promote the spirit, purport and objects of the Bills of Rights'.[12] This means that courts are obliged to interpret legislative provisions generously within the spirit of the Constitution.[13] The South African government has promulgated legislation on sustainable mining and the protection of integrity of the environment[14] however, there seems to be poor implementation hence the purpose of the act is significantly undermined.[15] I demonstrate herein, using relevant legislation that companies must be bound by and required to interpret these legislative frameworks liberally to accommodate and advance environmental concerns within mining communities, recognising mine-affected communities as core stakeholders in community development and protection and not purely a hindrance of passive beneficiaries.

2.1 The Constitution of the Republic of South Africa

Section 24 of the Constitution guarantees everyone a right to 'an environment that is not harmful to human health or well-being'.[16] The South African Constitution is recognised as the supreme law, and any law or conduct inconsistent with it is deemed invalid.[17] The fundamental rights guaranteed and granted to all South Africans in the Bill of Rights, are positive duties placed on the state to actively promote and fulfil those rights.[18] Although section 24 places a duty on the state to protect and respect the environment through its reasonable available resources and measures,[19] it is also the responsibility of all citizens to ensure that the environment is protected for present and future generations. Most mining communities are unaware of their right to a safe environment and positive obligations placed on the state and mining companies to promote environmental protection. Therefore, this right becomes easily violated and undermined on a daily basis by most mining companies who degrade and harm the environment in the communities they operate in. Sections 24(a) contends that everyone is entitled to an environment that is not harmful to their health or

[12] Section 39 of the Constitution of the Republic of South Africa, 1996.
[13] *Makate v Vodacom (Pty)* 2016 (4) SA 121 (CC) para 87.
[14] Section 2(h) of the Mineral and Petroleum Resources Development Act, 2002.
[15] Makua M et al (note 4 above) 13.
[16] Section 24 of the Constitution of the Republic of South Africa, 1996.
[17] Section 2 of the Constitution of the Republic of South Africa, 1996.
[18] Stein R 'Water Law in a Democratic South Africa: A Country Case Study Examining the Introduction of a Public Rights System' (2004) *Allocating and Managing Water for a Sustainable Future: Lessons from Around the World (Summer Conference*, June 6.
[19] Section 24(b) of the Constitution of the Republic of South Africa, 1996.

well-being.[20] To ensure that the is environment protected for the benefit of the coming generations, and secure ecologically sustainable development and use of natural resources while promoting justifiable and economic development.[21] Notably, section 24 of the Constitution does not only focus on a safe environment but also provides for ecologically-sustainable development. This means that sustainable mining must entail the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions to ensure that development serves present and future generations.[22] If mining is done irresponsibly it will affect the environment and cause harm and irreparable damage.[23] Thus it is clear that the Constitution allows and promotes for responsible mining activities with reasonable environmental protection measures.

2.2 The National Environmental Management Act

An important purpose of the National Environmental Management Act, 1998 (NEMA)[24] is to provide for cooperative and environmental governance between mining companies, government department and mining communities through principles of participation and considered decision-making on matters affecting possible environmental impacts caused by mining companies.[25] Responsibility for environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout the life cycle of the mine.[26] Taking all relevant factors into consideration, sustainable development requires that any business, particularly mining, must ensure that the disturbance of ecosystems and loss of biological diversity are avoided or where they cannot be avoided altogether, are minimised and remedied to keep away from environmental degradation.[27] This means that people's needs and health desires must be at the forefront of decision-making and serve their physical, psychological, development, cultural and social interests equitably.[28]

2.2.1 *Duty of care*

Duty of care for environmental protection is emphasised under section 28(1) of NEMA which stipulates that 'every person who causes, has caused or may cause significant pollution or

[20] Section 24(a) of the Constitution of the Republic of South Africa, 1996.
[21] Section 24(b)(ii) of the Constitution of the Republic of South Africa, 1996.
[22] Makua M et al (note 4 above) 19.
[23] Ibid.
[24] The National Environmental Management Act, 1998.
[25] Makua M et al (note 4 above) 19.
[26] Section 2(4)(e) of the National Environmental Management Act, 1998.
[27] Section 4(a) of the National Environmental Management Act, 1998.
[28] Section 2(2) of the National Environmental Management Act, 1998.

degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment'.[29] However, this section seem to be undermined by most mining companies and it is mostly acknowledged when significant pollution or degradation has been caused already, rather than taking reasonable measures prevent pollution or degradation, hence environmental issues are still a threat and voiced out in this thesis.

NEMA further stipulates that employees must be informed and educated about potential environmental risks resulting from their work and that their work must be performed in a manner that significant pollution or degradation of the environment must be totally avoided.[30] Education around potential environmental risks resulting from mining activities must not only be limited on employees but the public as a whole. 'The Director – General, or the Director – General of the department responsible for mineral resources or a provincial head of department may, after having been given adequate opportunity to affected persons to inform him or her of their relevant interests, may direct any person who is causing, has caused or may cause significant pollution or degradation of the environment to: *(a)* cease any activity, operation or undertaking; *(b)* investigate, evaluate and assess the impact of specific activities and report thereon; *(c)* commence taking specific measures before a given date; *(d)* diligently continue with those measures; and *(e)* complete those measures before a specified reasonable date'.[31] Unfortunately, given the increasing level of mining companies causing significant environmental pollution or degradation, there is still no evidence showing these actions mentioned under section 28 (4) of NEMA to have been taken into consideration adequately by responsible authorities.[32]

2.3 The Mineral and Petroleum Resources Development Act

One of the objectives of the Mineral and Petroleum Resources Development Act[33] (MPRDA) is to give effect to section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner to

[29] Section 28(1) of the National Environmental Management Act, 1998.
[30] Section 28(3)(b) of the National Environmental Management Act,1998.
[31] Section 28(4) of the National Environmental Management Act, 1998.
[32] Chiaro P 'Environmental Strategies in the Mining Industry: One Company's Experience' (1997) Washington, DC: National Academy Press 165.
[33] The Mineral and Petroleum Resources Development Act,2002.

