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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF MINERAL RESOURCES AND ENERGY

NO. 1939 **30 March 2022**

PUBLICATION OF THE MINE COMMUNITY RESETTLEMENT GUIDELINES 2022 FOR IMPLEMENTATION

I, **SAMSON GWEDE MANTASHE, MP**, Minister of Mineral Resources and Energy, hereby publish Mine Community Resettlement Guidelines, 2022 for implementation.

The Mine Community Resettlement Guidelines, 2022 will become effective on the date of publication in the government gazette.

MR S G MANTASHE, MP
MINISTER OF MINERAL RESOURCES AND ENERGY
DATE: 28/03/2022

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mineral resources & energy

Department:
Mineral Resources and Energy
REPUBLIC OF SOUTH AFRICA

MINE COMMUNITY RESETTLEMENT GUIDELINES, 2022

MARCH 2022

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1. INTRODUCTION

The South African mining and minerals industry is the cornerstone of the economy. It contributes to the Gross Domestic Product, job creation and amelioration of poverty and inequality. Despite these positive contributions the mining and minerals industry has direct or indirect negative socio-economic and environmental impacts on landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities. It also has an effect of displacement of communities where mining activities take place in the form of physical resettlement, exhumation of graves, loss and damage to property, influx of people to the mining community and a boom in informal settlements.

The rights and interests of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities, relating to resettlement as a result of a proposed mining development is governed by a number of pieces of legislation. The Mineral and Petroleum Resources Development Act, 2002 (MPRDA) read with regulations and guidelines on consultation provides for an extensive consultation process with landowners, lawful occupiers and interested and affected parties, before a prospecting right, mining right or mining permit is granted.

An applicant is obliged to notify and consult landowners, lawful occupiers and interested and affected parties about the proposed development and submit the results of the consultation to the Department in support of the application. The consultation process entails meaningful engagement with landowners, lawful occupiers and interested and affected parties on the impacts the proposed project will have on their rights to use and enjoyment of their land and should address matters relating to resettlement.

The MPRDA has no explicit provisions for resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities, however, the Consultation Guidelines prescribe that the applicant's consultation report should include a description of the most appropriate means to carry out the proposed

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operation with due accommodation of the issues raised in the consultation process i.e., agreement on resettlement plan.

Therefore, these Resettlement Guidelines are intended to outline the process and requirements to be complied with by an applicant or a holder of a prospecting right, mining right or mining permit when such application or right will result in physical resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities, from their land. These Resettlement Guidelines extend to existing prospecting rights, mining rights or mining permits where incremental project expansion will have the effect of displacement or resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities.

The Guidelines make provision for development of a Resettlement Plan, Resettlement Action Plan and Resettlement Agreement. A *Resettlement Plan* is a broader consultative document which is concerned with project description; impact analyses; costs and budgetary considerations and consultation mechanisms. The *Resettlement Action Plan* is a document that lists what steps must be taken in order to achieve the goals set out in the resettlement plan. The purpose of the Action Plan is to clarify what resources are required to reach the goal, formulate a timeline for when specific tasks need to be completed and determine what resources are required. The Resettlement Action Plan, in summary, must outline action to be taken, identify responsible stakeholders and timeframes.

The *Resettlement Agreement* serves to record in full all the commitments made by a mining right holder in the Resettlement Plan and the Resettlement Action Plan. It should outline rights and obligations of all parties to the agreement. This agreement must be signed by all relevant stakeholders and submitted to the office of the Regional Manager for noting.

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2. ACRONYMS AND DEFINITIONS

"Consultation Guideline" refers to the Guideline for consultation with communities and interested and affected parties developed in terms of sections 10(1)(b),16(4)(b), 22(4)(b),27(5)(b) of the Mineral and Petroleum Resources Development Act (Act 28 of 2002).

"Community" refers to community as defined in the MPRDA.

"Compensation" means cash payments or in-kind contributions for assets acquired or affected by a resettlement project".

