

# Legal Frameworks for Addressing the Human Rights Violations Linked to Illegal Mining: A Call for Government Accountability and Sustainable Solutions

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## ABSTRACT

The paper aimed to examine the critical intersection between civil liberties and environmental law, focusing on the urgent implications of governmental inaction regarding illegal miners threatened and killed by starvation underground at the Stilfontein mine in Klerksdorp, North-West. The Constitution of the Republic of South Africa ("The Constitution") protects human and environmental rights. This paper argues that inefficiencies of government regulation increase such destructive practices, resulting in significant ecological harm and systemic human rights abuses. This paper critically examines governmental negligence and the legal obligations of states regarding human rights and environmental issues. Additionally, the paper advocates for a multidisciplinary approach that integrates human rights with environmental legislation. The study found that though there are legal frameworks around mining, there is no monitoring and accountability of these mining companies. The paper advocates for solid legal frameworks that bridge human rights and environmental protections, emphasising the necessity for governmental accountability in addressing the illicit mining crisis and its implications on vulnerable communities. The author recommends robust legal frameworks to address illegal mining and the economic vulnerabilities driving individuals to illicit activities.

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## 1. INTRODUCTION

Tshoose argues that if we are to be rooted in the Constitution that embraces, respects civil liberties, cultivates people's dignity, equality, ubuntu, and accountability, the Stilfontein discourse calls for an urgent examination of government responsibilities

and sustainable solutions to protect vulnerable communities and uphold their fundamental rights.<sup>1</sup> As various regions globally encounter economic difficulties and environmental degradation, illegal mining has become a pressing concern, something that hugely violates and acts against the

<sup>1</sup> Tshoose, C. I. (2023). The Role and Impact of Constitutional Values of Ubuntu, Equality, and Human Dignity in the Interpretation and Protection of the Right

to Access Social Security in South Africa. *Journal for Juridical Science*, 48(2), 163-194.

fundamentals of the South African Constitution.<sup>2</sup> Agbakwa contends that Africa faces a significant challenge regarding these pertinent human rights. This issue underscores the prevalence of human rights violations and challenges related to community welfare, such as the lack of housing and other related social problems, propelling people to find illegal means to survive.<sup>3</sup> Mubangizi asserts that it is essential that the Constitution, as the supreme law, upholds and protects these rights.<sup>4</sup> Around the world, illegal mining has transformed into a severe and intricate threat to the rights and welfare of disadvantaged and vulnerable groups, casting a dark cloud over their future.<sup>5</sup> Furthermore, devastating delicate ecosystems and causing irreversible environmental harm, Akter opines that this unregulated and widespread extraction, driven by greed and apathy, also leads to immersive human rights violations.<sup>6</sup> These include the forced displacement of entire communities, severe labour exploitation, and serious health issues stemming from hazardous working conditions and polluted environments. Harris and Pamukcu assert that there is a need for swift action that is more urgent than ever.<sup>7</sup> They argue that governments, legislators, and civil society should directly confront these injustices and dismantle the systems perpetuating them, underlining the gravity of the situation.<sup>8</sup> The dire need for citizens' economic rights to the widespread incidences of illegal mining and the protection of their humanity and the

incidence of civil violence underscores the fundamental link between the protection of rights provisions of our Constitution<sup>9</sup> as the supreme law of the land for the protection of human rights of all the peoples of the Republic.<sup>10</sup> What is always amiss is the active involvement and proactiveness of the institutions that safeguard and enforce constitutional values, such as Chapter 9 institutions,<sup>11</sup> meant to protect the vulnerable and promote constitutional supremacy. These institutions should be impartial and independent, protecting humanity and enforcing the democratic constitution post-1994.<sup>12</sup>

By contrast, the government being reactive and establishing robust and enforceable legal frameworks is not merely a recommendation but imperative for fostering accountability and efficiently addressing these pervasive human rights violations.<sup>13</sup> Enacting comprehensive laws and enforcing them strictly are necessary to guarantee that those who engage in illicit mining are held responsible for their crimes. This legal foundation would support sustainable resource management methods that protect people and the environment while enabling impacted communities to recover their rights and means of subsistence. According to Malin and Kallman, such a legislative structure may safeguard communities and the government

<sup>2</sup> Black, D., & Wilson\*, Z. (2004). Rights, region and identity: exploring the ambiguities of South Africa's regional human rights role. *Politikon*, 31(1), 27-47.