justifiably promote environmental protection.[34] The MPRDA is the backbone of the mining legislation as it provides for the negotiation stages, prospecting stages, closure rehabilitation and restoration of the land prior and after the mining activities.[35] This Act gives the Minister who is responsible for mineral resources the power to intervene to prevent environmental degradation and where necessary revoke a mining right to protect and minimize environmental degradation.[36]

Briefly, for a prospecting right to be granted, an application must be lodged with the Regional Manager, in terms of section 16, 22 or 27 of MPRDA.[37] The Regional Manager must within 14 days after accepting the application make an announcement that an application for prospecting right, mining right or mining permit has been accepted.[38] Once the application is accepted, the Regional Manager must inform the parties to conduct an environmental management plan and notify and consult with interested and affected parties within 180 days from the date of the notice.[39] Therefore if there are objections to the prospecting right, mining right or mining permit, the Regional Manager must refer the objections to the Regional Mining Development and Environmental Committee to consider the objections and to advise the Minister thereon.[40] This shows that before a mining right is granted, it is a prerequisite for all relevant environmental concerns affecting the community to be noted and acknowledged under MPRDA. However, most mining companies still continue to ignore this duty as required under MPDRA and I will support this argument using applicable recent judgments below.

Additionally, this Act stipulates that 'no person may prospect for, mine, conduct technical co-operation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without an approved environmental management plan, as the case may be and consulting with the land owner or lawful occupier of the land in question'.[41] If any prospecting, mining, reconnaissance or production operations cause or results in ecological degradation, pollution or environmental damage which may be harmful to the health and well-being of the community and requires remedial measures, the Minister may direct the holder of the relevant right, permit or

[34] The Mineral and Petroleum Resources Development Act, 2002.
[35] Makau M et al (note 4 above) 20.
[36] Ibid.
[37] Ibid.
[38] Sec 10(1) of the Mineral and Petroleum Resources Development Act, 2002.
[39] Sec 10(1)(b) of the Mineral and Petroleum Resources Development Act, 2002.
[40] Section 10(2) of the Mineral and Petroleum Resources Development Act, 2002.
[41] Mineral and Petroleum Resources Development Act, 2002.

permission to investigate, evaluate, assess and report on the impact of any pollution or environmental degradation. If the holder fails to comply with the directive, the Minister may take such measures as may be necessary to protect the health and well-being of any affected person or to remedy ecological degradation and to stop pollution of the environment.[42] On the contrary, Ministers fail to do so because many mining operations usually result in environmental injustices concerned with the health and wellbeing of individuals, groups and communities in toxic environment.[43] Hence, the purpose of this research is to address environmental issues suffered by mining communities.

2.4 Environmental Impact Assessment

While NEMA provides for cooperative and environmental governance between mining companies, government department and mining communities, the Environmental Impact Assessment (EIA)[44] is an important concept and procedure as it is one of the most effective tools or techniques for ensuring that development activities are environmental sustainable.[45] The EIA is unique because it provides for a two-pronged approach to EIA, namely a process for what one can term less impactful projects (called a Basic Assessment) and another for more impactful or more complex projects (called Scoping).[46] The responsibility is on the Environmental Assessment Practitioner (EAP) to assess any particular project and determine whether it should be assessed using the Basic Assessment or Scoping and EIA.[47] The EAPs are bound in terms of regulation 18 of GN R385 to be independent and objective even though they are retained and paid by the person seeking authorisation.[48] Before proceeding with mining activities, companies must first get approval of their EIA, usually from the Ministry of Minerals and Energy, the Ministry of the Environment, or an equivalent governmental body. This is generally referred to as environmental authorisation or environmental license. Prof Murombo, a leading environmental law academic, contends that the EIA can be controversial, but if done impartially and responsibly and with qualified professionals, it can be a useful tool for communities.[49]

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[42] Mineral and Petroleum Resources Development Act, 2002.
[43] White R 'Resource Extraction Leaves Something Behind: Environmental Justice and Mining' (2013) *International journal for Crime and Justice* 49.
[44] Amendments to the Environmental Impact Assessment Regulations, 2014.
[45] Amendments to the Environmental Impact Assessment Regulations, 2014.
[46] Murombo T 'Beyond Public Participation: The Disjuncture Between South Africa's Environmental Impact Assessment (EIA) Law and Sustainable Development (2008) *Potchefstroom Electronic Law Journal* 12.
[47] Ibid.
[48] Ibid.
[49] Ibid.

More often, the EIA leaves out or underplays negative social and environmental impacts of the exploration or exploitation activities. An EIA may neglect a local development plan or activity, or it may mention threatened, endangered or rare species or important archaeological or spiritual sites, that would make its approval more difficult. Sometimes contractors save time and money by copying another EIA, making the study irrelevant.[50] This explains the current environmental injustices caused by irresponsible mining, by avoiding all the required environmental processes which needs to be implemented or taken into consideration. The EIA process in South Africa is integrative and holistic, addressing social, economic and environmental or ecological issues simultaneously.[51] EIA assists the government to keep track of development activities that have the potential to cause significant adverse Impacts on the environment, and to ensure adequate mitigating measures are integrated into the planning of the project.[52] Thus is it crucial for mining companies to follow all required procedures under the EIA. One of the main objectives behind EIA processes is to ensure that any development that is authorised will not constitute of significant impacts on the environment.[53] Most mining developments have significant impacts on the environment, for this reason, mining companies work with local health authorities to design and deliver environmental protection measures.[54]