"Interested and affected parties" means any person, group of persons, or organization interested in or affected by a resettlement activity and any organ of state that may have jurisdiction over any aspect of the resettlement activity.

"Meaningful consultation" for the purposes of these Guidelines means consultation with landowners, lawful occupiers, interested and affected parties, holders of informal and communal land rights, mine communities and host communities by an applicant or a holder of a mining right, prospecting right or mining permit with a view to:

1. Provide for the opportunity for landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities to comment, be heard and obtain clear, accurate and understandable information about all the impacts of the proposed mining activity or implications of a decision on resettlement.
2. Determine whether some accommodation is possible between the applicant for a prospecting right and the landowner insofar as the interference with the landowner's rights to use the property is concerned.
3. Provide opportunities for clearing up misunderstandings about technical issues, resolving disputes and reconciling conflicting interests.
4. Encourage transparency and accountability in decision-making; and
5. Give effect to the requirement for procedural fairness of administrative action as contained in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

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"Mine community" refers to a community where mining takes place and adjacent communities within a local, district or metropolitan municipality.

"Host community" For the purposes of these Guidelines, refers to a community within a local or metropolitan municipality adjacent to the mining area, as defined in the MPRDA.

"Resettlement" means the displacement and relocation of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities as a result of planned or operational mining activities.

"Stakeholders" refers to those individuals, groups, organisations, and institutions who are interested in, and potentially affected by a project, or have the ability to influence a project.

MPRDA: Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).

IPILRA: Interim Protection of Informal Land Rights Act, 1998.

SLP: Social and Labour Plan.

NGO: Non-Governmental Organisation.

CBO: Community Based Organisation.

RMEC: Resettlement Monitoring and Evaluation Committee.

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3. PURPOSE OF THE RESETTLEMENT GUIDELINES

The purpose of this document is to provide guidelines to be applied by an applicant or a holder of a prospecting right, mining right or mining permit when such application, prospecting right, mining right or mining permit will have the effect of resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities.

The Guidelines outline the process and requirements to be complied with by an applicant or a holder of a prospecting right, mining right or mining permit when such application or right will result in physical resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities, from their land.

4. POLICY AND LEGAL FRAMEWORK

4.1 South Africa has numerous policies and legislative instruments regulating issues of land and resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities. These in summary include but are not limited to:

(i) Constitution of the Republic of South Africa, 1996.

Section 25(6) of the Constitution provides that "A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress."

(ii) The Mineral and Petroleum Resources Development Act, 2002 (Act No 28 of 2002).

The MPRDA sets out the procedure that must be followed and requirements that must be satisfied when an application for a prospecting, mining right or mining permit is made under it. In particular sections 5, 22, 25, 54 and 55 contain sufficient detail about meaningful consultation with landowners, lawful occupiers and

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interested and affected parties. The MPRDA, section 54 further provides for appropriate redress in the form of agreement on compensation for loss or damage as a result of proposed prospecting or mining operations.

(iii) Expropriation Act, 73 of 1975 (Act No. 73 of 1975).

Section 3 of this Act permits any Minister of the department to expropriate land with compensation for the attainment of the objects a given Act.

(iv) National Environmental Management Act, 107 of 1998, (Act No. 107 of 1998).

This Act provides comprehensive regulation of environmental impacts. It provides for Environmental Impact Assessments (EIA's) which are required for certain activities listed in that Act. EIAs are used to evaluate the possible environmental impacts of a proposed project, taking into account inter-related socio-economic, cultural, and human-health impacts.

(v) National Water Act, 36 of 1998 (Act No. 36 of 1998).

This Act provides for protection of water resources. It provides for water use licence (WUL) or authorisation. In terms of this Act every mine must have a WUL from the Department of Water and Sanitation in order to regulate and minimize the detrimental impacts on the water resources.

(vi) Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998, (Act No. 19 of 1998).

This Act is administered by Department of Rural Development Land Reform and prohibits illegal evictions from land and provides recourse for affected parties.