<sup>3</sup> Agbakwa, S. C. (2002). Reclaiming humanity: economic, social, and cultural rights as the cornerstone of African human rights. *Yale Hum. Rts. & Dev. LJ*, 5, 177.

<sup>4</sup> Mubangizi, J. C. (2008). Protecting human rights amidst poverty and inequality: the South African Post-Apartheid experience on the right of access to housing. *African journal of legal studies*, 2(2), 130-146.

<sup>5</sup> [Miners' plight reaches SAHRC](#) (accessed on 15/11/2024).

<sup>6</sup> Akter, T. (2024). *Resource Exploitation And Environmental Crisis: An Ethical Analysis* © University of Dhaka].

<sup>7</sup> Harris, A. P., & Pamukcu, A. (2020). The Civil Rights of Health: A New Approach to Challenging Structural Inequality. *UCLA L. Rev.*, 67, 758.

<sup>8</sup> Fn. 7.

<sup>9</sup> S 7 of the Bill of Rights.

<sup>10</sup> Agbakwa, S. C. (2002). Reclaiming humanity: economic, social, and cultural rights as the cornerstone of African human rights. *Yale Hum. Rts. & Dev. LJ*, 5, 177. , Sripati, V. (2007). Constitutionalism in India and South Africa: A comparative study from a human rights perspective. *Tul. J. Int'l & Comp. L.*, 16, 49.

<sup>11</sup> Chapter 9 of the South African Constitution establishes these bodies to support and strengthen democracy, including Public Protector, and the South African Human Rights Commission.

<sup>12</sup> Etone, D. (2023). The South African National Human Rights Protection System. In *A Global Handbook on National Human Rights Protection Systems* (pp. 266-290). Brill Nijhoff.

<sup>13</sup> Harris, A. P., & Pamukcu, A. (2020). The Civil Rights of Health: A New Approach to Challenging Structural Inequality. *UCLA L. Rev.*, 67, 758.

while directly addressing ecological challenges.<sup>14</sup>

The call for governmental accountability and openness must not be wasted to protect human rights and move away from exploitative practices and toward fair, sustainable development. While the state may blame and shame the illegal miners, poverty and other social ills propel poverty-stricken communities to break the law and compromise the environment.<sup>15</sup> This may be attributed to non-responsive governments in issues affecting communities, especially those around abandoned mines. The state should put measures in place to protect communities and the environment. The illegal miners, while they need to feed their families, the environment, and other imperatives, are seriously violating or compromising them.<sup>16</sup> Mamokhere advocates a practical approach to evaluating and implementing efforts to enhance the services, which can involve a variety of strategies to reverse what Mamokhere calls infringement of civil rights, including the government's efforts to provide the essential human right, water.<sup>17</sup> It is the moment to act, impact life, and achieve a more equitable future that requires strong and well-functioning governments, the corporate sector, and civil society. In collaboration, we can create a world free from the terrible effects of illicit mining and where people and the environment flourish, filled with hope and optimism, by putting the rights of underprivileged groups and the integrity of our ecosystems first. The state ought to have

acted with urgency before many people died underground. The North Gauteng High Court ruled that relief workers must be allowed access to the Stilfontein mine, where thousands of illegal miners were trapped, and there was an urgent need for food and medical assistance.<sup>18</sup> An urgent plea by the society in the auspices of the Constitution and human rights, denouncing the government's labelling of miners as "criminals" while denying assistance, was a clear violation of human rights.