In terms of section 23(1) (a) of an EIA an environmental impact assessment report must be submitted by the applicant within 106 days of the acceptance of the scoping report, including and specialist report which must have been subject to a public participation process of at least 30 days and which reflects the incorporation of comments received, including any comments of the competent authority.[55] A reasonable and valid environmental impact assessment report must contain the information that is necessary for the competent authority to consider and come to a decision on the application, and include each identified potentially significant impact and risk including; *(i)* cumulative impacts; *(ii)* the nature, significant and consequences of the impact and risk; *(iii)* the extent and duration of the impact and risk; *(iv)* the probability to the impact and risk occurring; *(v)* the degree to which the impact and risk can be revised; *(vi)* the degree to which the impact and risk may cause

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[50] Zorrilla C 'Protecting Your Community Against Mining Companies and Other Extractive Industries' (2009) *A Guide for Community Organizers* 2.
[51] Murombo T (note 43 above) 2.
[52] Ibid 3.
[53] Ibid.
[54] Osewe P 'Better Health in Mines and Mining Communities: A Shared Responsibility, available at: http://blogs.worldbank.org/health/better-health-mines-and-mining-communities-shared-responsibility (Accessed 17 June 2020).
[55] Section 23(1)(a) of the Amendment to the Environmental Impact Assessment Regulations, 2014.

irreplaceable loss of resources; and *(vii)* the degree to which the impact and risk can be mitigated.[56] An EIA asserts that sensitive and possible impacts that the activity and technology alternatives will impose on the environment identified through the life of the activity should; (i) identify and motivate a preferred site, activity and technology alternative; (ii) identify suitable measures to avoid, manage or mitigate identified impacts; and (iii) identify residual risks that need to be managed and monitored.[57]

Notably, the EIA regulations also acknowledge the importance of public participation.[58] It states that in terms of the regulations the public should be consulted during the EIA study and must be given the opportunity to comment on the EIA reports. Consultation and participation are integral to the EIA process because they lie at the centre of studies aiming to establish social and economic sustainability.[59] EIA does not only ensure development activities techniques, but it also allows public engagement which brings with it accountability and transparency.[60] This is to ensure that the final report is submitted to the competent authority with the comments from the public taken into account,[61] and unquestionable unaccountability.

2.5 Free, Prior and Informed Consent

The interpretation of the principle of free, prior and informed consent (FPIC) is an emerging international human rights principle,[62] which indigenous people can use to claim their rights particularly, to self-determination, consultation and participation in decision making, affecting their land rights.[63] In plain terms, the principle of FPIC gives a right to simply agree or disagree to mining rights. After centuries of exclusion, dispossession and discrimination, indigenous people want their voices to be respected and heard.[64] It is vital that governments and corporations must not ignore this principle.[65] The goal is that striving for FPIC will lead to a better and meaningful engagement. FPIC is mostly used by rural communities to protect their land and environmental rights in order to enjoy their right and culturally rich life.

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[56] Appendix 3 under section 3(j) of the Amendment to the Environmental Impact Assessment, 2014.
[57] Appendix 1 section 2(e) of the Amendment of the Environmental Impact Assessment, 2014.
[58] The Amendment of the Environmental Impact Assessment, 2014.
[59] Murombo T (note 43 above) 6.
[60] Ibid 8.
[61] Ibid 13.
[62] Portalewska A 'Free, prior and informed consent: protecting indigenous peoples' rights to self-determination, participation and decision making' available at: http://www.culturalsurvival.org/publications/cultural/survival-quarterly/free-prior-informed-consent-protecting-indigenous (accessed 2 July 2019).
[63] Ibid.
[64] Ibid.
[65] Ibid.

3. Community Participation in Relation to Environmental Protection

Having succinctly examined the environmental legislative framework above, it is clear that mining companies must adhere to legislative environmental duties by establishing public participation in environmental decision-making. Public participation is entrenched under section 195 of the Constitution[66] and the section illustrates the importance of public participation in policy-making and administration concerning public needs.[67] It further states that 'people's needs must be considered and responded to'.[68] Unsurprisingly the Constitutional Court in *Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province*,[69] ruled that development must take into account the needs of society as expressed by members of the public, who must be given the opportunity to participate in environmental decision-making process.[70]

Recent work on community participation in natural resource management and mining projects has shown how enable communities can influence the mining development process positively.[71] Thus mining companies must initiate public participation with mining communities in relation to possible environmental impacts caused by mining activities and make educate them with their environmental rights. Consultation, engagement and participation are inextricably intertwined. Consultation and participation are in relation to possible environmental impacts caused by mining process lie at the centre of studies to establish social and economic sustainability.[72] To be effective, participation must not be a once-off event, but a sustained, iterative process, which commences with problem identification and goes on to project conception or formulation and approval.[73] Possible environmental impacts caused by mining companies and the need to ensure that community members are informed with these impacts are now discussed below.

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[66] Section 195, Constitution of the Republic of South Africa, 1996.
[67] Ibid.
[68] Ibid.
[69] *Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province*
2007 6 SA 4 (CC) para 60 and 70.
[71] Erzurumlu S & Erzurumlu Y 'Sustainable mining development with community using design thinking and multi-criteria decision analysis' (2015) *Resource Policy* 7.
[72] Murombo T (note 43 above) 6.
[73] Ibid 11.

3.1 Environmental Impacts caused by mining activities

Mining is an inherently high impact activity, even with management protocols and procedures in place, the environment will always be negatively impacted by mining operations. Murombo believes that development activities are not only supposed to be sustainable in the eyes of the proponent, but also in the view and perception of the public and local communities affected by the activities.[74] Mining activities have resulted in land degradation leading to limited land available for local food production and other agricultural purposes within mining affected communities.[75] Additionally, there is pollution which has affected mainly water resources which are declared to be protected areas under the National Environmental Management: Protected Areas Act, 2003.[76] Air and noise pollution are also evident problems resulting from mining activities.[77] Thus the combined effects of environmental problems have culminated into health problems with high prevalence of diseases such as malaria, respiratory tract infections and skin diseases.[78] It is against this background that this thesis believes that public participation in relation to environmental and health issues resulting from mining activities must take place before and during the commencement of mining operations. The main purpose is to pursue environmental justice yet, mining operations continue to put at risk the health of people.[79]

Below I discuss environmental impacts which must be considered through public participation by mining companies and mining communities.