(vii) The Local government Municipal Systems Act, 2000 (Act No 32 of 2000) and the Development Facilitation Act. 1995 (Act No 67 of 1995) are also some of the pieces of legislation requiring public participation and regulating land tenure intended to afford communities sufficient legal protection in relation to their land and recourse in the event of arbitrary deprivation of land.

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5. FUNDAMENTAL PRINCIPLES FOR RESETTLEMENT

5.1 The following fundamental principles shall be taken into account:

(a) ***Meaningful consultation***: an applicant or a holder of a prospecting right, mining right or mining permit must consult meaningfully with landowners, lawful occupiers, interested and affected parties, holders of informal and communal land rights, mine communities and host communities.

(b) ***Equality***: the proposed resettlement must not violate the Constitutional right for vulnerable members of communities including women, children, people living with disabilities. In terms of the Constitution of the Republic of South Africa, everyone has a right to equal treatment.

(c) ***Protection of existing rights***: landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities may not be deprived of enjoyment of the rights to land without provision of appropriate compensation.

(d) ***Conditions relating to meetings***: The key condition are to hold as many engagements as necessary and at regular intervals. All the stakeholders must have been given sufficient notice in advance and a reasonable opportunity to participate in consultation meetings, provided with sufficient information to make informed decisions and proper records must be kept.

(e) ***Avoid and Minimise***: To avoid resettlement wherever feasible; minimize resettlement where population displacement is avoidable; avoid the breaking up of communities by only resettling entire communities. Where resettlement is unavoidable ensure that affected people receive assistance so that they will be at least as well off as they would have been in the absence of the project.

(f) ***Professional services***: the applicant or a holder of a prospecting right, mining right or mining permit should endeavor to use HDSA service providers throughout the resettlement process.

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6. SCOPE AND APPLICABILITY OF THE GUIDLEINES

6.1 The guidelines apply to an application for prospecting right, mining right, mining permit.

6.2 Depending on when the demand for land emerges, displacement or resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities can occur during project planning and construction or during active mining operations. It may also occur as a result of incremental project expansion.

6.3 An applicant or holder of a prospecting right, mining right or a mining permit shall comply with these guidelines at all the stages of development, when such development will have the effect of displacement or resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities.

6.4 To this end, the Guidelines also apply to existing prospecting rights, mining rights or mining permits where incremental project expansion will have the effect of displacement or resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities.

6.5 The Guideline shall be applicable from the date it is published in the gazette for implementation.

7. MEANINGFUL CONSULTATION

Consultation with landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities shall be consistent with the Consultation Guideline developed in terms of sections 10(1)(b),16(4)(b), 22(4)(b),27(5)(b) of the Mineral and Petroleum Resources Development Act (Act 28 of 2002).

7.1 Duty to consult

An applicant or a holder of a prospecting right, mining right or a mining permit shall:

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1.1.1 Provide for the opportunity for landowners, lawful occupiers, interested and affected parties, holders of informal and communal land rights, mine communities and host communities to comment, be heard and to obtain clear, accurate and understandable information about all the impact of the proposed mining activity or implications of a decision on resettlement.

1.1.2 Determine whether some accommodation or coexistence is possible between the applicant or holder for a prospecting right, mining right or mining permit and the landowner insofar as the interference with the landowner's rights to use the property is concerned.

1.1.3 Provide opportunities for clearing up misunderstandings about technical issues, resolving disputes and reconciling conflicting interests.

1.1.4 Encourage transparency and accountability in decision-making; and

1.1.5 Give effect to the requirement for procedural fairness of administrative action as contained in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

7.2 Stakeholders to be consulted

The affected stakeholders to be consulted will be informed by the nature and extent of the proposed operation and area specific considerations. An applicant or a holder of a prospecting right, mining right or mining permit must conduct stakeholder mapping to identify and profile stakeholders that must form part of the meaningful consultation process. The meaningful consultation process may comprise a broad range of stakeholders including but not limited to:

7.2.1 Host Community.

7.2.2 Mine community.

7.2.3 Landowners (Traditional and Title Deed owners).

7.2.4 Lawful occupiers.

7.2.5 Holders of informal land rights.

7.2.6 Holders of communal land rights.

7.2.7 Traditional Authority.

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7.2.8 Land Claimants.