The rescue workers have approved six hundred packages of instant porridge and water bottles to the stranded miners, who may number as many as 4,500 and have been underground for months because of a government crackdown on illicit mining. The court ordered that the mine shaft be freed to allow trapped miners to escape and limit access by non-emergency staff. In a supporting affidavit, human rights campaigner Abderrahman Regragui said that the miners' fundamental rights—such as their right to life and access to healthcare—were violated by the government's actions, comparing the situation to torture. The most disturbing and inhuman was the miners' exposure to fluctuating weather and dehydration. At the same time, the state acted swiftly on Operation *Vala Umgodi*,<sup>19</sup> which was among the health hazards that sparked concerns in the greater society. Through Minister Khumbudzo Ntshavheni, the refusal to assist, with accusations of neglect and even genocide being levelled against it.<sup>20</sup> Attorney

<sup>14</sup> Malin, S. A., & Kallman, M. E. (2022). *Building something better: Environmental crises and the promise of community change*. Rutgers University Press.

<sup>15</sup> <https://www.msn.com/en-za/news/other/government-says-no-to-helping-criminals-as-thousands-of-trapped-illegal-miners-starve/ar-AA1u1VUZ?ocid=winp2fptaskbarhoverent&cvid=38e5c081c41f4be795a963043d1fcc54&ei=46> (accessed on 15/22/2025).

<sup>16</sup> [Reprieve for Stilfontein miners](#) (accessed on 17/03/2025).

<sup>17</sup> Mamokhere, J. (2022). Pragmatic implementation and promotion of sound governance principles in realizing Sustainable Development Goal Six (6) in South Africa. *International Journal of Research in Business and Social Science* (2147-4478), 11(6), 20-32.

<sup>18</sup> <https://www.news24.com/news24/southafrica/news/hig>

[h-court-orders-stilfontein-mine-be-open-to-emergency-services-20241116](#) (accessed 16/11/2024).

<sup>19</sup> *Vala Umgodi*, loosely translated as "close the hole," is a government operation that was started to stop illegal mining. This started while illegal miners were trapped underground, causing enormous anxiety to those who were underground and their families. The Human Rights Commission found that the operations violated illegal miners' rights to life as enshrined in section 11 of the Constitution, which also trampled upon their dignity as humans. See, <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/4181-media-statement-sahrc-s-investigation-around-operation-vala-umgodi-at-a-disused-mine-shaft-in-stilfontein-north-west-province> (accessed on 19/03/2025)

<sup>20</sup> <https://www.msn.com/en-za/news/other/government-says-no-to-helping-criminals-as-thousands-of-trapped-illegal>

Yasmin Omar, representing the Society, stated that the government's stance amounts to allowing people to die while making it clear that the miners are considered criminals for their actions. The case is set to continue in court on Tuesday, highlighting the ongoing tension between governmental authority and human rights. In the same vein, the ongoing investigations by the South African Human Rights Commission on allegations that police blocked the mine while the alleged illegal miners were trapped underground.<sup>21</sup> It remains an interesting case where law enforcement, who are for humanitarian protection and save the lives of civilians, are in the wrong against the lives of citizens. This will not be an isolated matter, as we are aware that in 2012, police were found to have used excessive force on miners in the strike that saw 34 miners being killed by police.

## 2. EQUALITY IN LIFE AND DIGNITY

While guns are against the illegal miners trapped at Stilfontein through the concept of *Vala Umgodi*<sup>22</sup> Life and dignity are at the helm of constitutional democracy as nondelegable rights. The general society expects the state to be at the forefront in enforcing the Bill of Rights and the presumption of innocence until proven guilty. Essentially, the state ought to see that as it issues the mining license to business operators, it should be the state's right to protect the communities where these mining businesses happen. Abandoned mine shafts are a threat to people's lives, but bring relief to poor stricken communities near mines. Former Chief Justice Pius Langa opined that respecting every person's worth within his

community is a fundamental principle in the legal system.