3.1.1 Water pollution

Section 27 of the Constitution guarantees everyone the right to have access to sufficient water.[80] The state is enjoined to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.[81] Unfortunately, this right is usually violated because mining operations affects fresh water through the heavy use of water in processing ore, and through water pollution from discharged mining waste rock impoundments.[82] Increasingly, human activities such as mining threaten water

[74] Ibid 3.
[75] Yebowa J (note 7 above) 3.
[76] National Environmental Management: Protected Area Act, 2003.
[77] Yebowa J (note 7 above) 4.
[78] Ibid.
[79] White R (note 40 above) 56.
[80] Section 27(1)(b) of the Constitution of the Republic of South Africa, 1996.
[81] Section 27(2)of the Constitution of the Republic of South Africa, 1996.
[82] Aboka YE (note 10 above) 46.

sources,[83] thus water has been regarded as the 'mining's most common victim'.[84] Poisonous chemicals such as mercury and cyanide used by mining companies pose a serious threat to humans, fish and other aquatic species.[85] Furthermore, it is believed that small-scale miners usually operate along the banks of rivers, destroying river banks and making them liable to overflow after heavy rains.[86] This has resulted to the recent flooding in mining communities.[87] The flow of water is unregulated and flows into neighbouring homes and environs, destroying property and human life.[88] It is crucial for the national government, as a public trustee of the South Africa's water resources, acting through the Minister of Water and Sanitation to ensure that water is managed for the benefit of all by mining companies.[89] This includes ensuring the protection of, use, development, conservation, management and control of water resources in a sustainable and equitable manner and taking into account economic development, social well-being, peace and security.[90] Responsibility is upon mining companies that water resources are used responsibly while promoting public interest and environmental values within mining communities.[91]

3.1.2 Air Pollution

Air pollution mainly comes from the dusty roads that are continuously used by heavy-dusty vehicles for transporting machines and other equipment to the mine sites, including transportation of disposal of waste.[92] Chemical gases, fumes and smoke are not readily visible at the mining site, but during blasting, dust fills the atmosphere for some time. Chemicals used in the blasting process are also released into the atmosphere and the community has been prohibited from using rainwater.[93] It has also been noted that all fine dust at a high level of exposure has the potential to cause respiratory diseases and disorders and can worsen the condition of people with asthma and bronchial stiffness.[94] Giving effect to the environmental right in section 24 of the Constitution of the Republic of South Africa, The National Environmental Management: Air Quality Act (NEM: AQA) was promulgated as the framework legislation to ensure that levels of air pollution are not harmful to human

[83] Ibid.
[84] Ibid.
[85] Ibid.
[86] Ibid.
[87] Ibid.
[88] Ibid.
[89] Ibid.
[90] Section 2 of the National Water Act, 1998.
[91] Stein R (note 16 above) 10.
[92] Aboka YE (note 10 above) 49.
[93] Ibid.
[94] Ibid.

health or well-being.[95] The NEM: AQA commenced on 11 September 2005 and aims to: protect and enhance of the quality of air in the Republic; prevent air pollution and ecological degradation; secure ecologically sustainable development while promoting justifiable economic and social development; and generally give effect to section 24(a) of the Constitution in order to enhance the quality of ambient air for the sake of securing an environmental that is not harmful to the health and well-being of people.[96] NEM: AQA can also be used to eliminate climate change as it is considered one of the causes of poor air quality resulting from the burning of fossils and fuels by humans.

3.1.3 Loss of Agricultural Land and Cultural Well-being

Removal of top soils, trees and vegetation with heavy machines renders the land infertile and unproductive for agricultural purposes.[97] Consequently, little farmland is now available and much of the available land for agricultural activities has been contaminated with chemicals from mining activities.[98] Yebowa contends that agricultural lands are not only generally degraded, but the loss of land for agricultural production has also led to a shortening of the fallow period from 10-15 years to 2-3 years.[99] Land degradation due to mining activities has led to a complete change of suitable agricultural activities and the cultural life of many mining rural communities.[100] Mining communities are also forced to relocate and leave their ancestors graves behind. The promulgation of Interim Protection of Informal Land Rights Act (IPILRA) was adopted as a temporary measure to protect those who held insecure tenure because of the failure to recognise customary ways of life.[101] More relevant to this Act, is the protection of informal rights in lands of those communities as defined in the Act.[102] Section 1 of the IPILRA defines informal land right as, as a right to use, occupy or to access land in terms of any tribunal, customary or indigenous law or practice of the tribe, including the custom, usage or administrative practice in a particular area or community.[103] This right gives the community a right to decide what should happen to their land,[104] and furthermore, communities may use this right to protect their environment.

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[95] National Environmental Management: Air Quality Act, 2004.
[96] Section 2 of the National Environmental Management: Air Quality Act, 2004.
[97] Aboka YE (note 10 above) 48.
[98] Ibid.
[99] Yebowa J (note 7 above) 47.
[100] Aboka YE (note 10 above) 48.
[101] *Baleni and Others v Minister of Mineral Resources and Others* 2019 (2) SA 453 (GP) para 51.
[102] Ibid para 55.
[103] Section 1 of the Interim Protection of Informal Land Rights Act 31 of 1996.
[104] *Baleni and Others* para 95.

3.1.4 Noise Pollution

Noise pollution standards are set for most companies that use heavy equipment and the noise emission levels of machinery are constantly assessed.[105] Noise pollution in the community is mainly attributable to blasting at the mining site and this noise is so great that building foundations in mining communities are shaken and one can easily see cracks on most buildings in the community.[106] Thus reasonable measures to minimise noise pollution must be considered and implemented by mining companies.

3.2 Access to Information

Internationally, environmental information has been defined as including all information on the state of the environment, environmental threats and environmental protection measures.[107] This means that all the environmental impacts such as water pollution, air, land, soil and noise pollution which I discussed above must be disclosed and made aware to mining communities together with mitigation measures.