7.2.9 Non-Governmental Organisation.

7.2.10 Community Based Organisations.

7.2.11 The Department of Agriculture Land Reform and Rural Development.

7.2.12 Any other person (including on adjacent and non-adjacent properties) whose socio-economic conditions may be directly affected by the proposed mining operation.

7.2.13 The Local Municipality; and

7.2.14 The relevant Government Departments, agencies, and institutions responsible for the various aspects of the environment and infrastructure which may be affected by the proposed project.

7.3 Methods of consultation with stakeholders

An applicant or a holder of a prospecting right, mining right or a mining permit may use appropriate tools and platforms to engage landowners, lawful occupiers, interested and affected parties, holders of informal and communal land rights, mine communities and host communities about the proposed mining development as outlined in the Consultation Guideline which may include:

7.3.1 Regular meetings or workshops.

7.3.2 Surveys or roadshows.

7.3.3 Announcements of the consultation process may be made in local radio stations, television, newspapers, and relevant media; and

7.3.4 Considerations for literacy levels and language requirements must be considered.

8. OBLIGATIONS OF AN APPLICANT OR A HOLDER OF A PROSPECTING RIGHT, MINING RIGHT OR MINING PERMIT

8.1 When an applicant or a holder of a prospecting right, mining right or a mining permit intends to relocate landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities to an alternative area, the applicant or a holder of a prospecting right, mining right or a mining permit shall:

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8.1.1 Consult meaningfully with the landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities by offering choices and options that are practical and economically suitable.

8.1.2 Ensure that landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities are informed about the options and rights concerning the resettlement by providing them with all relevant information and documents to make informed decisions.

8.1.3 Ensure that landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities concerns, inputs and comments are heard and considered.

8.1.4 Provide the landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities with compensation for any losses to their property and livelihoods.

8.1.5 Assist with the resettlement by providing financial and related support to affected landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities.

8.1.6 Provide the landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities with residential housing, housing sites or agricultural land.

8.1.7 Offer support after resettlement to ensure people's livelihoods and standards of living are restored.

8.1.8 Assist with sustained development within the resettled mine community or host community after resettlement.

8.1.9 The cost of resettlement shall be borne by an applicant or a holder of a mining right or a mining permit agreed by the landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities.

8.1.10 Establish a Resettlement Monitoring and Evaluation Committee contemplated in item 14.5 of these Guidelines.

8.1.11 Develop a Resettlement Plan contemplated in item 10 of these Guidelines.

8.1.12 Develop a Resettlement Action Plan contemplated in item 11 of these Guidelines.

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8.1.13 Conclude a Resettlement Agreement contemplated in item 12 of these Guidelines.

9. RESETTLEMENT AND COMPENSATION

9.1 Resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities to make way for mining activities must as far as possibly enhance and improve affected community livelihoods such as housing, schools, health facilities and recreational facilities.

9.2 No mining activity shall commence until a resettlement agreement is reached on the appropriate amount of compensation as a result of resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities. The Resettlement agreement must reflect the contents of the Resettlement Plan and Resettlement Action Plan.

9.3 The objective of resettlement is to enable the relocation of individuals, households, and communities to new locations. Companies should take the following factors into consideration:

(a) Creating an enabling environment that allows the livelihoods and standard of living of affected people to be improved, or at least restored.

(b) Reflecting the way people live in their current location and meet their key requirements in terms of living space, functionality and access to resources cultural considerations should be considered in the design process.

(c) Any resettlement solution should be considered in the local context and offer choices to those being resettled, with the informed participation of affected people and statutory authorities. Resettlement sites and designs should be developed and agreed with all stakeholders, not just community leaders or statutory authorities.