A person's worth and identity are not just linked; they are inseparably intertwined. One's identity intricately defines one's pride. Cultural identity is a crucial part of one's identity as it stems from triumph before the society that recognises and where such persons belong.<sup>23</sup>

The pre-constitutional era was a dark period, marred by anti-black racism and laws that blatantly disregarded human rights. Essentially, the conclusions by the South African Human Rights Commission that the SAPS *Vala Umgodi* Operations by police, which led to many deaths of illegal miners, was a death penalty which O'Regan J declared as a breach of the Constitution<sup>24</sup>, a violation that could not be justified by section 36, the limitation clause. The cardinal principles of life exceed just the preservation of law by the state, but look at the saving of life and protecting and advocating for sustained life through international legislation and the Constitution.

The preamble to the Universal Declaration of Human Rights<sup>25</sup> asserts that human dignity forms part of the fundamental principles for tranquillity, guaranteeing the recognition of the inherent dignity and the equal and inalienable rights of all members of the foundation of their freedom, justice, and harmony.<sup>26</sup> The United Nations Sustainable Development Goals (UNSDGs) purpose lambasts the past disparities that discriminated against persons based on their gender, and is central to the empowerment of all persons irrespective of gender, elevating them to equal status, nullifying the patterns of

[minersstarve/arAA1u1VUZ?ocid=winp2fptaskbarhovere&nt&cvid=38e5c081c41f4be795a963043d1fcc54&ei=46](https://minersstarve/arAA1u1VUZ?ocid=winp2fptaskbarhovere&nt&cvid=38e5c081c41f4be795a963043d1fcc54&ei=46) (17/03/2025).

<sup>21</sup>

<https://www.news24.com/news24/southafrica/news/high-court-orders-stilfontein-mine-be-open-to-emergency-services-20241116> (accessed 17/03/2025).

<sup>22</sup> The concept "*Vala Umgodi*," loosely translated close the hole, was introduced by SAPS to stop illegal mining in Stilfontein. This has caused a stir in society as many miners are locked underground. Such an act is a violation

of the constitution's right to life and the dignity of all the alleged illegal miners trapped underground.

<sup>23</sup> Case of *MEC for Education: KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC) para 53.

<sup>24</sup> Section 11(2) of the Constitution.

<sup>25</sup> <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed on 27/05/2025).

<sup>26</sup>

[https://www.sahrc.org.za/home/21/files/SAHRC%20Equality%20Report%202017\\_18.pdf](https://www.sahrc.org.za/home/21/files/SAHRC%20Equality%20Report%202017_18.pdf) (accessed on 27/05/2025).

gender stereotypes<sup>27</sup> Consequently, the ushering of the democratic government brings hope to implement the international frameworks that embrace human dignity and equality. However, the situation in South Africa is alarming, with high unemployment and social and economic inequalities still on the rise. Transformative laws should alter people's lives and make a shift through policies; however, the political landscape should take the government to a new trajectory, battles to implement and monitor progressive policies because of this reluctance in the state, South Africa is regarded as the unequal state which paints a very bleak picture in a state that has the most recommended Constitution. The United Nations Development Programme (UNDP) examined whether governments make any shift in their socioeconomic policies to improve the lives of people. Regrettably, UNDP painted a disturbing picture:

"If the high levels of inequality constrain growth and limit its pro-poor impacts, then reducing inequality may be a prior and necessary condition for a sustainable decrease in poverty. Going for growth as a means of addressing poverty in the absence of policies to address inequality or the underlying factors through which inequality or the underlying factors through which inequality is reproduced may shield limited returns. Instead, reducing inequality may be a necessary condition for the kind of growth required for optimal impacts on poverty. This has important implications for policy, casting into doubt the received wisdom of the trade-off between redistributive policies and growth."<sup>28</sup>

Despite the state enacting progressive legislation to turn around human life, giving a new shape to a democratic outlook, these

policies in practice are inefficient and do not make the envisaged impact in people's lives. Furthermore, the state must enforce the laws on those who conduct businesses to uplift the socioeconomic conditions of the communities. The legislation provides for the Social Labour Plan as a mechanism to invest in these communities and give them dignity and the opportunity for a better living.<sup>29</sup> However, when the state fails to monitor the SLP, it results in criminal activities such as illegal mining. In the wake of unemployment, people resort to means to make a living, even if such means are unlawful.