Access to information, public participation and access to justice are increasingly becoming important concepts on the agenda in the international environmental sphere.[108] These ideas are aimed at promoting human flourishing and the well-being. In *Company Secretary of ArcelorMittal South Africa v Vaal Environmental Justice Alliance*,[109] the court confirmed that the legislature recognised the importance of public interaction and consultation in the field of environmental conservation.[110] For communities to be able to address current environmental challenges, goodwill and determination of all interested parties, including mining companies is required.[111] In this regard transparency in the public and private sphere is vital, as the right to know is indispensable in achieving sustainability.[112] The right of access to information held by private and public organisations is promoted and protected in section 32 of the Constitution.[113] This right can be seen as unique and progressive as an obligation

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[105] Aboka YE (note 10 above) 49.
[106] Ibid.
[107] Redelinghuis JE 'The right of access to environmental information in the public and private sphere' (2016) Mini dissertation submitted at the Potchefstroom Campus of the North-West University 11.
[108] Ibid 1.
[109] *Company Secretary of ArcelorMittal South Africa v Vaal Environmental Justice Alliance* 2015 (1) SA 515 (SCA).
[110] Ibid.
[111] Redelinghuis JE (note 104 above) 1.
[112] Ibid.
[113] Section 32 of the Constitution of the Republic of South Africa, 1996.

is placed on both the public and private organisations to provide access to records in their possession.[114]

In extending the protection of this right, the Promotion of Access to information Act 2 of 2002 (PAIA)[115] was established to regulate and promote the constitutional right, as well as transparency and accountability within the public and private sphere, in order to realise an open and participatory South African democracy, in contrast to the secrecy that was at the heart of the apartheid system.[116] This right to ensure that members of the community easily access information related to environmental impacts and public participation in environmental decision-making processes remain to be ignored by mining companies. However, most environmental non-profit organisations contends that communities face difficulties in accessing information under PAIA in relation to mining.[117] Therefore, the Pretoria High Court handed down a life changing judgment confirming that mining affected communities have the right to access information about projects that impact them.

4. Failure of extractive industries to ensure environmental sustainability and protection.

4.1 Baleni and Others v Minister of Mineral Resources and Others (Xolobeni)

The facts

In this matter, Transworld Energy and Mineral Resources (TEM), an Australian mining company sought to mine the titanium rich sands in the Xolobeni area.[118] To this end, TEM applied for a mining right for titanium ores and other heavy minerals in the Xolobeni area in Eastern Cape.[119] The applicants opposed TEM to mine as they argued that they enjoy and respect their rich cultural life.[120] They further expressed that they own and honour their family graves in the area and these graves are considered essential for family and community rituals.[121] They stretch back their history to the 1800's, when their forebears established settlement on this land after they have emigrated from Zululand to escape the conquests of the Mfecane that sought to subdue and incorporate autonomous territories into Zulu

[114] Section 32 of the Constitution of the Republic of South Africa, 1996.
[115] The Promotion of Access to Information Act 2 of 2002.
[116] Redelinghuis JE (note 104 above)1.
[117] www.wits.ac.za/news/sources/cals-news/2020/game-changing-judgment-xolobeni-community-on-mining-rights-applications.htlm (accessed 25 October 2020).
[118] *Baleni and Others* para 4.
[119] Ibid para 4
[120] Ibid para 9.
[121] Ibid.

domain.[122] The community further strongly opposes the proposed mining right based on the fact that they fear the social, economic and ecological consequences resulting from mining.[123] On the other hand, TEM submitted that the (MPRDA) does not require landowner's consent prior to the grant of a mining right. In this regard, TEM relied on section 5 of MPRDA which states that a mining right is a limited real right. Although consent of the landowner under the MPRDA is not a prerequisite, however, what is required is that the relevant community or landowner must be consulted prior to the mining being granted by the Minister of Mineral Resources.

Legal issues

The issue decided by the court was whether the consent of the community is required in terms of IPILRA before granting a mining right and accordingly whether MPRDA supersedes IPILRA or whether they should be read together. While MPRDA focuses on the promotion of equitable access to mineral resources for all South African citizens,[124] IPILRA seeks to protect communities who were victims of past discrimination and who have a deep cultural and religious connection to the land.[125]

Conclusion

The High Court held that MPRDA and IPILRA should be read together and it held that, the Minister lacks the authority to grant TEM a mining right in terms of MPRDA, unless amongst other things, the Minister, the Regional Manager and Director General for the Department of Mineral Resources have complied with the provisions of IPILRA, furthermore, the Minister is required to obtain full and informed consent from the applicants and the Umgungundlovu community as holders of rights in land before granting TEM with a mining right.

4.2 Endangered Wildlife Trust and Others v Director-General of the Department of Water and Sanitation and another (Mabola Judgment)

The facts

The Department of Water Affairs issued a Water Use Licence on 7 July 2016 to Atha-Africa Ventures (Pty) Ltd, the South African subsidiary of the India-based Atha Group.[126] The water

[122] Ibid.
[123] Ibid para 14.
[124] Mineral and Petroleum Resources Development Act, 2002.
[125] Interim Protection of Informal Land Rights Act, 1996.
[126] *Endangered Wildlife Trust and Others v Director-General of the Department of Water and Sanitation and Others* para 1.

use licence grants Atha-Africa the right to use water for mine, subject to conditions that included mitigation measures to prevent pollution; monitoring and reporting on underground water pollution; and post-mining rehabilitation measures until the water quality stabilises. This process could take until the end of this century, according to the appellants opposing the mine. The appeal was brought by the coalition of eight civil society organisations challenging a range of authorisations that have permitted an underground coal mine in a strategic water source area and a protected area.[127]

Legal issue

The legal issue before the Tribunal was whether the proposed mine should be granted a water use licence for a proposed underground coal mine in a highly water-sensitive area of the Mpumalanga grasslands. However, the Tribunal found that water-related impacts such as dewatering (pumping water from the mine during operations), decant and seepage of waste water were manageable and that mitigation measures proposed by the respondents were reasonable and technically adequate. [128]

Conclusion

The appeal was therefore dismissed and the Water Use License was hereby confirmed by the Tribunal subject to subject to the condition that, there had to be adequate financial provision to implement such mitigation measures, regularly over many years.[129] Atha-Africa had to also provide proof of adequate financial guarantees for the rehabilitation of damage caused by the coal mining. [130] Below I discuss whether or not the judgments I outlined above promote environmental justice.