(d) The relocation of households and communities should preserve existing social networks, livelihoods and maintain community and household cohesion.

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(e) Maintaining links with existing assets and resources not affected by resettlement or replace them.

(f) Enabling resettled people to appropriately share in benefits, for example project-related employment and provision of relevant services required for the relocation or be linked to existing business opportunities within the mining operation.

(g) Offering fair, equitable and adequate replacement housing and house plots that are at least the same standard as existing housing and ideally better.

(h) Ensuring the replacement of all existing community facilities, related infrastructure, and provision of additional facilities and infrastructure as required by local planning regulations.

(i) Ensuring upkeep of new housing and facilities are affordable for the recipient.

(j) Providing security of tenure through registration of property rights by regulatory authorities the process of security of tenure may be lengthy and should be planned accordingly. Allowing for ongoing development and expansion of the new community.

(k) Businesses should be considered early in the process, as potential drivers of resettlement communities.

(l) Communities in which resettled people will be hosted should be considered in planning from day one and should see benefits in the resettlement process.

(m)Statutory authorities should be involved from the outset, in order to ensure timely approvals and adoption of infrastructure.

9.4 Calculation of compensation amounts.

9.4.1 There is no standard formula for determination of sufficient compensation as a result of resettlement. Compensation rates should be determined based on the local context and current full replacement values. A transparent, participatory approach to determining compensation should be undertaken. An experienced Independent Valuer deemed acceptable to companies and communities should be used. The compensation policy should be consistent. The methods used for valuation should be clearly documented and disseminated. Compensation rates should be updated if the process is undertaken over a long period.

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9.4.2 The rate of compensation for lost assets must be calculated at full replacement cost, that is, the market value of the assets plus transaction costs. With regard to land and structures, replacement costs are defined as follows:

(a) *Agricultural and grazing land*: the market value of land of equal productive use or potential located in the vicinity of the affected land, plus the cost of preparation to levels similar to or better than those of the affected land, plus the cost of any administration, registration, and transfer taxes.

(b) *Land in urban areas*: the market value of land of equal size and use, with similar or improved public infrastructure facilities and services preferably located in the vicinity of the affected land, plus the cost of any administration, registration, and transfer taxes.

(c) *Household and public structures*: the cost of purchasing or building a new structure, with an area and quality similar to or better than those of the affected structure, or of repairing a partially affected structure, including labour and contractors' fees and any administration, registration and transfer taxes.

10. MINE COMMUNITY RESSETLEMENT PLAN

10.1 An application for a mining right, prospecting right or a mining permit or a holder of a prospecting right, mining right or mining permit shall develop a resettlement plan whenever such application will have the effect of physical resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities.

10.2 The resettlement plan shall be consulted with landowners, lawful occupiers, interested and affected parties, holders of informal and communal land rights, mine communities and host communities as outlined in items 7.2 of these Guidelines.

10.3 The resettlement plan may include measures to ensure that the displaced persons are informed about their options and rights pertaining to the resettlement; consulted meaningfully; provided assistance during relocation; and offered

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support after displacement, for a transition period based on a reasonable estimate of the time likely to be taken to restore their livelihood and standards of living.

10.4 The types of resettlement packages may include:

10.4.1 Cash compensation for assets, including crops and structures;

10.4.2 Provision of resettlement housing;

10.4.3 Provision of a resettlement site;

10.4.4 Legal services;

10.4.5 Health and safety services including counselling where needed;

10.4.6 Allowances to facilitate the moving process; and

10.4.7 Livelihood restoration programmes.

10.5 Contents of a Resettlement Plan

Taking into account project and site-specific considerations, a resettlement plan may contain the following elements:

10.5.1 *Project Description*

(i) Describe in full detail the name, nature, extent, and type of project to be undertaken.

10.5.2 *Impact Analysis*

(i) Outline the details of a Socio-Economic Impact analyses conducted regarding the potential or actual negative and positive impacts of the proposed resettlement, costs, benefits, and opportunities.