### 3. CRIMINALIZATION VS. HUMANITARIAN RESPONSE

The government's refusal to assist individuals labelled as 'criminals' in illegal mining raises significant legal and ethical questions. This stance can be justified by enforcing the rule of law and maintaining order within society. Illegal mining often results in severe environmental degradation, economic disruption, and undermining legitimate mining operations. From a legal perspective, the government may argue that its responsibility is to uphold laws designed to protect the environment and public resources and deter unlawful activities that threaten the livelihood of citizens engaged in legal mining practices. However, this approach can conflict with principles established in humanitarian law, particularly when considering the implications for individuals who engage in illegal mining out of desperation or dire economic necessity. Many of these miners belong to marginalized communities facing extreme poverty, limited job opportunities, and systemic inequalities. By criminalizing their actions without providing alternatives, the state and those accountable for the mining are reluctant or unable to address the root causes of illegal mining and exacerbate existing

<sup>27</sup> Mahaye, N. E., & Kutame, A. Philosophical Application in Fostering Innovative Leadership, Technologies, and Discipline for Social Change: The Educational Empowerment of the Girl Child.

<sup>28</sup> United Nations Development Programme, The Impact of Socio-economic Inequality on Economic Development in South Africa (2014) 7.

<sup>29</sup> Minerals and Petroleum Resources Development Act 28 of 2002.

vulnerabilities. The critical balance between criminalization and humanitarian response demands that the government not only enforce laws but also acknowledge the socio-economic realities that drive individuals to commit illegal mining. Ignoring these realities feeds into a cycle of violence and marginalization. Without humanitarian assistance or interventions, such as providing vocational training, alternative employment opportunities, and support for community development, the government risks perpetuating human rights violations. Miners may become targets for violence from law enforcement or rival groups, leading to further marginalization and a breakdown of community structures. While the legal justifications for not assisting individuals labelled as 'criminals' in illegal mining are rooted in the need to uphold law and order, this stance must be critically examined, considering humanitarian principles. A more integrated approach that combines law enforcement with active support for vulnerable communities could prevent human rights violations and foster a more equitable and just society. Thus, it is essential to advocate for policies that recognize the complexities of illegal mining and aim for a cohesive strategy that balances enforcement with humanitarian intervention.

Investigate the legal justifications for the government's refusal to assist individuals labelled as 'criminals' in illegal mining. Consider how this stance aligns or conflicts with principles of humanitarian law. The balance between the criminalization of illegal mining and a humanitarian response is critical. In the absence of intervention, the criminalization of miners can exacerbate human rights violations, leading to a cycle of violence and marginalization. A solely punitive approach may neglect the underlying socio-economic issues driving individuals to partake in illegal mining. Conversely, a humanitarian response focuses on rehabilitation and support, providing sustainable alternatives for affected

communities. Without intervention, communities may suffer as both strategies fail to address the root causes of illegal mining, leading to ongoing human suffering and conflict. The DA Federal Chair weighed in on the illegal miners' plight after the Minister in the Presidency responded that the state would not assist criminals. Zille asked about the Ubuntu phenomenon in the state, which is foundational in the democratic Constitution. I submit that considering the unemployment and the high cost of living, the miners deserved better than the violence they faced, while the authorities anticipated the contrary. Courts expect that the state has mechanisms in place for harmony in the workplace. The unfortunate incidents, such as the Marikana killings, undermined the road that the Constitution has already paved in recognizing the African concept of *Ubuntu* after years of democratic government.