5. Critical Analysis

From the cases I outlined above, it can be concluded that mining industries still fail to inform and educate affected communities with potential environmental impacts and to also provide them with protection measures for a safe environment. In the *Xolobeni* case, the mining right was refused in order to protect their agricultural and cultural land. In protecting their informal land rights and their way of customary life, the Xolobeni community drew on the IPILRA. This Act guarantees the community a right to decide what should happen to their land,[131]

[127] Ibid para 13.
[128] Ibid.
[129] Ibid para 172.
[130] Ibid para 172.3.
[131] *Baleni and Others* Ibid para 95.

and furthermore, communities may use this right to protect their environment. The *Xolobeni* case illustrates how mining communities have taken action to refuse to mining activities on their land to avoid many environmental injustices caused by mining activities. In the *Xolobeni* case, community members strongly opposed the mining right, arguing that they fear for the social, economic and ecological consequences which result from mining activities. Most environmental problems are known to amount to social problems and the effects of environmental degradation are usually felt by people who are already exposed to social-economic disadvantages.[132] This shows that their *Xolobeni* community rejects to live under worse conditions experienced by many mining affected communities. Corporations and government departments sink a lot of funds into research and development, then design solutions to problems, including environmental issues without consulting the public and affected parties and then present the proposal as the best solution to the problem.[133] The problem is that mining companies assume that these proposed solutions are also the best solutions in the eyes of the public, yet this is not invariably true.[134] Mining communities must be involved in mining development proposals to voice out their views and comments. Individuals and organisations affected by mining approvals, pollution licences and land use plans have increasingly demanded participation and more transparent and accountable decisions.[135] However, the demand for participation in the *Xolobeni* case was ignored, hence the refusal of a mining licence.

The *Xolobeni* community argued that their ancestral land is crucial to their livelihoods.[136] They utilise their land for grazing their livestock, the cultivation of crops and depend on the water supply,[137] and furthermore they use their products of their labour to sustain their families and the surplus is used to generate income.[138] More often most committed individuals leave their communities after large-scale mining moves to town.[139] The *Xolobeni* community also submitted that they are not ready to relocate and leave their ancestral graves behind. They confess that their family graves are considered essential for family and community rituals.[140] It is clear that the community enjoys and respect their rich cultural

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[132] Feris LA 'The Role of Good Environmental Governance in the Sustainable Development of South Africa' (2010) *Potchefstroom Electrical Law Journal* (13) 76.
[133] Murombo T (note 43 above) 15.
[134] Ibid.
[135] Richardson BJ Public Participation in Environmental Decision-making' (2005) 165.
[136] *Baleni and Others* para 11.
[137] Ibid.
[138] Ibid para 11.
[139] Zorrilla C 'Protecting Your Community Against Mining Companies and Other Extractive Industries' (2009) *A Guide for Community Organizers* 17.
[140] Ibid.

life[141] and therefore, they are not willing to sacrifice their cultural lives due to mining activities. Most importantly, the *Xolobeni* community argues that one of their reasons why they refused a mining right is because the respondents failed to initiate and participate with them. Although participation and consultation may not lead to an agreement, however, to a great degree public participation is essential to ensuring that social and environmental considerations and goals are integrated into governmental decision-making.[142] Additionally, community members will be given an opportunity to raise all their relevant concerns.

In the *Mabola* judgment, water pollution and sensitivity of water resources was emphasised by the appellants in this case. The appellants held that the proposed mining will be a danger to all these natural resources and ecological systems.[143] They further argued that while the coal lies at the belly of the earth, where the flora and fauna beautifies the landscape, nourished by the rivers, rivulates and wetlands in the area, any harm or disturbance to this natural order will constitute an infringement under section 24 of the Constitution.[144] They further submitted that although they are aware that existing laws and policies does not prevent all mining activities from being conducted in areas that are regarded environmentally sensitive, however, they argue that an area which is regarded to be sensitive must be subject to greater caution and heightened scrutiny before such activities are authorised.[145] This will ensure a balance between sustainably using water resources while allowing environmental development activities.[146] The environmental movement itself has been criticised for its social elitism, supposedly dominated by the better educated and wealthier segments of society with little presentation from blue-collar workers or the poorest.[147] However, this case made it clear that environmental protect must also be given priority and high scrutiny while allowing mining development activities.

Public participation processes were undertaken by the respondents before the commencement of a mining activity from 19 June to 20 August 2015 in terms of section 41 (4) of the NWA,[148] however, not all required information was provided to the affected parties, including the financial provision and the EIA report. To protect and conserve the environment, emphasise should be given to environmental education in both formal and

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[141] *Baleni and Others* para 9.
[142] Dernbach JC (note 165 above) 257.
[143] *Endangered Wildlife Trust and others* para 13.
[144] Ibid.
[145] Ibid para 16.5.
[146] Ibid para 13.
[147] Richardson BJ (note 170 above) 191.
[148] *Endangered Wildlife Trust and others* para 161.1.

