# **How deep is the problem? Human rights violations in rural mining areas.**

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## **Introduction**

South Africa has seen an increase in legal cases between mining companies and mining affected communities. These cases are often a result of harmful negligence by mining companies that results in pollution and exploitation of resources, like water, that are needed by community members. Municipalities in these areas seem to be unable or unwilling to address the concerns of these communities as these problems continue to go unmitigated. There is a need to investigate what it is, on the side of municipalities, that makes it difficult to fulfil their responsibilities.

This study seeks to conduct an in-depth investigation on the municipal limitations that result in negligence of human rights to clean water in mining affected communities. The study primarily focuses on the Somkhele area in Kwazulu Natal and the Xolobeni rural community in the Eastern Cape. Somkhele is appropriate for this study because of their ongoing struggle with the Tendele mining company whose operations are polluting the communities water supply. The case between the two parties has undeniable evidence of human rights violations that are seemingly unaddressed by municipal leaders. Xolobeni on the other hand is a community that could potentially become a mining community in the future because of the minerals on their land. As both these communities share spatial and infrastructural similarities, it is important to study the water related human rights violations in Somkhele to strategize ways of avoiding the same fate for Xolobeni and other potential mining communities. This study then proposes that an in-depth investigation of the Somkhele case, including the potential causes and implications of apparent municipal neglect, would not only illustrate the violation of human rights by mining companies and municipalities in mining areas, but it would also provide necessary information to prevent the same violations with the Xolobeni community.

## **Literature and Background**

Recent work by Madiya (2020) draws attention to the implications of neoliberalism on the citizenship and inclusion of rural communities in South Africa[[1]](#endnote-1). The author uses the recent conflict between the Xolobeni rural community in South Africa and the minister of the Department of Minerals and Energy (DME). She draws from secondary sources about a recent mining application that was supported by the minister of the DME but opposed by some members of the Xolobeni community.

The author concludes that continued inequality in South Africa, with specific regards to accessing resources and infrastructural development in rural areas, is a result of the neoliberal governance strategies adopted by the democratic government. She then presents these inequalities as human rights violations imposed on rural communities by the South African government. Madiya (ibid) adequately makes a case for the challenges faced by South African rural communities as a result of incompatible governing strategies employed by the South African government. However, her work does not account for the responsibilities of individual municipalities whose primary function is to distribute resources and services in local communities. It is important to consider this angle because municipal governments are the first line of defence against poverty and human rights violations in South African communities. When municipalities fail to function in their tasks it exposes communities to challenges that the constitution protects them against such as the access to clean water and good infrastructure.

In recent years Somkhele and Xolobeni have been in longstanding conflicts with government and mining companies concerning the damage to water resources as a result of ongoing mining activities. According to Somkhele community members, the mining activities of Tendele mining have polluted the air with coal particles that have also settled in rainwater containers used by the residents. This has made the water unsafe for farming, drinking and cooking. The damage to Somkhele water is also evident in the discoloration in the water as a result of the settled charcoal particles. In 2018, the community approached the KwaZulu-Natal High Court to stop the expansion of the Tendele mining company as their activities are evidently damaging water supplies in the community. The community also claimed that the Tendele company had been operating beyond their parameters without necessary authorisations.

The Xolobeni community has been involved in a court battle with the minister of the DME. Some members of the community banded together to form the Amadiba Crisis Committee (ACC) to fight against the ministers’ efforts to grant mining rights to Mineral Commodities (MRC) who wated to mine various minerals on communal land in the Amadiba area. Although some members of the community agreed to mining for its anticipated economic contribution to the community, those who opposed it sited water and air pollution, water shortages and damage to livelihood strategies as some of their reasons for rejecting the mining. It is important to note that the minister proposed to avoid this problem by relocating those members of the community who would be most affected by mining. ACC members refused this proposal, siting their strong ties to their land and the history it represents. In 2018, the ACC won a case against the DME minister who was informed by the courts to get full consent from the community prior to granting MRC rights to mine the Amadiba land. The minister has vowed to appeal the court’s decision in order to continue his initiatives. No date has been announced for this particular appeal. However, the minister has continued attempts to negotiate with the ACC for a mutually beneficial resolution.

These two cases call into question the capabilities and efforts of municipalities in mining affected areas with regards to ensuring water safety and availability for community residents. In addition to this, these cases inspire an inquiry into the conditions upon which mining, and water licences are granted to mining companies in South Africa with particular reference to the company’s responsibility to water and the community.

