

**MODEL LAW ON
MINING ON COMMUNITY LAND
IN AFRICA**

**PREPARED BY THE INTERNATIONAL ALLIANCE ON
NATURAL RESOURCES IN AFRICA**





Table of Contents

PREAMBLE	5
CHAPTER 1 : DEFINITIONS	7
1 <i>Definitions</i>	7
CHAPTER 2 : PRINCIPLES AND FUNDAMENTAL RIGHTS	10
2 <i>Application</i>	10
3 <i>Equality</i>	11
5 <i>Property</i>	12
6 <i>Information</i>	12
7 <i>Environment</i>	13
CHAPTER 3 : COMMUNITY DECISION-MAKING	13
8 <i>Community Definition</i>	13
9 <i>Community Governance</i>	14
10 <i>Community Rights</i>	14
11 <i>Community Consent Required</i>	15
12 <i>Free, Prior and Informed Consent</i>	16
13 <i>Customary Decision-Making</i>	17
14 <i>Consent Prior to Prospecting</i>	20
15 <i>Consent Prior to Mining</i>	21
16 <i>Outcome</i>	22
17 <i>Community Advisory Committee</i>	23
18 <i>Powers of the Community Advisory Committee</i>	26
19 <i>Appointment of Independent Investigator</i>	26
21 <i>Role of the Independent Investigator</i>	29
CHAPTER 4 : ASSESSMENT OF IMPACT	29
22 <i>Integrated Impact Assessment Required</i>	30



23	<i>Independent Impact Assessment Practitioners' Fund</i>	33
25	<i>Powers of the Independent Impact Assessment Practitioners' Fund</i>	34
26	<i>Appointment of Independent Impact Assessment Practitioners</i>	35
27	<i>Removal of Independent Impact Assessment Practitioners</i>	35
28	<i>Independent Impact Assessment</i>	36
29	<i>Role of the IIAP</i>	37
30	<i>Annual Review of IIA</i>	37
31	<i>Comprehensive Review of IIA</i>	38
CHAPTER 5 : INFORMATION		39
32	<i>Disclosure</i>	39
33	<i>Reporting</i>	41
CHAPTER 6 : COMPENSATION AND RELOCATION		42
34	<i>Entitlement to Compensation</i>	42
35	<i>Compensation for Loss</i>	42
36	<i>Relocation</i>	44
37	<i>Benefit Sharing</i>	45
38	<i>Restitution</i>	45
39	<i>Community Resources</i>	46
CHAPTER 7 : TAXATION AND OTHER MINING REVENUES		47
40	<i>Introduction</i>	47
41	<i>Taxation</i>	47
42	<i>Regulations</i>	48
CHAPTER 8 : CONSIDERATION OF APPLICATIONS		48
43	<i>Mining Rights Application Panel</i>	48
44	<i>Requirements for Application</i>	49
45	<i>Powers of the Mining Rights Application Panel</i>	50
CHAPTER 9 : ARTISANAL MINING		50
46	<i>Introduction</i>	51



47	<i>Regulations</i>	51
CHAPTER 10 : SUSTAINABLE MINING		52
48	<i>Separation of Corporate and State Power</i>	52
49	<i>General Standards</i>	52
50	<i>Duty of Care and Remediation of Environmental Damage</i>	53
51	<i>Beneficiation</i>	54
CHAPTER 11 : ENFORCEMENT AND DISPUTE RESOLUTION		55
52	<i>Local Grievance Mechanisms</i>	55
53	<i>Appointment of Independent Investigator</i>	55
54	<i>Enforcement Agency</i>	56
55	<i>Inspections</i>	56
56	<i>Complaints</i>	56
57	<i>Enforcement Agency's Enforcement Powers</i>	57
58	<i>Offences</i>	58
59	<i>Access to Courts and Tribunals</i>	58



PREAMBLE

We, the people of Africa:

RECOGNISING our shared history of colonial oppression and exploitation;

HAVING contributed to the struggles for independence from colonial rule and development of all our countries in Africa;

FINDING ourselves still being governed by mining laws that undermine human rights, override environmental laws and regard foreign investors as more important than indigenous people;

ACKNOWLEDGING the diversity and multiple identities and different development aspirations of the African Peoples and the relevance of natural resources to these aspirations;

RECOGNISING the multiplicity of challenges and impacts caused by extractive activities across the continent;

FURTHER ACKNOWLEDGING that extraction of the natural resources can positively contribute to local and national economic development where properly and sustainably regulated;

CONVINCED that appropriate mining legislation and diligent implementation can significantly contribute to more equitable and sustainable mining practice throughout the continent;

CONSIDERING that the African Charter on Human and People's Rights, assented to by almost every country in the region, represents the highest aspiration for a fair and sustainable development paradigm on the continent through enshrining, *inter alia*: (1) the right to the respect of the dignity inherent in a human being and the associated right of Peoples to the recognition of individual and collective legal status; (2) the right to receive information; (3) the right of Peoples to the free disposal of wealth and natural resources; (4) the right to economic, social and cultural development; (5) the right to national and international security;

DETERMINED to achieve social justice through ensuring that people's rights are protected, promoted, and realised;



CONSIDERING the Charter of the Organisation of African Unity, which stipulates that “freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples”;

REAFFIRMING the pledge in Article 2 of said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify cooperation and efforts to achieve a better life for the peoples of Africa, and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

SEEKING to give priority to the ecosystem and to the eradication of poverty and inequality;

INSISTING that indispensable extractivism be driven by local and regional interests and demands;

RECOGNISING on the one hand, that fundamental human rights stem from the attitudes of human beings, which justifies their international protection, and on the other hand that the reality and respect of peoples’ rights should necessarily guarantee human rights;

CONVINCED that it is essential to pay particular attention to the right to development, and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality, and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

CONSCIOUS of our duty to achieve the total liberation of Africa, the Peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, and Zionism, and to dismantle aggressive foreign military bases and all forms of discrimination, language, religion or political opinions;

TO THIS END WE HEREBY chart out this model Law as the people of Africa on what we believe will serve as a basis for transforming the legal and policy framework regarding the extraction of natural resources in Africa and bring the desired positive change in human rights promotion and meaningful contributions to the economic, social and cultural development of Africa.



CHAPTER 1 : DEFINITIONS

1 Definitions

- 1.1 *Affected rights holders* means the persons who will be directly affected by any proposed mining activity, including and especially any person whose customary property rights will be affected.
- 1.2 *Annual IIA Review* means the annual review of a company's independent impact assessment required by section 30.
- 1.3 *Applicant* means any entity seeking to engage in any mining activity.
- 1.4 *Community Advisory Committee* means the committee established in terms of section 16.
- 1.5 *Community* means a community as defined in section 8.
- 1.6 *Comprehensive IIA Review* means the comprehensive review of a company's independent impact assessment required every five years by section 31.
- 1.7 *Customary law* means the rules and principles that communities use to govern themselves and their access, governance, development, allocation, conservation and disposal of shared resources. In this Law, the customary law as practiced by communities today shall prevail over any written account of a community's customary law, particularly any account written by colonial administrators or their functionaries.