informal system of education.[149] This call for a radical change in the way things are done irresponsibly by mining companies. Reasonable action must be taken in variety communities to increase environmental awareness and education.[150] Sola believes that an educated public can be one of the most powerful weapons in the world's battle against harm to the environment.[151] Thus in this case, public participation did not include any form of environmental education and environmental awareness. The responsible authority, the Tribunal and the first respondent are obliged to encourage further public participation much more often even after and during mining activities. It was emphasised that the financial provision must be reviewed regularly and continuously to adjust for mine monitoring data, inflation and other financial variables.[152] This stipulates that as the financial provision will be reviewed regularly, public participate must run regularly to inform the community with changes or suggestions relating to the financial provision. Public participation is central to achieving equity and sustainability. To promote the principle of equality, all concerned citizens must participation in public participation processes without any gender, sexuality or age discrimination. Thus failure to achieve integrated decision-making and advancing public participation is at the root of continued environmental degradation and the widening gap between rich and poor.[153]

5.1 The Covid-19 Pandemic and the Environment

Almost the whole world recently unexpectedly experienced Covid-19 pandemic. Covid-19 is defined as a global health challenge in the twenty first century.[154] The emergence of SAR-CoV-2 in Wuhan, China in December 2019, and its spread to regional countries and now is affecting more than 210 countries worldwide represents the first pandemic in history to be caused by a coronavirus.[155] It was argued that lock-downs, quarantines and border closures in the wake of pandemic have led to reductions in air pollution through decreased travel and production, which resulted in almost a clean environment. However, most environmental organisations argue that this is not the end of the matter as other communities still suffer from environmental degradation resulting from mining activities and thus significant progress must be made in a sense that any plans which relate to safeguard health and environment

[149] Sola AO' Environmental Education and Public Awareness' (2014) 4 *Journal of Educational and Social Research* 366.
[150] Ibid.
[151] Ibid.
[152] *Endangered Wildlife Trust and others* para 169.1.
[153] Ibid.
[154] Mohamed A et al 'Environmental Impact of the Covid-19 pandemic - a lesson for the future' (2020), available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7448928/.
[155] Ibid.

must be tailored to how local people identify and prioritise their own health needs, environmental concerns and access to health care.[156] Mining affected communities' voices must be incorporated into any proposed health and environmental programs that have any reasonable chance of success, and the programs must be inclusive and promote the rights of local communities.[157] However, this reasonable action is still not taken by many mining companies. Public involvement can also facilitate community co-operation in implementing environmental decisions, such as anti-littering and recycling campaigns.[158] The sense of ownership and responsibility for decisions that comes from being part of decision-making can encourage more thoughtful environmental behaviour. These positive environmental effects are likely mostly temporary, but may serve as an example that changes in our way of life can have prompt positive effects for the environment and demonstrate the usefulness of travel-reducing measures such as teleconferencing. Thus acknowledging that covid-19 pandemic may inspire to future behavioural changes with positive environmental effects should not be ignored.[159]

While the response to Covid-19 has therefore demonstrated the necessity of striking a balance between the pillars of sustainable development even during crises.[160] Sustainable Development must be considered at both a macro policy making level, by regulators, but also at a micro development level by project developers. If developers, consider all three pillars and the need to balance them in respect of any planned development in terms of environmental and planning laws, applications for activities that impact the environment and require environmental authorisations, building in ecological sensitive areas, waste laws and water laws, the more likely the project is to be approved by the regulator in question.[161] Whether South African policy and regulation will push for economic development at all cost in order to kick-start the economy, or whether it will prioritise protection of vulnerable ecosystems, biodiversity, air quality and deforestation to improve health, has been unclear however, it has been argued that a balance for both economic and ecological development is important.[162] There is also an opportunity for South Africa to adopt a greener path for its Covid-19 economic recovery strategy, which may make us more resilient in the long-run since the shift to renewable energy is gaining momentum across the globe in attempts to

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[156] Zorrilla C (note 47 above) 17.
[157] Ibid.
[158] Richradson BJ (note 170 above) 172.
[159] Mohamed A et al (note 154 above).
[160] Ibid.
[161] Levetan S & Anstey D 'South Africa: COVID-19 And The Imperative for Sustainable Development' (2020), available at: https://www.lexology.com/library/detail.aspx?g=2c083cc2-0c73-4bcc-9759-d1f55e3064c.
[162] Mohamed A et al (note 154 above).

meet international commitments and obligations agreed to under the provision of the Paris Agreement.[163] However, this is likely to require legislative amendments to protect and encourage investment in and procurement of renewable energy, furthermore, will also require the government and developers to consider and strike a balance between all of the pillars of sustainable development in rebuilding South Africa during and post-Covid 19. Continued focus and committed of courts in reaching such generous judgments is needed for full delivery of the system, and specifically to ensure that human health and the environment considerations are integrated within socio-economic development planning.[164]

The *Mabola* judgment also made reference to the *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* case,[165] which expressed that economic and social development is essential to the well-being of human beings.[166] This is what we must learn from Covid-19, that although it is uncertain how the post Covid-19 will look. Covid-19 has demonstrated the importance of striking a balance between environmental, social and economic development.[167] This Court highlighted the fact that development cannot take place in a deteriorating environmental and that unlimited development is detrimental to the environment and the destruction of the environment is detrimental to the development.[168] Thus the promotion of development requires the protection of the environment and the environment cannot be protected if development does not pay attention to the environment. Therefore, it was held that the environment and development are linked.[169] In illustrating the link between the environment and development, section 2(4)(r) of NEMA supports the notion that sensitive, vulnerable, highly dynamic and stressed ecosystems such as coastal shores, estuaries, wetlands and similar systems, require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure to achieve human flourishing.[170] Sustainable development is an essentially contested concept and therefore it has no absolute correct interpretation.[171] However, the understanding of the

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[163] Ibid.
[164] Ibid.
[165] *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others*, 2007 (6) SA 4 (CC).
[166] Ibid.
[167] Levetan S & Anstey D 'South Africa: COVID-19 And The Imperative for Sustainable Development' (2020), available at: https://www.lexology.com/library/detail.aspx?g=2c083cc2-0c73-4bcc-9759-d1f55e3064c.
[168] Ibid.
[169] Ibid.
[170] Section 2(4)(r) of the National Environmental Management Act No. 107 of 1998.
[171] Huge J, Waas T & Dahdouh F (note 3 above) 188.