(ii) Consider alternative measures to resettlement, advantages, disadvantages, and mitigation measures.

10.5.3 *Meaningful Consultation*

(i) Contain detailed information about the meaningful consultation with all stakeholders, proof of such consultation and outcomes of such meaningful consultation as outlined in item 7 of these Guidelines.

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10.5.4 Implementation Schedule

(i) An applicant or holder of a prospecting right, mining right or mining permit shall prepare an implementation plan with clear allocation of roles and responsibilities, timelines, financial resources, deliverables and stakeholder engagement.

10.5.5 Costs and Budgetary Implications

(i) The costs for implementing the plan shall be borne by the applicant or holder of a prospecting right, mining right or mining permit. These costs shall include costs relating to independent evaluation of movable and immovable property, legal and any other consultancy services, where applicable.

(ii) The valuation of movable and immovable property shall be certified by the Office of the Valuer General.

10.5.6 Institutional Arrangements

(i) The institutional arrangements relate to both formal and informal institutions and agencies that are responsible to facilitate and deliver on the resettlement plan commitments.

(ii) The resettlement plan shall identify agencies responsible for resettlement activities such as Local Municipality, Department of Human Settlements, and an assessment of the institutional capacity of such agencies.

(iii) Identify organisations responsible for delivery of resettlement measures and provision of services and ensuring that local organisations familiar with the communities are used. Clearly define the roles and responsibilities of all stakeholders.

(iv) Ensure that persons responsible for implementing the resettlement plan do not have conflicting interests.

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10.5.7 Approval and Declaration

(i) The resettlement plan shall contain a declaration by the Chief Executive Officer or an equivalent person of the right holder taking responsibility for the contents of the plan and its execution.

(j) The Resettlement Plan once completed must be submitted to the office of the Regional Manager where the application for right or the right or permit was submitted or issued.

11. RESETTLEMENT ACTION PLAN

11.1 The Resettlement Action Plan is a document that lists what steps must be taken in order to achieve the goals set out in the resettlement plan. The purpose of the Action Plan is to clarify what resources are required to reach the goal, formulate a timeline for when specific tasks need to be completed and determine what resources are required. The Action Plan, in summary, must outline action to be taken, identify responsible stakeholders and timeframes (See ***Table A*** for an example).

11.2 The Resettlement Action Plan is a tool concerned with practical implementation of the broader resettlement plan. The Action Plan must therefore be read together with the Resettlement Plan.

11.3 Landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities must also be consulted meaningfully on the contents of the Resettlement Action Plan.

11.4 The Resettlement Action Plan once completed must be submitted to the office of the Regional Manager where the application for right or the right or permit was submitted or issued.

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Table A:

ACTION	RESPONSIBLE STAKEHOLDER	TIMEFRAME
Forming a Resettlement Monitoring and Evaluation Committee (RMEC)	Applicant or holder of right or permit, Landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities, Municipality.	Pre- Project phase
Develop a Resettlement Plan	Mining, prospecting right or mining permit holder	Pre-project phase
Develop a Resettlement Action Plan	Mining, prospecting right or mining permit holder	Pre-project phase
Meaningful consultation with landowners, lawful occupiers and interested and affected parties.	Mining, prospecting right or mining permit holder	Pre-project phase
Valuation of immovable and immovable property	Mining, prospecting right or mining permit holder and the Office of the Valuer General	Implementation phase
Physical relocation of people, livestock, and possessions.	Mining, prospecting right or mining permit holder and contractor	Implementation phase
Initiate sustainability projects.	Mining, prospecting right or mining permit holder	Post-implementation

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12. RESETTLEMENT AGREEMENT

12.1 The Resettlement Agreement shall not be valid unless it is in writing and signed by authorized representatives of mine communities subject to the resettlement, landowners and lawful occupiers and the applicant or holder of a prospecting right, mining right, or mining permit.