- 1.8 *Environmental Department* means the state department responsible for environmental protection.
- 1.9 *I/A* means an independent impact assessment in terms of section 28.
- 1.10 *I/AP* means an independent impact assessment practitioner appointed in terms of section 26.
- 1.11 *Independent investigator* means a person appointed in terms of section 19 and shall specifically include juristic persons, including and especially non-governmental organisations.
- 1.12 *Information* includes any original or copy of documentary material irrespective of its physical characteristics, such as records, correspondence, fact, opinion, advice, memorandum, data, statistic, book, drawing, plan, map, diagram, photograph, audio or visual record, and any other tangible or intangible material, regardless of the form or medium in which it is held, in the possession or under the control of the information holder to whom a request has been made under this Act.
- 1.13 *Information holder* means a public body, relevant private body and/or private body.
- 1.14 *Mineral* means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process, and includes sand, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles or in residue deposits, but excludes —
- (a) water, other than water taken from land or sea for the extraction of any mineral from such water;
 - (b) petroleum; or



(c) peat.

- 1.15 *Minerals Department* means the state department responsible for mining industry.
- 1.16 *Mining* means the extraction of any mineral, in or under the earth, water or any residue deposit, whether by underground or open working or otherwise and includes any operation or activity incidental thereto, in, on or under the relevant mining area
- 1.17 *Mining activity* means any mining-related activity and specifically includes any activities involving or reasonably incidental to prospecting and mining;
- 1.18 *Mining entity* means any juristic or natural person involved in any mining activity.
- 1.19 *Minister* means the Minister of the Minerals Department.
- 1.20 *Private body* means:
- 1.20.1 a natural person who carries on or has carried on any trade, business or profession or activity, but only in such capacity;
 - 1.20.2 a partnership which carries on or has carried on any trade, business or profession or activity;
 - 1.20.3 a company or closed corporation incorporated under domestic or foreign law;
 - 1.20.4 any former or existing juristic person or any successor in title, excluding public bodies.
- 1.21 *Prospecting* means exploring for any mineral through any activity that:



- 1.21.1 requires access to another's land; or,
- 1.21.2 disturbs the surface or subsurface of any land.
- 1.22 *Public body or agency* means any body:
 - 1.22.1 established by or under the national Constitution;
 - 1.22.2 established by statute;
 - 1.22.3 which forms part of any level or branch of government;
 - 1.22.4 that exercises public powers or performs a public function.
- 1.23 *The Community Advisory Committee* means the Committee established in terms of section 17.1.
- 1.24 *The Fund* means the Independent Impact Assessment Practitioners' Fund established in terms of section 23.1.

CHAPTER 2 : PRINCIPLES AND FUNDAMENTAL RIGHTS

2 Application

- 2.1 The rights and obligations in this Law bind the executive and all organs of State.
- 2.2 The rights and obligations in this Law bind natural persons and juristic persons incorporated under domestic law or any other jurisdiction, as well as any person with a controlling interest in or direction over such a juristic person.

- 2.3 A juristic person is entitled to the rights and is under the obligations in this Law to the extent required by the nature of the rights and obligations and the nature of that juristic person.
- 2.4 Parties that participate in mining within the jurisdiction of this Law, or that voluntarily bind themselves to this Law, accept its extraterritorial application.
- 2.5 No person may contract out of any of the obligations set out in this Law.

3 Equality

- 3.1 Everyone is equal before the law and has the right to equal protection and benefit of the law.
- 3.2 Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- 3.3 The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- 3.4 No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection 3.3.

4 Human dignity



- 4.1 Everyone has inherent dignity and the right to have their dignity respected and protected.

5 Property

- 5.1 Communities and members of communities owning or possessing land in terms of any custom or practice shall have a right to property and the protection thereof, including the use and disposal of both surface and subsurface rights.
- 5.2 This right shall vest in the members of the community in terms of the customary law, custom or practice of that community.
- 5.3 This right shall not vest in chiefs, tribal authorities, committees or any other leader or representative of the community.
- 5.4 Notwithstanding any mandate of any office or institution to represent the community's interest in its communally held property, the rights of members of communities held in terms of customary law to access, use and make decisions over the communal property will be guaranteed.

6 Information

- 6.1 Everyone has the right of access to-
 - 6.1.1 any information held by the State or a public body; and
 - 6.1.2 any information that is held by another person and that is required for the exercise or protection of any rights.
- 6.2 The right of access to information is recognized as a fundamental human right, necessary for the promotion of other human rights, citizen



participation, and accountability. It is an indispensable component of democracy and development, including socio-economic development.

7 Environment

- 7.1 Everyone shall have the right to an environment that is not harmful to their health or wellbeing, and to have the environment protected to advance ecologically sustainable development and the use of natural resources.

CHAPTER 3 : COMMUNITY DECISION-MAKING

8 Community Definition

- 8.1 Community shall be defined as a group of persons who have chosen or choose to adhere to and enforce shared rules of access to their land, minerals and other resources, owned by them through long occupation and or grant or other means regardless of whether title is formally held by the State or another person, provided that the community shall:
- 8.1.1 practice a system of customary land tenure; or,
 - 8.1.2 be indigenous people or descendant; or,
 - 8.1.3 live on trust land under domestic statute law.
- 8.2 Such a community may affirm its recognition and social boundaries with reference to its neighbours, and neighbouring communities may recognise a community for purposes of decision-making under this law.
- 8.3 In the context of proposed mining activities, decision making power shall vest at the lowest level of organisation of customary rights holders,



including at the village, ward or clan level or any other structure defined by that community's customary law.

9 Community Governance

- 9.1 Communities shall have the choice to practice customary forms of governance in matters internal to the community and involving relations external to the community.
- 9.2 Such practice shall be recognised as a living and changing form of governance.
- 9.3 Such practice shall not be defined or bound by colonial constructions of customary ownership, decision-making and governance.
- 9.4 Customary decision-making processes shall be as defined by the communities' living practice, subject to the realisation of equality and democracy enshrined in the African Charter on Human and Peoples' Rights, especially the promotion of the rights of women to participate in and lead such processes.

10 Community Rights

- 10.1 The continued existence of a community shall be considered inviolable.
- 10.2 The rights of a community include, amongst others, the right to:
 - 10.2.1 pursue their own development path;
 - 10.2.2 the natural resources on and below the surface of their land; and
 - 10.2.3 collectively benefit from the use of the natural resources on and below the surface of their land.



- 10.3 No community may be arbitrarily deprived of these rights through mining or associated activities.
- 10.4 The State must facilitate and support the chosen development path of such a community, including supporting the community in considering all viable forms of development.

11 Community Consent Required

- 11.1 Should a proposed mining activity require access to a portion of land owned, occupied or used by a community in terms of that community's custom or practice, or if an existing mining activity should require a significant change in the scope or nature of operations, the affected community's consent shall be required.
- 11.2 The affected community shall have the right to grant consent unconditionally or subject to conditions that the community considers necessary to protect their socio-economic rights or interests, or their natural or cultural heritage.
- 11.3 The affected community shall have the right to refuse to grant such consent.
- 11.4 Should the affected community's consent not be granted, the State shall not permit the proposed mining activity to proceed until such consent is granted.
- 11.5 Should mining commence or a mining right be granted without the consent of the community, the community shall have the choice to:



- 11.5.1 have the right set aside and to be paid compensation for the full damages suffered by the community including the value of any minerals extracted and the value of rehabilitating the land to the condition it was in prior to any mineral exploitation; or
- 11.5.2 consent to the mining retrospectively through the process set out in this Chapter, including the negotiation of compensation, and to recover all compensation that would have been owed to it had the community's consent been received from the outset.
- 11.6 Communities shall have the right to revoke their consent should mining activities be conducted in a manner contrary to this Law, with communities then entitled to compensation for the full damages suffered by all mining activities.
- 11.7 If more than one community is affected by a proposed mining activity, each community shall have the right to independently decide whether to grant or refuse its consent.