## **Municipal Limitations to Protecting community rights.**

Any attempt to solve and prevent the concerns expressed by the Somkhele and Xolobeni communities is to approach the problem from the source, the municipal government. South African municipalities often blame slow service delivery and slow development on a shortage of resources. These resources include funding and necessary infrastructure. To further assert this challenge, reports show that 83% of Eastern Cape municipalities, have been deep in debt for many years[[2]](#endnote-2). These municipalities have been unable to perform their mandated functions including delivering basic services to their communities, building and maintaining infrastructure and paying employee salaries. While the above can be true, South African municipalities have other significant limitations that negatively impact human rights in the communities they govern. These include mismanagement of funds, unstable management structures, struggles to retain skilled workers and discriminative service delivery.

### **Mismanaging Funds**

The recent spread of corona virus in South Africa exposed many municipalities that were mismanaging funds meant for service delivery, infrastructure and development initiatives. The Eastern Cape municipality was at the top of this list as many news outlets and analysts reported that the municipality was found to have granted tenders and allocated funds to projects in a corrupt manner.

One such case concerns a reverse osmosis plant that was meant to be built near the Sarel Hayward Dam in Port Alfred[[3]](#endnote-3). The project has been halted since they year 2020 as a result of disputes regarding the tender. Some political representatives and construction companies approached the courts claiming that the municipality had granted the tender to Quality Filtration Services corruptly, including an advanced payment of R20million payment[[4]](#endnote-4). This is similar to a 2019 case filed by WBHO and Icon Construction against the state owned water board Umngeni Water, in Kwazulu Natal, claiming that the board had granted a R919million tender to Klomac Engineering manufacturers water treatment equipment in a corrupt manner as the companies bid was approximately R514million more than the board had hoped to spend and significantly higher than bids made by other contractors[[5]](#endnote-5).

These cases are similar to what has been happening in Giyani, Limpopo, where communities have been promised infrastructure for portable water but have not yet received it. In 2014, the Lepelle-Nkumpi Local Municipality and the Department of Water and Sanitation (DWS) had granted a R 3billion tender to Khato Civils to build and install pipes that would send water to people’s homes[[6]](#endnote-6). However, it was reported in the year 2020 that the public protector, and the minister of finance, found the tender to have been awarded improperly[[7]](#endnote-7). In addition to this, the municipality and the DWS are in debt to the contractors for approximately 40 million[[8]](#endnote-8). These combined limitations have caused a halt in the project, leaving many Giyani villages without water.

These examples show that, while the constant unavailability of water infrastructure in some municipalities can be blamed on a lack of funding, it can also be a result of corrupt people who are supposed to facilitate the construction of such infrastructure. It is therefore not shocking that no infrastructural provisions have yet been made or announced to solve the problem in Somkhele. We can propose from these above cases that there may be corrupt practices taking place in this matter. If this is the case, we can also assume that there are no such provisions in the pipeline for Xolobeni if the MRC mining project continues. Corrupt incidents of this nature cause a larger problem of rights of citizens being violated. This refers particularly to the basic right to clean drinking water.

### **Unstable leadership structures and skilled worker retention**

Consistent leadership structures and retention of skilled workers are important for municipalities and the water sector to function efficiently. However, over the recent years, the South African water sector including the DWS and water departments in various municipalities have faced significant challenges in the areas of leadership and retention. An inability to mitigate these challenges results in essential government functions, such as monitoring water projects and the progress of municipalities being neglected. In addition to this, the failure to retain skill workers such as engineers and technicians is arguably the main reason behind inadequate water infrastructure in many neglected communities.

In the year 2020, corruption watch released a report in which they reviewed the South African department of water and sanitation[[9]](#endnote-9). A section of this report particularly discusses the lack of institutional capacity which causes this department to perform poorly. One of the more pressing observations made by this report regards the serious instability at the leadership level within the DWS. They reference the high turnover of director generals on the department over the four years and claim that this has been a major factor in the poor performance of the department. We can agree with this claim because leaders who are appointed for short periods would not be able to implement and monitor significant projects within this department. They are also not able to implement a constructive modus operandi within the department based on available skills and resources. The second observation by corruption watch is weakening oversight mechanisms. According to this report, ministers are required by law to collect information on water related services and resources and provide it to the public (ibid). They also report a deliberate action to stop the production of public material, including the blue, green and no drop reports which accomplished that mandate (ibid).

This could be seen as the main reason many projects in some municipalities have been unfinished. When communication with the community and other stakeholders is cut-off, there is no dialogue between government and stakeholders about community needs and government responsibilities or available resources. In conditions like these, the voices of communities in need of water services and assistance are not heard. Above this, no one is present to ensure that the functions of the departments and municipalities are being attended to.