12.2 The resettlement agreement serves to record in full all the commitments made by a mining right holder in relation to the resettlement. It should outline rights and obligations of all parties to the agreement. Taking into account project and site-specific considerations the Resettlement Agreement may contain the following elements:

12.3 ***Elements of a Resettlement Agreement***

12.3.1 Parties to the agreement.
12.3.2 Interpretation clause.
12.3.3 Subject or object for agreement
12.3.4 Purpose and objects of the agreement.
12.3.5 Record of meaningful consultation process.
12.3.6 Mining right and its duration or life of mine.
12.3.7 Rights and obligation of parties to the agreement.
12.3.8 Recording of the commitments made in the Resettlement Plan.
12.3.9 Recoding of the commitments made in the Resettlement Action Plan.
12.3.10 Dispute resolution mechanisms.
12.3.11 Force major
12.3.12 Tenure of the agreement.
12.3.13 Fraud and corruption.
12.3.14 Review, variation, and amendments.
12.3.15 Domicilia and notices.
12.3.16 Signatories.

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12.4 Once the agreement is signed, it together with all annexes, must be submitted to the office of the Regional Manager for noting. Annexes to the agreement may include the Resettlement Plan, Resettlement Action Plan, and related documents.

13. DISPUTE RESOLUTION MECHANISM

13.1 Legal representation

An applicant or a holder of a prospecting right, mining right or mining permit shall where feasibly provide financial assistance to affected landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities to pay for the appointed competent legal representation in the dispute resolution processes.

13.2 Party to Party dispute resolution process

If there is a dispute about any aspect of the resettlement, an applicant or a holder of a prospecting right, mining right or mining permit shall endeavor to resolve the dispute amicably through engagements and mutual agreement with affected landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities. In this regard an applicant or a holder of a prospecting right, mining right or mining permit shall:

(a) Create a grievance management mechanism and an effective, formal, and structured grievance procedure to track and attend to project and resettlement-related grievances from the start of resettlement planning.
(b) Affected landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities should be informed and receive continuous communication about grievance procedures.
(c) Identify a site or community-based location where grievances can be received in writing.
(d) Response time to grievances received is critical, particularly once a commitment is made to respond within a certain time period. Management of grievances can be a time-intensive activity, and may require a full-time, dedicated staff member to be responsible for receiving, documenting, and processing grievances.

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(e) Emphasis on locally appropriate grievance resolution mechanisms (e.g., through traditional leaders or local structures) can result in conflict being handled faster and at a lower cost. Ensure that every complaint has an internal "owner" who is responsible for ensuring that it is effectively closed out.

(f) Monitor and close out complaints on the basis of "outcomes" not just by recording that a corrective action has been completed. At a minimum verify whether the complainant was satisfied with the corrective action or not and check whether they were happy with the process.

13.3 Regional Manager led Process (section 54)

If a resettlement related dispute cannot be resolved through the party-to-party dispute resolution process and grievance mechanisms and procedures the applicant or a holder of a prospecting right, mining right or a mining permit shall notify the Regional Manager about the dispute and the Regional Manager shall initiate a negotiation process as contemplated in section 54(3) of the MPRDA.

In this regard the Regional Manager shall:

(a) Constitute a negotiation team comprising representation from all affected parties (the applicant, the right holder, representatives of affected community/ies, traditional leadership etc).

(b) Develop Terms of Reference for the negotiation team with clear parameters regarding the role of the team, scope of its work, meeting dates and times and timeframes to resolve the dispute.

(c) Require all affected parties to submit all relevant information (documents, agreements etc) that pertains to the dispute.

(d) Chair the meetings as per the terms of reference objectively with a view to facilitate a speedy resolution of the dispute.

(e) Ensure that the meetings quorate and that every party is represented and mandated.

(f) Refer complicated matters to the Deputy Director General, Director General or the Minister where warranted.

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13.4 Formal mediation, arbitration, and conciliation process

If a resettlement related dispute cannot be resolved through Regional Manager led process, parties to the dispute may refer the matter to an arbitration or conciliation process in terms of applicable legislation (Arbitration Act and Conciliation Act).