12 **Free, Prior and Informed Consent**

- 12.1 Community consent may only be granted on the terms set out in this Chapter, and must be:
 - 12.1.1 free from any form of manipulation, coercion, or pressure;
 - 12.1.2 prior to the commencement of the activity; and
 - 12.1.3 with full, detailed and accurate information on the nature and scope of the proposed mining activity, on the reasonably possible impacts on the community's economic, social and environmental wellbeing, including the impact on women informed by the



precautionary principle that the burden of proof falls on the application to establish that an activity is not harmful, and on development alternatives.

13 Customary Decision-Making

13.1 When a community's consent is required, a community shall decide whether to grant its consent in terms of that community's customary law and practices, provided that such processes shall:

13.1.1 be transparent, democratic, and participatory;

13.1.2 ensure the participation of all persons directly affected by the proposed mining activities; and

13.1.3 protect and promote the right of women to participate, lead, and make decisions.

13.2 Where the proposed mining activity requires the relocation of specific community members' homes, the majority of the specific persons affected by the relocation must consent to the mining activity. This is a necessary requirement, without which the community as a whole cannot consent to such activity.

13.3 A decision to provide consent must include an agreement regarding compensation payable to the community and its members compliant with the standards set out in CHAPTER 6.

13.4 Notwithstanding any timeframes provided for in terms of statute law, communities have the right to sufficient time to give effect to decision making processes required by their customary law.



13.5 The independent investigator appointed in terms of section 19 shall participate in such processes to the extent necessary to ensure that community members have sufficient information with which to reach a decision. This shall include, at minimum:

13.5.1 A widely publicised public meeting where the independent investigator summarises the likely affects of the proposed mining activities, including the results of any impact assessment conducted, in a manner that is accessible to the community and at a convenient venue and time. The independent investigator must also summarise the proposed terms under which the applicant proposes to compensate the community and its members for the proposed mining activities, and advise the community regarding the extent of the applicant's compliance with the requirements of CHAPTER 6.

13.5.2 At such a meeting, community members shall be entitled to comment freely and to seek further information.

13.5.3 At or after such a meeting, the community may appoint community representatives to represent the community in engagements with the independent investigator and the applicant in terms of that community's customary law, provided that such representatives shall not be empowered to give binding undertakings on behalf of the community.

13.5.4 After such a meeting, the independent investigator shall furnish all information sought by community members in an accessible form.



- 13.6 At a later meeting, publicised in the same manner as the first, the community shall be entitled to take a decision regarding whether consent shall be granted, provided that:
- 13.6.1 All information requested at previous meetings shall have been provided to the community.
 - 13.6.2 The independent expert shall present the full details of the applicant's final offer regarding compensation to the community and its members, and advise the community regarding the extent of the applicant's compliance with the requirements of CHAPTER 6.
 - 13.6.3 The community decision-making process shall seek a consensus outcome, subject to the condition in section 13.2.
 - 13.6.4 Should consensus not be reached, consent may only be deemed to be granted if, at minimum, the majority of the affected rights holders have consented to the mining activity in writing, provided that such a meeting may only occur after the independent investigator has recorded the reasons why consensus has not been reached and ensured that minority and vulnerable households have participated in the process.
 - 13.6.5 In cases where the proposed mining activity requires the relocation of members of the community, consent will only be deemed to have been granted if the majority of the persons affected by the relocation have consented to such activity in writing.



13.6.6 Where a community member is unable to read or write, consent may be given by the rights holder by signing or making their mark on the written consent document after the contents of the document have been explained to him or her.

14 **Consent Prior to Prospecting**

- 14.1 Community consent as set out in section 13 shall be required for the grant of a prospecting right over land held by a community.
- 14.2 Such consent must be granted prior to the commencement of the prospecting activities.
- 14.3 Prior to seeking such consent, the applicant must approach the Community Advisory Committee established in terms of section 16 to have an independent investigator appointed.
- 14.4 After the appointment of the independent investigator in terms of section 17, the applicant must provide the independent investigator with full and detailed information regarding the proposed prospecting activities and the extent to which the applicant will require access to community land in order to conduct such activities.
- 14.5 The applicant must provide all information that is reasonably required by the independent investigator to advise the community in relation to the proposed prospecting activity.
- 14.6 If any information provided by the applicant is subsequently found to have been materially misleading, either by intent or gross negligence, any consent granted in terms of this section shall be voidable and may be set aside by the community.



- 14.7 Providing materially misleading information to a community by intent or gross negligence shall be an offence in terms of this Act.
- 14.8 Should consent be granted and the application for prospecting rights be successful, the applicant must give such advanced notice as is reasonably required by the community prior to conducting any prospecting or exploratory activity. Such notice shall at minimum require four weeks advance notice.
- 14.9 If the applicant requires access to community land for activities not specified when consent was initially sought, the consent of the affected rights holders must be sought and obtained prior to the commencement of such activities.
- 14.10 If consent is granted by a community in terms of this section, it does not preclude that community from withholding consent to mining in terms of section 15.

15 Consent Prior to Mining

- 15.1 Community consent as set out in section 13 shall be required for the grant of a mining right over land held by a community. Such consent shall be required at two stages:
- 15.1.1 Prior to the commencement of any impact assessment; and
- 15.1.2 Subsequent to any impact assessment and prior to the commencement of mining.
- 15.2 Prior to seeking consent, the applicant must approach the Community Advisory Committee to have an independent investigator appointed, provided that where the Committee has already appointed an



independent investigator to advise the community regarding prospecting, that investigator shall continue to advise the community unless their mandate is revoked by the community.

15.3 The provisions relating to the provision of information by the applicant and the consequences of providing insufficient information in subsections 14.5 to 14.9 apply with equal force to this section.

15.4 Should consent be granted and the application for mining rights be successful, the applicant must give such advanced notice as is reasonably required by the community prior to conducting any mining activity.

16 **Outcome**

16.1 Where consent is granted for a mining activity, it is mandatory that the applicant and the community conclude a written agreement setting out the terms of exactly what has been consented to in plain language, including the terms of compensation payable to the community and its members, provided that the community may nominate representatives to sign such agreement in terms of its customary law and practice after the final draft has been made available to the public.

16.2 This written agreement may be amended with the consent of all parties where it is necessary to change the project plan for the proposed mining activity which is likely to affect or change the impact of such activity.