The retention challenge for municipalities is also identified in a 2007 report by the water research commission (WRC)[[10]](#endnote-10). The report notes that the South African water sector is in constant need for skilled engineers but find themselves competing with the private sector for skilled workers. We could also apply this to the lack of skilled technicians and workers in rural areas, where mining often takes place, as far as water management and treatment is involved. Rural municipalities also loose skills to cities where employee conditions and remuneration are often better.

### **Discriminative service delivery and development initiatives.**

South Africa has legislation in place to protect communities from exploitation, invasion and violation by mining companies. Some of this legislation is specific to the availability of clean water. The problem is implementation and monitoring. While the above paragraphs illustrate that the lack of leadership structure and skilled employees within the water sector are the cause of slow and at times non-existent monitoring of water projects, this section illustrate that this may also be a result of targeted interests by government.

In 2015 the Johannesburg government invested in water treatment plant to clean and repurpose water that had been damaged by acid mine drainage as a result of the mining activity in the Witwatersrand area[[11]](#endnote-11). We observe in such cases that the South African government is aware of water legislation that needs to be implemented and monitored in mining affected areas such as ensuring the availability of clean water to those affected. This is just not the case for rural communities that are affected by mining such as Somkhele.

The difference between Witwatersrand and rural areas is not only evident in infrastructure, but also in their value to the South African economy. Gauteng is often referred to as the centre of trade in the Southern African region, producing 34% of the national gross domestic product (GDP) in 2017 while the Eastern cape and Kwazulu Natal contributed 8% and 16% respectively[[12]](#endnote-12). We therefor pose that another reason for mining affected communities in rural areas to be neglected is that they do not serve the economic interests of the South African government which appear to be economically centred. They focus time and money on areas that contribute more to the economy.

Targeted developments, particularly those that relate to basic needs and services, are eerily similar to the modus operandi of the apartheid government. At that time, government services were given to a select few based on racial differences. In these post-apartheid years however, services and developments seem to be received based on geographic and perhaps even class differences. This suggests that, through the current water governing conditions, the South African government has maintained the modus operandi of the apartheid government.

To further illustrate this point, we need to outline some of the most appropriate water legislation that is meant to protect communities from exploitation of water resources and show how they are being ignored in Somkhele. The Broad-Based Black Economic Empowerment Act (53/2003) stipulates the responsibility of companies to ensure that their activities do not harm members of the communities where they operate. For mining companies, this includes ensuring the availability of safe water by managing their waste and pollution levels efficiently. Similarly, part of the preamble of the Mineral and Petroleum Resources Development Act (28/2002) (MPRD) stipulates that the government is obligated “to protect the environment for the benefit of present and future generations”[[13]](#endnote-13). In addition, legislative requirements by the National Environmental Management Act (Act No. 107 of 1998) (NEMA) Environmental Impact Assessment (EIA) Regulations of 2014, as amended, state that after companies have applied for mining rights, they are required to conduct an environmental impact analysis involving all interested parties. This group mainly consists of community members, landowners, and traders who will be affected by the mining activities. The mining companies are then required to declare how they will mitigate or prevent any anticipated negative impacts of their activities. Together these laws are meant to prevent or, in other cases, allocate responsibility for the damage done to natural resources because of mining activities.

If this legislation were well implemented and municipalities monitored mining activities to ensure that guidelines of legislation are followed and kept, cases like Somkhele would not exist. Both MRC and Tendele have claimed that they have complied with the relevant laws regarding mining and the environmental protection. If this is taken to be true while their activities still harm communities, the problem is the lack of municipal initiative to monitor these companies and ensure that their projects are within the guidelines of legislation.

## **Conclusion**

South African municipalities have many limitations that hamper their efforts in resolving human rights violations in mining communities. Some of these limitations are a result of a debilitating economy. While others are a result of municipalities and national governments’ corruption and discriminative service delivery which only targets areas that contribute the most to the South African economy.

## **Recommendations**

* Ensure access to multiple sources of water in communities where mining is to be conducted. This should be done before mining projects start. It would be the responsibility of the both the municipalities and mining companies to ensure this provision by proceeding with agreements of constructing and maintaining necessary water infrastructure that provides clean water to mining affected communities.
* Conduct thorough air and water pollution tests before any mining takes place. As stated above, legislation already exists that demands this step in the mining application process. However, this legislation may need to be revised to ensure that cases like Tendele mining in Somkhele are prevented. This may be done by requiring the testing to be more vigorous and specifically detailed.
* Develop standard guidelines for all functions of municipalities and water departments to ensure that a change of leadership does not affect the progress of any water related projects in communities. These may be amended over time subject to changes in the environment and legislation.

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