In the *S v Makwanyane* case, the African philosophy of interconnectedness, which respects the dignity, advocates for equality, and embraces human life using the concept of *Ubuntu*.<sup>30</sup> The *Ubuntu* philosophy elucidates and is based on frankness instead of harming or oppressing others. The principles emulated by Ubuntu informed the enactment of the Interim Constitution. That forms the basis for why *Ubuntu* was invoked and explained by the courts; it was an open question about how fundamental a notion should be for constitutional interpretation. Madala J spoke of *Ubuntu* as a "concept that generally permeates the Constitution, particularly chapter three, which embodies the entrenched fundamental human rights. Shumbamhini and Chirongoma assert that through the spirit of *Ubuntu*, the state has an obligation to exercise compassion, reciprocity, dignity, humanity, and mutuality in its response to crisis or illegality, such as that of mining, especially because the state has a duty to protect human life."<sup>31</sup> They argue that *Ubuntu* cannot become a lived reality if others

<sup>30</sup> *S v Makwanyane* 1995 2 SACR 1 (CC).

<sup>31</sup> Shumbamhini, M., & Chirongoma, S. (2025). *Ubuntu, Gender Equality and Sustainable Development*

in Africa: An African Feminist Perspective. In *The Palgrave Handbook of Ubuntu, Inequality and Sustainable Development* (pp. 781-798). Springer.



are excluded or shut out from living an equal life with dignity.<sup>32</sup>

#### 4. ACCOUNTABILITY AND LIABILITY

An absence of robust legal mechanisms can lead to a perpetuation of abuses, such as land dispossession and exploitation of local communities. Strengthening legal frameworks is essential to ensure that they exist and are actively implemented and upheld.

Mathiba argues that there must be a resolution to the issues around mining in the broader spectrum of Human Rights. Mathiba asserts that the existing legal frameworks that govern illegal mining activities frequently prove inadequate in their capacity to tackle the grave human rights violations associated with this issue.<sup>33</sup> When government authorities neglect their responsibility to intervene, these legal structures often become mere formalities, lacking the necessary enforcement measures to safeguard vulnerable populations. This deficiency can result in a cycle of abuse, where local communities face threats such as land dispossession, exploitation, and various forms of oppression. To combat these injustices effectively, it is crucial to strengthen and enhance these legal frameworks. This means establishing comprehensive laws and ensuring they are actively implemented, rigorously enforced, and upheld to protect the rights and well-being of affected individuals and communities. Explore the potential legal consequences for government authorities failing to aid vulnerable populations, mainly when starvation or human rights violations may occur due to their policies or lack thereof.

#### 5. IMPACT OF NON-INTERVENTION

Study the effects of government non-intervention on local communities, the environment, and the broader socio-economic landscape.<sup>34</sup> For instance, the state must ensure that mines, as guided by the mining legislation, sign the Social Labour Practices (SLP) document addressing the social deficiencies that dictate how mining companies must deal with impoverished local mining areas. It stipulates how to address past disparities to uplift living standards and Local Economic Development (LED). Consider case studies where similar governmental actions have led to humanitarian crises. The lack of intervention in various contexts—social issues, environmental concerns, or geopolitical conflicts—can have significant consequences.<sup>35</sup> Non-intervention often implies a deliberate decision to refrain from acting, which can have far-reaching effects. When governments choose non-intervention to respond to social injustice, the status quo usually persists, leading to heightened inequality and community discontent. For example, a lack of intervention in systemic issues can prolong conflicts and prevent the establishment of fairness and justice. Environmental Concerns: Non-intervention in ecological policy can exacerbate climate change, biodiversity loss, and natural resource depletion. When actions are not taken to mitigate these problems, the cumulative effects can result in irreversible damage to ecosystems and the planet.

In essence, the impact of non-intervention can manifest as stagnation, deterioration, and heightened conflict across various sectors. It is crucial to evaluate the implications of such decisions and consider proactive measures that can lead to positive change. At the height of the government's

<sup>32</sup> Fn. 31.