16.3 Where consent is granted or refused, the independent investigator shall produce a report documenting the decision-making process, with a particular emphasis on the following factors:



- 16.3.1 The steps taken to notify the members of the community about the meetings convened by the independent investigator;
- 16.3.2 The quality of the information provided by the applicant and the extent of its cooperation;
- 16.3.3 Indications of manipulation, coercion or pressure from outside actors during the decision-making process.
- 16.3.4 The extent of community participation, including the extent of participation by vulnerable members of the community and minority groups;
- 16.3.5 Where consensus was not reached, the reasons why consensus was not reached, the views of those opposed to the mining activity including and especially minority and vulnerable households, and full details on the meeting at which the decision was taken.
- 16.3.6 The extent of the participation of and leadership by women in the process;
- 16.3.7 Where the relocation of members of the community had been proposed by the applicant, the steps that were taken to solicit the views of the persons affected by the relocation; and
- 16.3.8 Any other information that may be relevant to explaining the extent and quality of the public participation process and the decision of the community.

17 Community Advisory Committee



- 17.1 There is hereby established a body to be known as the Community Advisory Committee.
- 17.2 This Committee shall consist of six members:
- 17.2.1 a representative of the Minerals Department;
 - 17.2.2 a representative of the Environmental Department;
 - 17.2.3 a representative nominated by civil society organisations engaged in supporting mining affected communities;
 - 17.2.4 two representatives nominated by communities affected by mining; and
 - 17.2.5 a representative nominated by the mining industry.
- 17.3 The Committee members shall hold office for a stipulated term, subject to reappointment for only one further term.
- 17.4 Prior to this Law coming into force, the Minister, in consultation with the Minister of the Environmental Department, civil society organisations, and communities affected by mining, shall draft regulations setting out the process by which the representatives nominated in 17.2.3, 17.2.4, and 17.2.5 shall be appointed and the criteria for appointment. In addition, the regulations shall set out the requirements and process for terminating a Committee member's office before the expiry of their term. These regulations shall also ensure balanced gender representation on the Committee.
- 17.5 After drafting the regulations, the Minister shall set a date for their commencement in the Government Gazette.



- 17.6 Once the Minister has promulgated the regulations, any party shall be entitled to approach the courts to challenge the regulations on the basis that they do not ensure independent representation of civil society, communities affected by mining, or the mining industry.
- 17.7 The Committee must, through a process of public consultation, including publication in the official gazette and a 30 day period for public comment, develop its own rules, procedures and code of conduct to regulate its affairs. Any amendments to these rules, procedures and code of conduct must also be made public in the same manner as above.
- 17.8 The Committee shall be financed through fees paid by applicants, set in advance or levied on an *ad hoc* basis, together with such funds as may be allocated by Parliament.
- 17.9 The relevant Parliamentary Committee must determine the remuneration and allowances that will be paid to the members of the Community Advisory Committee who are not employees of the Departments of Minerals or Environment.
- 17.10 The Committee shall report to Parliament on programme and financial matters on an annual basis, with Parliament empowered to audit the Committee annually or at such intervals as it should determine.
- 17.11 Independence of the Community Advisory Committee**
- 17.12 The Committee is independent, and subject only to the national Constitution and the law, and must be impartial and must perform its functions without fear, favour or prejudice.
- 17.13 The Committee must function without any political or commercial interference.



18 Powers of the Community Advisory Committee

18.1 The Community Advisory Committee has the power to:

- 18.1.1 appoint an independent investigator in terms on section 19;
- 18.1.2 remove an independent investigator from their office in terms of section 20.
- 18.1.3 levy fees to be paid by the applicant for a mining or prospecting right, which will be used to fund the Committee and to remunerate the independent investigator and to fund their work;
- 18.1.4 appoint experts in specific technical fields, at the request of the independent investigator, should such expert reports be reasonably required by the community to decide whether to consent or not;
- 18.1.5 levy fees to be paid by the applicant for a mining or prospecting right, which will be used to remunerate the experts appointed in terms of section 18.1.4 and to fund such experts' work; and
- 18.1.6 exercise any other powers and perform such duties conferred and imposed upon it by this Law and any other applicable law.

19 Appointment of Independent Investigator

19.1 The Community Advisory Committee must appoint an independent investigator after being approached by an applicant or a community in terms of this section.

19.2 *Approach by applicant*



- 19.2.1 An applicant must apply to the Committee prior to seeking the consent of any community for any mining activity.
 - 19.2.2 The Committee shall then appoint an independent investigator to advise the affected community in relation to all decisions requiring the community's consent. The Committee shall advise the applicant of the appointment of the investigator.
- 19.3 *Approach by community*
- 19.3.1 If an applicant seeks the consent of a community without first approaching the Committee, or if the community seeks the appointment of a different investigator than the one appointed by the Committee, the community may apply to the Committee.
 - 19.3.2 The Committee must determine whether the person or people who have approached it are authorised to represent the community.
 - 19.3.3 If such person or people are authorised to represent the community in terms of the community's customary law or practice, the Committee shall appoint an independent investigator, provided that the Committee must appoint any investigator requested by the community if that investigator is qualified.
 - 19.3.4 Should the authority of the person or people purporting to act on behalf of a community be disputed by members of the community, the Committee shall take such steps as it deems necessary to ensure that a suitable independent investigator is appointed.
- 19.4 The Committee shall be responsible for the remuneration of the investigator at rates to be determined by the Committee, and shall provide



funding for all reasonably necessary activities conducted by the independent investigator in fulfilling their mandate. The Committee may, at its discretion, compel the applicant to pay such costs.

20 **Removal of Independent Investigator**

20.1 The Committee may remove an independent investigator from their office on application by the applicant or the community.

20.2 The applicant or the community may apply to the Committee for the removal of the independent investigator on one of the following grounds:

20.2.1 the person is mentally or physically incapable of performing the functions and duties of the office;

20.2.2 the person is declared insolvent;

20.2.3 where the person has performed actions amounting to gross misconduct or brought the oversight mechanism into disrepute;

20.2.4 the person has been convicted of a serious crime;

20.2.5 the person is unable to perform the duties of their office efficiently.

20.3 The independent investigator, community and applicant must be afforded the opportunity to make written or oral submissions regarding the application for removal, prior to the decision of the Committee.

20.4 The Committee may call for further evidence to assist it in deciding the application for removal.



20.5 If the Committee terminates the office of the existing independent investigator, it must appoint a new independent investigator in accordance with section 19.

21 Role of the Independent Investigator

21.1 The independent investigator shall be responsible for advising the affected community in all decisions in which the community's consent is required.

21.2 The independent investigator shall ensure that they facilitate community participation.

21.3 The independent investigator may also advise the affected community where mining activities have commenced without the community's consent.

21.4 The independent investigator shall not be empowered to substitute the community's judgment with their own.

21.5 The independent investigator shall be empowered to approach the Community Advisory Committee to request the appointment of further experts in specific technical fields should such expertise be reasonably required in order for the community to make an informed decision on whether to grant or refuse consent.

21.6 Should an applicant breach any of its duties in terms of this Law, the independent investigator shall be empowered to make a recommendation to the Enforcement Agency established by section 54.

CHAPTER 4 : ASSESSMENT OF IMPACT



22 Integrated Impact Assessment Required

22.1 Prior to the commencement of any mining activity, an impact assessment must be prepared that documents, at a minimum:

22.1.1 social impact;

22.1.2 environmental impact; and

22.1.3 the viability of alternatives to the proposed mining activity.

22.2 This impact assessment shall be completed by an independent impact assessment practitioner appointed in terms of this Chapter.