The referral must take place within a reasonable time and the conciliation or arbitration process shall be undertaken and concluded within reasonable time.

13.5 Court Processes

Parties to a resettlement dispute are encouraged to resolve matters trough engagement, however if a resettlement dispute cannot be resolved through the party-to-party process, the Regional Manager led process and the conciliation or arbitration process, the aggrieved party may take the dispute to the competent court within a reasonable period of time.

14 REPORTING, MONITORING AND EVALUATION

14.1 Monitoring and evaluation should not be left to implementation stages but must be considered upfront and integrated into project planning. Monitoring and evaluation should be concerned with monitoring, evaluation and reporting on the effectiveness of the approved Resettlement Plan, Resettlement Action Plan and Resettlement Agreement.

14.2 The purpose of monitoring is to provide project managers, as well as directly affected persons, households, communities, and project financiers, with timely, concise, indicative information on whether compensation, resettlement, other impact mitigation or community development measures are on track to achieve sustainable livelihood restoration and improvement in the welfare of the affected people, or whether plans need to be adjusted.

14.3 Monitoring and Evaluation should take place from the outset of resettlement activities and occur through the planning and engagement phases, as opposed to only occurring during implementation it should continue post-resettlement and monitor the success of livelihoods and vulnerable people's programmes.

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14.4 Measuring whether or not livelihoods programmes have been successful requires a commitment to monitoring longer than two or three years it may be up to ten years before livelihoods are fully restored in some cases, particularly where tree crops are impacted. Evaluate emergent, mid-term and long-term impacts of the resettlement activities on the welfare of impacted households, communities, and local government.

14.5 Establishment of a Resettlement Monitoring and Evaluation Committee

14.5.1 An applicant or a holder of a mining right or a mining permit shall, where the operations involve displacement and resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities, establish a Resettlement Monitoring and Evaluation Committee (RMEC).

14.5.2 The RMEC shall comprise representation from the stakeholders referred to in item 7.2 of these Guidelines.

14.6 Functions of the Resettlement Monitoring and Evaluation Committee

14.6.1 The functions of the RMEC shall include:

(a) Development of a monitoring and evaluation plan.

(b) Implementation of the monitoring and evaluation plan.

(c) Maintain continuous engagement with affected stakeholders and providing regular updates and information about the progress in implementation of the monitoring and evaluation plan and the resettlement plan.

(d) Conduct completion audits at the end of the projects.

(e) Monitor and evaluate achievement against objectives in the resettlement plan and difficulties arising from implementation.

(f) Monitor the impact of projects to communities including post resettlement impacts.

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14.7 Funding and resources requirements of the Resettlement Monitoring and Evaluation Committee

14.7.1 An applicant or a holder of a mining right or a mining permit shall, where the operations involve displacement and resettlement of landowners, lawful occupiers, holders of informal and communal land rights, mine communities and host communities, be responsible for all the costs, funding, and resources requirements of the RMEC.

14.7.2 Resource requirements relate to dedicated staff complement with resources e.g., computers, laptops, office space, meeting facilities, phones, transportation etc.

14.8 Reporting obligations

14.8. 1 A holder of a mining right, prospecting right or a mining permit shall be responsible for reporting progress with implementation of the resettlement agreement quarterly during the first year of the resettlement taking place and thereafter annually for the period of the issued right or permit to the Department.

14.8.2 The Department, through the Regional Manager shall monitor and evaluate implementation of the resettlement plan by a holder of a mining right or a mining permit. Monitoring and evaluation to be done for the duration of the mining right.

15 RESETTLEMENT BENEFITS AND MPRDA COMMITMENTS

Resettlement compensation and related benefits should not be conflated with Social and Labour Plan and Mining Charter commitments. Resettlement compensation and related benefits should be clearly distinguishable and separated from the Social and Labour plan and Mining Charter commitments.

16 REVIEW OF THE RESETTLEMENT GUIDELINES

These Guidelines may be reviewed by the Minister, by notice in the Gazette.

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