principle of integration in promoting environmental protection and social development seems rational and logical because it does not carry a biased connotation at first sight.[172] In the *Fuel Retailers Association* case it was held that reasonable measures must be taken into account to promote development that is socially, environmentally and economically sustainable.[173] Notably, it was further emphasised that it is vital to consider all relevant policies, legislation, guidelines, norms and standards when exercising decision-making powers in relation to the adoption and achievement of substantive environmental and social goals.[174] The more basic point behind such recommendations is the need for a reliable and continuing flow of information about the environmental, social, and economic effects of human activities which will enable flexible and adaptive public participation.[175]

From the legislations I discussed above, they also emphasise the importance of balancing environmental protection and economic development through the need for public participation. The ways that the public can assist in enforcement efforts are as numerous as the potential approaches for increasing public awareness and environmental protection.[176] Although legislation has been enacted to promote transparency and access to information, the implementation of the right of access to information has to be effective, thus participation will not be successful while information is not provided.[177] Some of these problems include lack of adherence to statutory timeframes, lack of communication between various public bodies and/or the requester and poor record-keeping.[178] Caring for the environment will not require one to become an environmental activist, but just to know more about one's environment. Public should understand about the fact that if we degrade our environment, we are harming ourselves. This is the duty of educated people to educate the others about the adverse effect of the environment.[179] It is also clear from these judgments that actions taken to address environmental problems have met with mixed results. Failure to integrate environmental issues into adequate planning and preventative measures and to also integrate environmental issues into development planning represent is a key weakness currently.[180]

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[172] Ibid190.
[173] See (note 166 and 70 above).
[174] *BP Southern Africa (Pty) Limited* (note 166 above) para 44.
[175] Dernbach J (note 8 above) 273.
[176] Sola AO (note 190 above) 366.
[177] Redelinghuis JE (note 104 above) 3.
[178] Ibid.
[179] Sola AO (note 190 above) 366.
[180] Scorgie Y (note 157 above).

Public Participation includes a variety of forms. It can occur through education, information dissemination, advisory or review boards, public advocacy, public hearings and submissions, and even litigation.[181] Stakeholder engagements and consultations form part of the requirements of public participation process for the environmental authorisation applications.[182] Stakeholder engagement is a process of interacting with stakeholders, so that a range of views and concerns can be expressed to inform decision-making and help build consensus on the assessment process to be followed.[183] However, equity can be achieved when stakeholder engagements also includes the public within their consultations periods. Such processes have to be open, transparent, and equitable and allow sufficient time and meaningful process for interested and affected parties and communities to engage.[184]

Dernbach states that the main purpose of sustainable development is to achieve human freedom, opportunity and quality of life,[185] with the idea to protect and restore the environment, while promoting peace, security, economic development and social development.[186] This shows that to achieve sustainability, environmental considerations and goals incorporated into the decision-making processes for development must not be treated separately or independently, and all parties including economic industries, government departments, all members of the communities and stakeholders must participate together.[187] Participations must promote policymakers to foster health and economic security in the short-medium and long term by investing in measures to establish a regenerative rather than an exploitative economy. This regenerative economy should value and prioritise rights for all South African affected citizens or communities and tackle systematic inequality and injustice. Encouragement on building green economies by establishing a pipeline of projects which create secure, healthy, sustainable jobs and lead to cleaner, healthier, safer and a more just world.[188]

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[181] Dernbach JC (note 165 above) 248.
[182] http//www.groundowrk.org.za/news.php. (Accessed 18 September 2020).
[183] Ibid.
[184] Ibid.
[185]Dernbach JC (note 165 above) 248.
[186] Ibid 251.
[187] Dernbach JC (note 165 above) 248.
[188] http//www.groundwork.org.za/news.php (Accessed 18 September 2020).

6. Conclusion

The tendency of governments, corporations and other decision-makers to consider the environment and development separately is a major reason why the promotions for environmental justice efforts often fail.[189] It is crucial that mining benefits must not only refer to material benefits but also to environmental goods and services provided or environmental costs and hazards avoided.[190]

From the above judgments I discussed above, it is clear that involvement of public in the implementation of environmental education programmes and campaigns was ignored. Air, water and land pollution is on the increase. To minimize these problems, environmental awareness is imperative and sharing of environmental knowledge through use of press media, awareness raising campaigns, incorporation in the mainstream education (basic, secondary and tertiary), public participation in environmental matters, celebrities in media campaigns and civic education are some of the ways by which environmental education can be heralded.[191] Educating adult, community, traditional and religious leaders on the importance of environmental health and on the well use of the natural environment is also very critical to sustainable development.[192] This will ensure that the community members and traditional leaders are well informed about environmental impacts caused by mining and the need to protect the environment. In most cases, when the environment is ignored, governments and companies make it harder and more costly, or even impossible to do the other things they have committed to do, in providing peace and security for their citizens, fostering economic development, human rights and providing conditions for social development.[193] A lesson that must be taken from covid-19 is to acknowledge and respond to the people's needs immediately and urgently. Section 2 of NEMA states that 'environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, development, cultural and social interest equitably'.[194] This means that all environmental concerns must be responded to in order to sustain human quality and health of the people.

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[189] Ibid 251.
[190] Murombo T (note 43 above) 19.
[191] Sola AO (note 190 above) 333.
[192] Ibid.
[193] Dernbach J (note 8 above) 252.
[194] Section 2 of the National Environmental Management Act, 1998.

Arguably, it is clear that mining activities are capable to eradicate poverty, unemployment and inequalities through job opportunities, as well as assisting communities with adequate public services such as health, water, infrastructure and education. Therefore, the bottom line is that the voices of the communities must be heard, the needs of communities must be met and furthermore, communities must be satisfied beyond reasonable doubt that mining companies are dedicated to advance their living conditions while protecting the environment at the same time.

9 603 words excluding an abstract and bibliography

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