22.3 The impact assessment must include an estimate of the cost of compensation payable in terms of CHAPTER 6 and the estimated cost of rehabilitation, as well as a minimum amount of funds the applicant must set aside to cover such costs prior to the commencement of mining.

22.4 Prior to this Law coming into force, the Minister of the Environmental Department in consultation with the Minister of the Minerals Department, civil society organisations, and communities affected by mining, shall draft regulations governing impact assessments for prospecting and mining, respectively, which regulations shall ensure:

22.4.1 that there are clear guidelines for the appointment and removal of independent impact assessment practitioners;

22.4.2 the assessment of the likely impact on the community's human rights and its way of life, as well as the specific impact on the rights of women and youth;



- 22.4.3 community participation in the assessment of both social and environmental impact, with a particular emphasis on holders of land rights in the proposed mining area;
 - 22.4.4 the assessment of the likely impact on communities' traditional knowledge and culture, including any particular impact on indigenous peoples;
 - 22.4.5 the assessment of the likely environmental impact on the affected community, as well as on the nation as a whole, of the mining activities including the impact after mining activities have been concluded;
 - 22.4.6 meaningful cost-benefit analysis, including an environmental resources economics assessment at a micro and macro level that considers and assesses any projected revenues submitted by the applicant; and
 - 22.4.7 the assessment of the impact on community and national heritage, including sacred and/or historical sites.
- 22.5 The Minister of the Environmental Department shall publish the draft regulations for comment and must follow an appropriate consultative process in the circumstances.
- 22.6 The public participation process must include the following:
- 22.6.1 The Minister of the Environmental Department must give notice of the draft regulations:
 - (a) in the *Government Gazette* or the official government publication;



- (b) in at least one newspaper distributed nationally;
- (c) in radio broadcasts that are accessible to communities affected by mining; and
- (d) in consultation with communities.

22.6.2 The notice must:

- (a) invite members of the public to submit to the Minister, within 30 days of publication of the notice in the Government Gazette, written representations on, or objections to, the draft regulations;
- (b) Invite members of the public to submit to the Minister, within 30 days of publication of the notice in the Government Gazette, a request to give oral representations on, or objections to, the draft regulations; and
- (c) contain sufficient information to enable members of the public to submit meaningful representations or objections.

22.6.3 The Minister of the Environmental Department may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or a person designated by the Minister.

22.6.4 The Minister of the Environmental Department must give due consideration to all representations or objections received or presented and must amend the regulations where appropriate.

22.7 Once the Minister of the Environmental Department has promulgated the regulations, any party shall be entitled to approach the courts to challenge the regulations' on the basis that they do not comply with the requirements set out in section 22.4.



23 Independent Impact Assessment Practitioners' Fund

- 23.1 There is hereby established a fund to be known as the Independent Impact Assessment Practitioners' Fund ("the Fund").
- 23.2 The Fund shall be managed by a committee of seven respected impact assessment professionals nominated per the following:
- 23.2.1 one nominated by the Department of Minerals;
 - 23.2.2 one nominated by the Department of Environment;
 - 23.2.3 one nominated by the Department for Social Development;
 - 23.2.4 two nominated by communities affected by mining;
 - 23.2.5 one nominated by civil society organisations working with mining affected communities; and
 - 23.2.6 one nominated by the mining industry.
- 23.3 The Minister of the Environmental Department shall, in consultation with the Minister of the Minerals Department, civil society organisations, and communities affected by mining, draft regulations setting out the process by which the representatives nominated in terms of sections 23.2.4, 23.2.5, and 23.2.6 shall be appointed and the criteria for appointment. In addition, the regulations shall set out the requirements and process for terminating a Committee member's office before the expiry of their term. These regulations shall also ensure balanced gender representation on the Fund.
- 23.4 The Minister of the Environmental Department must conduct a public participation process in accordance with sections 22.5 and 22.6.



- 23.5 After drafting the regulations, the Minister shall set a date for their commencement in the Government Gazette.
- 23.6 After the regulations have been promulgated, any party shall be entitled to approach the courts to challenge the regulations on the basis that they do not ensure independent representation of civil society, communities affected by mining, or the mining industry.
- 23.7 The Fund shall be financed through fees paid by applicants for rights to conduct mining activities, and may be supplemented by tax revenues as necessary.
- 23.8 The Fund shall be responsible for the remuneration the IIAPs at rates to be determined by the Fund, and shall provide funding for all reasonably necessary activities conducted by the IIAP in fulfilling their mandate.
- 23.9 The Fund shall report to Parliament on an annual basis, with Parliament empowered to audit the Committee annually or at such intervals as it should determine.

24 Independence of the Independent Impact Assessment Practitioners' Fund

- 24.1 The Fund must be impartial and must perform its functions without fear, favour or prejudice.
- 24.2 The Committee must function without any political or commercial interference.

25 Powers of the Independent Impact Assessment Practitioners' Fund

- 25.1 The Fund has the power to:



- 25.1.1 appoint independent impact assessment practitioners (IIAPs) in terms on section 26;
- 25.1.2 remove an IIAP from their office in terms of section 27;
- 25.1.3 levy fees or charges to be paid by the applicant for a mining or prospecting right, which will be used to finance the operations of the Fund, to remunerate the IIAP and to fund the IIAP's work;
- 25.1.4 levy fees or charges to be paid by the applicant for a mining or prospecting right, which will be used to remunerate and fund the work of such additional experts as may be reasonably required by the IIAP to fulfil their mandate; and
- 25.1.5 exercise any other the powers and perform the duties conferred and imposed upon it by this Act and any other applicable law.

26 Appointment of Independent Impact Assessment Practitioners

- 26.1 Where an applicant requires an impact assessment in terms of this Law, the applicant shall apply to the Fund.
- 26.2 The Fund shall thereafter appoint an independent impact assessment practitioner ("IIAP") with the requisite experience in terms of transparent processes determined in advance by the Fund.
- 26.3 The applicant shall have no role in selecting the IIAP or in determining their mandate.

27 Removal of Independent Impact Assessment Practitioners



- 27.1 The Fund may remove an IIAP from their office on application by the applicant or the community.
- 27.2 The Fund must consider the application for removal and determine whether there is just cause to do so.
- 27.3 If the Fund terminates the office of the existing independent investigator, it must appoint a new independent investigator in accordance with section 26.

28 Independent Impact Assessment

- 28.1 Any independent impact assessment submitted in terms of this Law shall comply with the regulations above as well as the provisions of this section.
- 28.2 A comprehensive draft independent impact assessment must be submitted to an extensive public participation process that includes, at minimum:
 - 28.2.1 a public presentation of the draft report must be made to the community;
 - 28.2.2 the draft IIA must be translated to the language spoken by the interested and affected communities.
 - 28.2.3 all interested and affected parties to must be given an opportunity to meaningfully comment on the IIA; and
 - 28.2.4 the community must be empowered to independently assess the draft IIA.
- 28.3 The IIAP must consider all comments received and amend the IIA where necessary or appropriate.



28.4 After the draft IIA has been subjected to the public participation process set out above, a final IIA shall be submitted to any affected community and to the Fund.

28.5 If the Fund is satisfied that the IIA complies with the regulations promulgated in terms of section 22.4, it may pass a resolution approving the IIA.