<sup>33</sup> Mathiba, G. L. (2023). Towards a meaningful engagement approach to mining-induced displacements in South Africa: a legal comparative perspective.

<sup>34</sup> SLP A document outlines how a mining company will share the benefits of mining with the communities and employees it impacts. SLPs are a legal requirement for mining companies in South Africa and are submitted to

the Department of Mineral Resources and Energy (DMRE) as part of a mining license application.

<sup>35</sup> Khine, M. M., & Langkulsen, U. (2023). The implications of climate change on health among vulnerable populations in South Africa: a systematic review. *International Journal of Environmental Research and Public Health*, 20(4), 3425.

inactive stance, it suddenly decided to introduce Operation Vala Umgodi to curb illegal mining. Society does not welcome the initiative since there are human beings underground.<sup>36</sup> Society joins hands against the closing of the mine while people are underground. The NGO Mining Affected Communities United in Action (MACUA) has filed an urgent application with the Constitutional Court to rescue illegal miners occupying an abandoned gold mine in Stilfontein. The group's previous bid at the Pretoria High Court was unsuccessful. The organization requests direct access and leave to appeal to the apex court to compel the government to expedite the operation.<sup>37</sup>

## 6. SUMMARY DISCUSSION

The discussion centres on the critical intersection of human rights and environmental law, specifically focusing on the repercussions of governmental inaction regarding illegal mining activities at the Stilfontein mine in Klerksdorp, North-West. The paper underscored the alarming human rights violations that arise from these operations and highlighted the broader environmental degradation that results from unregulated mining practices.

In poor areas, illegal mining often becomes a last resort for individuals desperate to provide for their families amid crippling poverty. This pursuit, however, leads to significant environmental damage, including deforestation, soil erosion, and water contamination, which exacerbates food insecurity and jeopardizes community health. The author argues that governments' lack of adequate regulatory frameworks increases these destructive practices, resulting in ecological devastation and systemic human rights violations. The analysis draws on existing literature and legal frameworks to illustrate the severe consequences of governmental negligence, emphasizing its

impact on already vulnerable populations. The effects of such inaction harm current miners and their communities and threaten future generations' ecological balance and rights. Moreover, the paper advocated for a multidisciplinary approach integrating human rights concerns into environmental legislation, arguing that a unified focus on both can yield fairer and more just policy outcomes. Prioritizing the rights of marginalized and vulnerable populations in policy development is crucial to effectively curbing illegal mining activities. The study ultimately called for the South African government to enhance legal accountability and implement proactive measures to address the economic vulnerabilities driving individuals into illegal mining. By aligning sustainable development with human rights, the paper posits that it is possible to create viable livelihoods that do not compromise ecological integrity or fundamental rights. A collective effort from governments, civil society, and the private sector is essential to safeguard vulnerable populations and promote environmental sustainability for a more equitable future.

## 7. RECOMMENDATIONS

As the Constitution rests on the socioeconomic issues of the state, the government should use its available resources to protect its citizens. I recommend that the state take full responsibility and strive for economic growth, alleviate poverty around the mining communities, and secure a sustainable development plan. The following points are recommended:

- a. Improve the living conditions in communities surrounded by mining activities
- b. Strengthen the implementation of the South African Mining and Natural Resources Legislation Policies.

<sup>36</sup> <https://www.ewn.co.za/civil-society-bands-together-to-challenge-govts-handling-of-stilfontein-mine/> (accessed on 10/ Jan/ 2025).

