

# SA reaches for the stars - but at what cost to mining?

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While the square kilometre array (SKA) telescope is one of the most exciting projects in South Africa's scientific and academic fields with long-term benefits to the country's economy, it is likely to impact the use and exploitation of mineral resources in the Northern Cape.



Photo: SKA

Prospecting and mining right holders in the area are likely to be affected by the Astronomy Geographic Advantage Act 21 of 2007 (the AG Act), which gives the minister of science and technology the power to protect areas that are of strategic importance for astronomy activities, along with the Regulations on the Protection of the Karoo Central Astronomy Advantage Areas (SKA Regulations), which became operational in December 2018.

While both these documents appear to govern what happens in the sky, they actually provide parameters for activity on the ground in and around the SKA. Therefore, mining and exploration companies intending to mine or prospect in the Northern Cape need to pay close attention to the implications of these identified boundaries.

## What does this mean for miners?

The AG Act gives the minister the ability to demarcate Astronomy Advantage Areas (AAA), to protect areas that are of strategic importance for astronomy and related scientific endeavours.

Section 4(1) of AG Act provides that, in the event of any conflict between a provision of the AG Act and other national legislation such as the Mineral and Petroleum Resources Development Act, 28 of 2002 (MPRDA), the AG Act will prevail, if the conflict specifically concerns the management or development of an AAA or the protection of such an area.

In addition to the SKA Regulations, the minister has declared the Sutherland Core/Central AAA, to preserve the demarcated area of land for achieving the purposes of the AG Act. While no regulations have been published, a number of declarations have been released, and importantly, prospecting or mining activities are expressly prohibited in the Sutherland Central AAA. This, in the very least, is evidence of what may follow in this area.

While it may seem very discerning for prospecting and mining right holders, there are provisions built into the AG Act and the SKA Regulations that may be of assistance, which include public participation processes for determining AAAs and applications and procedures for obtaining permits and exemptions.

Further food for thought is the effect that the AG Act is going to have on new prospecting and mining right applications, proposed sales and/or purchases of rights and renewal applications in the Northern Cape. At present, it appears as though this has not yet been addressed by the Department of Mineral Resources.

## **Radio frequencies under the spotlight**

The SKA Regulations specifically prohibit the use of mining equipment that emit radio frequencies in excess of a certain level, which means that all mining and prospecting right holders in the area must ensure that their machinery is compliant. Continued use of non-compliant equipment may be regarded as an offence in terms of the AG Act.

Mining and prospecting right holders ought to bear in mind section 4(1) of the AG Act in the event of any conflict with the MPRDA. Furthermore, and importantly so, the MPRDA obliges prospecting and mining right holders to comply with any other relevant law, for example, the AG Act.

## **Enter the environment**

Another interesting development in South African law includes new regulations published by the minister of environmental affairs in April 2019, which lay down the procedure to be followed for adopting spatial tools or environmental instruments described in the National Environmental Management Act, 107 of 1998. These raise the question of whether the radio telescope and the SKA Regulations will be deemed a “spatial tool” or an “environmental instrument”, and what the environmental implications of this could be.

## **What’s to be done?**

Prospecting and mining right holders in the Northern Cape should establish whether any of their rights fall into a demarcated AAA. If they do, it is time to assess the impact, if any, of these new regulations on existing and future operations, and plan accordingly.

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