29 **Role of the IIAP**

29.1 An IIAP shall ensure the completion of an independent impact assessment in accordance with the regulations promulgated in terms of this Chapter.

29.2 The IIAP shall be empowered to appoint such additional experts as may be reasonably required to fulfil their mandate.

30 **Annual Review of IIA**

30.1 Should a mining right be granted, the mining company shall conduct an annual IIA review, in accordance with the following process:

30.1.1 The company shall prepare a draft review report that measures the impact of the previous year's mining activities against the IIA and records the degree and nature of any impact not in line with the IIA.

30.1.2 Copies of the draft IIA review report, together with the IIA itself and any previous IIA review reports, shall be made available to the affected community and stakeholders.

30.1.3 The affected community and stakeholders shall have 30 days to comment on the draft report.



30.1.4 The company shall consider all comments received and adjust the draft report as necessary or appropriate.

30.1.5 The final IIA review report shall be submitted to the affected community, stakeholders, and the Fund, together with all comments received.

31 Comprehensive Review of IIA

31.1 Every five years, the Fund shall appoint an IIAP to conduct a comprehensive IIA review that assesses the impact of mining as measured against the IIA. This report shall record areas for improvement, remedial measures to be taken, and a recommendation regarding whether the mining right should be revoked for non-compliance with this Law and any agreements or other requirements arising from it.

31.2 This review must include the following:

31.2.1 The IIAP must prepare a draft comprehensive IIA review report after consultation with the affected community, the mining company, and all relevant stakeholders and after consideration of the previous years' annual review reports.

31.2.2 After preparing a draft comprehensive IIA review report, the IIAP shall make the report available to the public for comment. The public shall be given 45 days in which to comment.

31.2.3 The IIAP must:

(a) Make the draft review report available to the affected community, all stakeholders, the mining company, and all



relevant government departments electronically and at a venue within the community.

- (b) Present the draft review at a meeting held at an accessible venue within the community. The IIAP must give reasonable notice of the meeting to the community to allow any interested community members to participate.

31.2.4 The IIAP shall incorporate all comments received into the final comprehensive IIA review report.

31.2.5 The final report shall be submitted to the community, the mining company, the Fund, the Minister of the Minerals Department and the Minister of the Environmental Department.

CHAPTER 5 : INFORMATION

32 Disclosure

32.1 Public agencies and private bodies involved in mining or related activities should proactively disclose information which is of public importance including information about:

32.1.1 their contracts, including their terms, conditions and obligations;

32.1.2 any sub-contracts over US\$ 1 000.00 they conclude with other parties, including their terms, conditions and obligations;

32.1.3 the results of any tenders they hold, including their terms, the bids of competing parties, the scores and their results;



- 32.1.4 impact assessments, annual and comprehensive IIA reviews, social and environmental audits;
 - 32.1.5 respective roles of public agencies, companies and communities;
 - 32.1.6 information about their structure, decision-making processes and internal rules and policies;
 - 32.1.7 payments to government, including in the form of taxes, customs and fees;
 - 32.1.8 information regarding the applicant's past, present and projected revenues and income, including any including any feasibility study, financing plan and net present value prepared by the applicant; and
 - 32.1.9 reports of inquiries or of investigations of abuse.
- 32.2 Should such information not be proactively disclosed, any person is entitled to such information on request to the relevant entity.
- 32.3 Public agencies and private bodies involved in mining or related activities shall put in place user-friendly, gender sensitive systems for members of the public to make requests for information and to respond to those requests in a timely and appropriate fashion.
- 32.4 Public agencies and private bodies involved in mining or related activities shall establish effective appeal mechanisms to which individuals or communities can appeal a refusal of their request for information.
- 32.5 Should a request for information be refused, any person may approach the Community Advisory Committee for the appointment of an



independent investigator. The investigator shall be empowered to make a recommendation to the enforcement agency established by section 54.

32.6 This Law and any other law, policy or practice creating a right of access to information must be interpreted and applied on the basis of a presumption of disclosure. Non-disclosure is permitted only in exceptionally justifiable circumstances.

32.7 The Department of Minerals shall establish a central information portal that provides links to the websites of the public agencies and private companies involved in mining.

33 Reporting

33.1 Entities holding a license for mining activities must submit a comprehensive annual report on their activities. Such reports shall include, at a minimum:

33.1.1 the annual IIA review;

33.1.2 a complete report on their mining activities and finances, including all costs and revenues;

33.1.3 a record of any complaints that they have received from an affected community or other interested and affected parties; and

33.1.4 a full accounting of all compensation paid and activities conducted in terms of CHAPTER 6.

33.2 Where mining occurs on community land, the Committee shall appoint an independent investigator to:

33.2.1 review the company's annual report; and



- 33.2.2 present the report to the affected community in a suitably public and accessible venue.
- 33.3 The independent investigator shall be empowered to request additional information from the company.
- 33.4 Should the annual report reveal non-compliance with this Law or any other law, the independent investigator may make recommendations regarding the steps the company must take to remedy the non-compliance. These recommendations are binding until they are reviewed and set aside by a court.

CHAPTER 6 : **COMPENSATION AND RELOCATION**

34 **Entitlement to Compensation**

- 34.1 Should a mining company require access to a portion of land that is owned, occupied or used by a community for a mining activity, such a community shall be entitled to compensation as determined in this Chapter.
- 34.2 Applicants shall reach an agreement regarding compensation payable to the community during the community decision-making process set out in CHAPTER 3 prior to receiving a license to commence mining activities.

35 **Compensation for Loss**

- 35.1 Where a mining activity deprives any individual or community of access to land, they shall be entitled to compensation for the replacement value of such loss.



35.2 The replacement value of the loss shall include the value of potential alternatives to such land, calculated with reference to the following factors, provided that where persons or communities are physically displaced the provisions of section 36 shall also apply:

35.2.1 For individuals and households, the following factors must be considered:

- (a) loss of access to land used for agricultural purposes, including crop fields, gardens, and grazing land;
- (b) loss of access to food and medicine harvested from forests, fields, marine areas, and inland waters;
- (c) displacement and/or destruction of family graves;
- (d) impact on health and wellbeing; and
- (e) the social disruption caused through such deprivation.

35.2.2 For communities, the following factors must be considered:

- (a) loss of grazing land;
- (b) displacement and/or destruction of sacred places;
- (c) loss of traditional knowledge, or loss of the value of such knowledge;
- (d) environmental degradation and pollution;
- (e) loss of commercial opportunities such as eco-tourism; and
- (f) costs associated with rehabilitating the community's land after the completion of mining activities.

35.3 Such compensation shall not be paid as a once-off lump sum, but must be paid at regular intervals.

35.4 Where the potential costs and harms listed above have not been provided for in terms of any agreement reached between the community and a mining company, such individuals, households, and/or communities may secure such damages through the mechanisms set out in CHAPTER 11.

36 Relocation

36.1 No person or community shall be relocated to enable mining unless such relocation is unavoidable.

36.2 Such relocation shall only be permitted if the community was made aware of the possibility that households could be relocated prior to granting consent for the mining activity. If the community was not made aware prior to granting its consent, relocation will only be permitted with the express consent of the persons to be relocated or through the processes set out in CHAPTER 3.

36.3 Where relocation is unavoidable and consent is granted, community members shall be relocated to an area where living conditions are equal to or better than the conditions in which they lived prior to the relocation.