<sup>37</sup> [https://www.google.com/search?q=judge+pius+langa&rlz=1C1OPNX\\_enZA1049ZA1049&oeq=judge+langa&gs\\_l=crp=EgZjaHJvbWUqCAGDEAAAYFhgeMgoIABAAGOM](https://www.google.com/search?q=judge+pius+langa&rlz=1C1OPNX_enZA1049ZA1049&oeq=judge+langa&gs_l=crp=EgZjaHJvbWUqCAGDEAAAYFhgeMgoIABAAGOM)

[CGIAEMgcIARAUgIAEMMggIAhAAGBYHjIICAMQABgWGB4yCAGEEAAYFhgeMggIBRAAGBYHjIICAYQA BgWGB4yDQgHEAAAYhgMYgAQYigUyCggIEAAYgAQYogOyCggIEAAYogOYiOXSAOg4NDg5ajBqN6gCCLACAO&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=judge+pius+langa&rlz=1C1OPNX_enZA1049ZA1049&oeq=judge+langa&gs_l=crp=EgZjaHJvbWUqCAGDEAAAYFhgeMgoIABAAGOM) (accessed on 10/Jan/ 2025).



- c. Ensure that environmental health is a constitutional right and prioritize it in its policies.
- d. Hold accountable the personnel executing regulatory acts and policies
- e. Hold the mining companies accountable for the abandoned mines.
- f. Protect lives around the abandoned mine shafts through government initiatives and ensure efficacy.
- g. Strengthen law enforcement around disused mines and strengthen safety in the areas posing danger to the community due to the disused mine shafts.
- h. Investigate management systems of the mining owners and enforce a high standard of accountability.
- i. Ensure transparency and decisiveness in the government policies and clear any confusion on implementations and monitoring compliance.
- j. Safeguard legislative implementation and upholding of the Constitution and the Bill of Rights against the abuses of persons and of the communities.
- k. Preserve the Ubuntu principles when interacting with the alleged illegal mining perpetrators while rehabilitating these mines for sustainable development.
- l. Allow and empower the unemployed, unskilled miners to thrive.
- m. Engage the communities surrounding the mining areas in the development strategies of their communities.

The levels of unemployment and the socioeconomic conditions prompt people to try the available means to survive. While it is not recommended to break the law, people find the abandoned mines an easy way to survive. The Public Protector (PP) raised

several issues in its report, including studying the traits of criminality in mining to improve people's lives and save the environment.<sup>38</sup>

## 8. CONCLUSION

In conclusion, this study emphasized the urgent need to address the significant complexities of the intersection between human rights and environmental law in the context of illegal mining at the Stilfontein mine. The ongoing governmental inaction exacerbates economic hardship for vulnerable communities and engenders significant environmental degradation, threatening current and future generations. The purpose of this paper was to shed light on the systemic failures of governance that have allowed such practices to flourish, often at the expense of marginalized populations who resort to illegal mining as a means of survival.

The findings present a compelling case for integrating human rights considerations into environmental legislation, advocating for a multidisciplinary approach that prioritizes the well-being of at-risk communities. By establishing more robust legal frameworks and accountability measures, it is possible to curtail the destructive impacts of illegal mining while simultaneously fostering sustainable livelihoods. This paper calls for a concerted effort among various stakeholders—including government entities, civil society, and the private sector—to seek solutions that protect human rights and the environment collaboratively. Furthermore, the Department of Mineral Resources and Energy is proactive in protecting the lives of individuals living near abandoned mines and caring for the environment. This proactive approach includes regularly monitoring and managing these areas' safety and implementing measures to reduce environmental damage. By conducting frequent evaluations and making preventative efforts, the Department ensures that communities are shielded from

<sup>38</sup> Rohman, Arif, Hartiwiningsih, and Muhammad Rustamaji. "Improving Ecological Justice Orientation through a Typological Approach to Illegal Mining in the Criminal Justice

System." *Cogent Social Sciences* 10, no. 1 (2024): 2299083.

potential threats, such as soil contamination and water pollution. This proactive approach also extends to supporting sustainable practices that conserve natural resources for future generations. The Department's engagement with local communities and stakeholders is a key part of this proactive approach, as it is essential for raising

awareness and encouraging collaboration to address these challenges successfully. Ultimately, the state must bring lasting solutions to poverty and sustainable solutions to these impoverished communities where this mining exists, countering the narrative that the government is committing a miscarriage of justice.<sup>39</sup>

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