36.4 Such relocations shall only be effected if the living conditions in the new area are satisfactory at the time that the relocation is to take place. The opinion of those who will be displaced, particularly women, shall be taken into account when determining whether the conditions are satisfactory. These conditions shall ensure, at minimum, the safety, health, nutrition, and hygiene of the displaced, and that families are not separated.

36.5 Persons and communities who are constructively forced to relocate when mining activities make continued residence intolerable are entitled to the



rights set out in this section and may enforce these rights through the mechanisms set out in CHAPTER 11.

37 Benefit Sharing

37.1 In addition to compensation for losses as set out in this Chapter, an affected community shall be entitled to directly benefit from mining activities at a scale that is just and equitable with reference to the total value of the mining activity. Such benefits shall be agreed to in the agreement required by section 16, and may include the following:

37.1.1 a share of the revenues generated by mining activities on community land;

37.1.2 a regular royalty payment;

37.1.3 rent;

37.1.4 equity in the mining company conducting the mining activities;

37.1.5 minimum levels of local procurement and/or employment; and

37.1.6 training and capacity building to participate in the management of the mining company and/or to develop alternative livelihoods.

37.2 The Minister of the Department of Minerals may from time to time determine and publish a minimum share of revenues to which an affected community is entitled.

38 Restitution

38.1 The violation of any rights set out in this Law shall entitle individuals, households and communities to claim restitution from the mining

company. The amount to be paid as restitution shall be calculated to put affected communities into the position that they would have been in had the mining not occurred and if alternative economic opportunities been pursued. In this regard, the decision-maker must have reference to section 35.

38.2 Individuals, households and communities shall also be entitled to compensation for a reasonable share of the value of lost natural resources calculated with reference to section 35.

38.3 The State shall seek to enforce the right to restitution contained in this section against liable parties.

38.4 Where parties that are liable for restitution in terms of this section are unwilling or unable to compensate victims, the State shall be liable for such compensation, provided that where the State pays compensation in the stead of a liable party, it shall have the right to seek the value of such compensation from that party

39 **Community Resources**

39.1 The body within the community that administers compensation and benefits payable to the community must be democratic and accountable to the community. The body must:

39.1.1 Ensure that its decision-making processes are inclusive and that:

- (a) all members are notified of all general meetings;
- (b) all members are entitled to participate in the decision-making processes of the body; and



(c) there shall be no discrimination against any members on the any of the grounds set out in section 3.3.

39.1.2 make all financial records available for annual independent verification and to all members on request;

39.1.3 ensure the broadest possible community benefit; and

39.1.4 ensure equal gender representation in its governance structures.

39.2 Mining companies must train such bodies and build their capacity to manage benefits in terms of section 37.

CHAPTER 7 : TAXATION AND OTHER MINING REVENUES

40 Introduction

40.1 Tax is a sustainable source of the government revenue. Governments need mining revenue for service delivery and poverty eradication. Mining revenue management is also critical for intra-generational equity.

40.2 There is therefore an urgent need to deal with weak tax systems and tax malpractices by mining firms.

40.3 As a fundamental principle, mining companies must pay their fair share of tax.

41 Taxation

41.1 Adequate tax rates and adherence to taxation schemes shall ensure that the extraction and processing of local materials shall benefit the nation.



- 41.2 A share of revenues derived from the taxation of mining activities shall be ring-fenced for the development of rural communities, including communities not affected by mining.
- 41.3 A windfall tax mechanism may be established whereby a higher tax rate is set where profits exceed a level to be determined and these resources are set aside into a stability fund to assist communities.
- 41.4 The Minister may suspend or revoke a mining license for non-compliance with national tax laws, and may specifically do so when a mining company engages in transfer pricing.
- 41.5 The State shall be entitled to establish higher rates of export taxes for mined products exported without beneficiation.
- 41.6 Information regarding taxes paid by mining companies must be made publicly available and must be provided on request by any person. Such information shall include all tax incentives, whether direct or indirect, that mining companies may utilise.

42 Regulations

- 42.1 The Minister of Finance shall, in consultation with the Minister of the Minerals Department, civil society organisations, and communities affected by mining, draft regulations to give effect to the principles and requirements of sections 40 and 41 within 24 months of the commencement of this Law.

CHAPTER 8 : CONSIDERATION OF APPLICATIONS

43 Mining Rights Application Panel



43.1 There is hereby established a panel to be known as the Mining Rights Application Panel (“the Panel”).

43.2 The Panel shall be composed of the following:

43.2.1 The Minister of Environment or their delegate;

43.2.2 The Minister of Minerals or their delegate; and

43.2.3 The Minister of Finance or their delegate.

44 Requirements for Application

44.1 An applicant must provide the following in support of an application for a right to engage in any mining activity:

44.1.1 A copy of the impact assessment conducted in terms of CHAPTER 4.

44.1.2 A written agreement establishing the terms on which community consent has been granted as contemplated in section 16.

44.1.3 A public participation report, setting out the steps taken to consult all interested and affected persons.

44.1.4 A mining works plan that sets out at a minimum:

(a) details on the applicant, including any associated or subsidiary entities;

(b) a detailed outline of the proposed mining activities; and

(c) the location of the proposed mining activities.



44.1.5 An environmental management plan that sets out how environmental impacts identified in the impact assessment will be avoided or mitigated, and specifically details plans for rehabilitation.

45 Powers of the Mining Rights Application Panel

45.1 The Panel shall decide whether to grant an prospecting or mining right to an applicant. It shall do so by a majority vote.

45.2 In granting a right to conduct specified mining activities, the Panel may impose such conditions as it deems necessary to advance the spirit and obligations of this Law.

45.3 The Panel may only grant such a right if all the requirements of this Law and any other relevant law are complied with, and may under no circumstances grant a mining right where community consent has not been obtained in terms of CHAPTER 3.

45.4 The Panel may only grant such a right if it is in the public interest to do so, taking into consideration, *inter alia*:

45.4.1 the interests of the affected community or communities;

45.4.2 the impact on the local and national economy;

45.4.3 any negative environmental impact identified in the impact assessment; and

45.4.4 any impact on community or national heritage.

CHAPTER 9 : ARTISANAL MINING



46 Introduction

46.1 Communities and members of communities shall be entitled to engage in artisanal mining of small mineral deposits on community land in a sustainable manner, subject to the requirements of this Law and the regulations promulgated in terms of this Chapter.

46.2 The State shall endeavour to ensure that communities and members of communities are empowered to engage in artisanal mining on community land.

47 Regulations

47.1 Prior to this Law coming into force, the Minister of the Minerals Department, in consultation with civil society organisations and communities affected by mining, shall draft regulations governing artisanal mining which regulations shall:

47.1.1 establish a definition of artisanal mining that is suitably flexible to accommodate different standards for different minerals;

47.1.2 provide for the creation of artisanal mining areas over which no mining rights other than artisanal mining rights may be granted for certain minerals;

47.1.3 provide for the publication of a Charter that shall:

(a) protect and promote customary and artisanal small scale miners;



(b) set the framework for effecting the participation of members of communities in the exploitation of the resources of their communal land.

47.1.4 provide for assistance to communities and community members in complying with the requirements of this Law, including the subsidised appointment of independent investigators and independent impact assessment practitioners required by this Law; and

47.1.5 establish guidelines for the granting of artisanal mining rights that ensure sustainable extraction with minimal environmental impacts and widespread community benefit.

CHAPTER 10 : **SUSTAINABLE MINING**

48 **Separation of Corporate and State Power**

48.1 Officials of bodies tasked with regulating mining activities shall be barred from providing services to, owning shares in, or serving on the boards of mining companies and associated entities for a period of five years after leaving office.

49 **General Standards**

49.1 Best industry practice and best international law standards shall be applicable to domestic statute law or directly applicable in the absence of domestic statute law in the following areas requiring regulation:



- 49.1.1 health and safety in and on mines provided that mine health programmes and support will also be available to neighbouring communities;
- 49.1.2 labour and working conditions;
- 49.1.3 housing and housing conditions including basic infrastructure and services to employees to employees and neighbouring communities;
- 49.1.4 mine closure and the promotion of alternative livelihoods post mining; and
- 49.1.5 environmental rehabilitation and environmental reserve funds.

50 Duty of Care and Remediation of Environmental Damage

- 50.1 Every person who causes, has caused or may cause significant pollution or 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.
- 50.2 The measures required may include measures to:
 - 50.2.1 investigate, assess and evaluate the impact on the environment;
 - 50.2.2 inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution or degradation of the environment;



- 50.2.3 cease, modify or control any act, activity or process causing the pollution or degradation;
- 50.2.4 contain or prevent the movement of pollutants or the causer of degradation;
- 50.2.5 eliminate any source of the pollution or degradation; and
- 50.2.6 remedy the effects of the pollution or degradation.

51 **Beneficiation**

- 51.1 The State shall seek to ensure the maximum positive impact of mining by endeavouring to support:
 - 51.1.1 downstream linkages into mineral beneficiation and manufacturing;
 - 51.1.2 upstream linkages into mining capital goods, consumables and services industries; and
 - 51.1.3 sidestream linkages into infrastructure and skills and technology development.
- 51.2 This support shall be accomplished with an overarching objective of promoting investment for sustainable development, especially sustainable investment in mining affected communities in particular and rural areas in general, grounded in the State's overall development strategy.
- 51.3 The Minister may promulgate regulations to give effect to sections 51.1 and 51.2, provided that the rights of communities enshrined in this Law may not be undermined.



CHAPTER 11 : ENFORCEMENT AND DISPUTE RESOLUTION

52 Local Grievance Mechanisms

- 52.1 Where a right for prospecting or mining is granted, the applicant must establish a local grievance mechanism where disputes may be resolved in good faith.
- 52.2 The grievance mechanism should be proportionate to the risks and adverse impacts of the project.
- 52.3 The grievance mechanism should be established in consultation with the affected community or communities, through an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost to the affected communities and without retribution.
- 52.4 The grievance mechanism shall set out clear, well-publicised procedures establishing the means by which a party may raise a grievance, the likely time frame for each stage of the process, and the means of monitoring implementation.
- 52.5 The mechanism shall ensure that outcomes and remedies accord with the rights enshrined in this Law, and any outcomes that do not meet this standard may be challenged by any parties.
- 52.6 This mechanism shall not prevent any person from seeking judicial or administrative remedies.

53 Appointment of Independent Investigator



53.1 Where a community or a member of a community is aggrieved by any conduct, they may approach the Community Advisory Committee to seek the appointment of an independent investigator.

53.2 The Committee shall appoint an independent investigator to investigate the complaint, advise the community regarding its rights, and make a recommendation to the Enforcement Agency.

54 Enforcement Agency

54.1 An agency to ensure the enforcement of the protections of this Law is hereby established (“the enforcement agency”) under the Environmental Department.

54.2 The enforcement agency shall be established as a unit within the Environmental Department with the sole mandate of enforcing the provisions of this Law.

55 Inspections

55.1 The enforcement agency shall be empowered to inspect any mining activity without any prior notice to the mining company involved.

55.2 The enforcement agency shall inspect each mining operation at least once a year.

55.3 When the enforcement agency inspects a mining activity, it shall have the power to summon or subpoena any party.

56 Complaints



56.1 The enforcement agency shall establish accessible channels through which complaints regarding violations of this Law may be reported.

56.2 When such a complaint is registered, the enforcement agency must investigate the complaint within two weeks and inform the complainant of the results of the investigation within six weeks.

57 Enforcement Agency's Enforcement Powers

57.1 After conducting an investigation, the agency shall have the power to impose sanctions in terms of the following:

57.1.1 by issuing binding directives to any party to comply with this legislation;

57.1.2 through the imposition of penalties that are reasonably proportionate to the harm of the conduct and do not exceed 10% of company turnover over the period during which the violation occurred;

57.1.3 by ordering the payment of compensation and/or restitution to a community, to be calculated in terms of CHAPTER 6.

57.2 Sanctions imposed by the enforcement agency shall be binding unless set aside by a court of law.

57.3 Where an independent investigator makes a recommendation to the enforcement agency, the enforcement agency may confirm, vary, or set aside such a recommendation, provided that if the enforcement agency does not vary or set aside such recommendation within 90 days of receiving the recommendation, such recommendation shall have the same status as if it had been made by the agency in terms of section 57.1.



58 Offences

58.1 Any person shall be guilty of an offence if they:

58.1.1 commence mining activities without the consent of the affected community;

58.1.2 fail to respect the rules set out in section 32 regarding access to information;

58.1.3 provide false information regarding mining activities or proposed mining activities, including in annual and comprehensive reviews of independent impact assessments, intentionally or through gross negligence; and

58.1.4 fail to comply with any directive issued by the enforcement agency in terms of section 57.

58.2 Any person who was a director of a company at the time of the commission by that company of an offence under any provision shall be guilty of said offence if the offence in question resulted from the failure of the director to take all reasonable steps that were necessary under the circumstances to prevent the commission of the offence.

59 Access to Courts and Tribunals

59.1 Everyone, including communities, shall have the right to seek the enforcement of this Law and/or to have a dispute resolved by national courts or independent tribunals:

59.1.1 speedily;



- 59.1.2 impartially; and
- 59.1.3 with assistance if indigent.
- 59.2 A Court may make any ruling to advance the spirit and objects of this Law that it deems just and equitable.
- 59.3 In considering applications made in terms of this Law, Courts shall endeavour to ensure that claims are considered despite non-compliance with technical requirements, and shall be empowered to independently request the Community Advisory Committee to appoint an independent investigator to advise the Court regarding any issue.
- 59.4 This Law shall be enforceable in any adjudicative body or tribunal subject to that body's rules, and shall specifically be enforceable by the relevant regional and international tribunals as well as the courts of the home country of any natural or juristic person that may have breached this Law.
- 59.5 Any person or group of persons or community may seek appropriate relief in respect of any breach or threatened breach of any provision of this Law, including the preamble, or of any provision of a regulation or policy under this Law:
 - 59.5.1 in that person's interest;
 - 59.5.2 in the interest of, or on behalf of, another person, group of persons, or a community;
 - 59.5.3 in the interest of or on behalf of a group or class of persons whose interests are affected;
 - 59.5.4 in the public interest; and



59.5.5 in the interest of protecting the environment.