RESILIENT FUTURES PROJECT

FROM TAILINGS TO TILLINGS

FIBRE FARMING FOR THE FUTURE: LEGAL INTERESTS

PROF HANRI MOSTERT

DST/NRF SARCHI RESEARCH CHAIR: MINERAL LAW IN AFRICA, UCT

PROF ALEXANDER PATERSON

DIRECTOR: INSTITUTE FOR MARINE & ENVIRONMENTAL LAW, UCT

DR LOUIE VAN SCHALKWYK

POSTDOCTORAL FELLOW / SENIOR RESEARCHER: MINERAL LAW IN AFRICA, UCT

MS AYSHA LOTTER & MS RENEILWE KGOSANA

RESEARCHERS: MINERAL LAW IN AFRICA, UCT
Our premise:

Fibrous plants (such as bamboo) can be used to transform degraded (mine waste) land into a restorative agricultural sector and a dynamic manufacturing sector which provides employment opportunities, inclusive socio-economic growth and poverty reduction in mining communities beyond the life-of-mine.
from this to this
THE THREE HORIZONS

1. Inefficient status quo
2. Ideal future
3. Decommissioned
4. Transformative actions
5. Incentives / Sanctions

Prevalence

Time
ADDRESSING THE ‘EVIL TRIPLET’

- Poverty: 55.5%
- Unemployment: 27.5%
- Inequality: Gini 0.62

- National Development Plan
- Report: High Level Panel on the Assessment of Key Legislation
- SONA 2018
1. Inefficient status quo

2. Ideal future

3. Decommissioned

4. Transformative actions

5. Incentives / Sanctions
VISION

Mine Waste  Agricultural Productivity  Diversified Economy
1. Inefficient status quo
2. Ideal future
3. Decommissioned
4. Transformative actions
5. Incentives / Sanctions
The Auriga Mine
Mineral Law in Africa

Application Phase
- Mining Right (SLP)

Mining Phase
- Environmental Authorisation
- Water Use Licence
- Land Use Authorisation

Post-closure
- Extraction
- Rehabilitation
- Commercial Agriculture
- Agri-Processing
FOCUS

- Environment
- Mining Company
- Municipality
- Community
- Landowner
POCKETS OF THE FUTURE

Environmental Impact Assessment (EIA)

Environmental Management Programme (EMP)

Rehabilitation Plan

Water Use Licence
REHABILITATION REQUIREMENTS

Rehabilitation Standards
- Pre-mining state / sustainable end-state?

Rehabilitation Phases
- Ongoing process / Post-mine closure

Financial Provision
- Sufficient funds for FFI?
WATER USE LICENCE

- Apply before commence mining

- Specify:
  - What water will be used for
  - How much required
  - How treated

- FFI
  - When introduced?
  - How will water use change?
ENVIRONMENT

STATUS QUO

Environmental Impact Assessment (EIA)

Environmental Management Programme (EMP)

Rehabilitation Plan

Water Use Licence

NEW INTERVENTIONS

New EIA required

Redefine Rehabilitation Standard

Incorporate FFI into Rehabilitation Plan

New Water Use Licence
1. Inefficient status quo

5. Incentives / Sanctions

2. Ideal future

3. Decommissioned

4. Transformative actions

Prevalence

Time
MINING COMPANY

STATUS QUO

Corporate Social Responsibility (CSR)

Social & Labour Plan (SLP)
• Purpose of Social & Labour Plan:
  • Stimulate job-creation; advance social & economic wellbeing
  • Transformation: social and economic inclusivity & equality
  • Contribute to socio-economic development

• Local Economic Development Programme:
  • Mine projects supporting infrastructure and poverty alleviation
  • Projects must align with municipality’s IDP

• Human Resources Development Plan
SLP POLICY FRAMEWORK

Integrated Development Plan
Mining Charter
National Development Plan
Sustainable Development Goals
MINING COMPANY

POCKETS OF THE FUTURE

Corporate Social Responsibility (CSR)

Social & Labour Plan (SLP)

NEW INTERVENTIONS

Incorporate FFI as part of mining company’s SLP
1. Inefficient status quo

5. Incentives / Sanctions

2. Ideal future

3. Decommissioned

4. Transformative actions

Prevalence

Time
MUNICIPALITY

POCKETS OF THE FUTURE

Land Use Scheme & Zoning

Integrated Development Plan (IDP)
• Land Use Scheme contains zoning categories
• Zoning categories list permitted land uses
• Mining vs Agriculture
• Rezoning?
• Social & Labour Plan:
  • Local Economic Development Programme
  • Human Resources Development Plan
• Municipal Integrated Development Plan:
  • Important instrument for municipal planning
  • Operates alongside municipal land use scheme
MUNICIPALITY’S ROLE?
MUNICIPALITY

POCKETS OF THE FUTURE

Land Use Scheme & Zoning

Integrated Development Plan (IDP)

NEW INTERVENTIONS

Rezoning of land for agriculture

Strengthen municipality’s role to facilitate & monitor
1. Inefficient status quo
2. Ideal future
3. Decommissioned
4. Transformative actions
5. Incentives / Sanctions
COMMUNITY

POCKETS OF THE FUTURE

SLP

Mining Charter, 2018

Consultation  Consent
DEFINITION OF ‘COMMUNITY’

• Consultation should be key requirement in terms of decision-making around post-mine land use

• BUT: Consult with whom?
  • Traditional communities
  • Mine communities?
  • Labour-sending areas?

• Conflicting/differing definitions in law
  • Historically disadvantaged persons
  • Interests/rights in area of land
  • Exercise communal rights in terms of agreement, custom or law
UNEQUAL BARGAINING POSITIONS
COMMUNITY

POCKETS OF THE FUTURE

SLP

Mining Charter, 2018

Consultation ▶ Consent

NEW INTERVENTIONS

Rethink Skills Development
Redefine “Business Needs”

Greater emphasis on training
1. Inefficient status quo
2. Ideal future
3. Decommissioned
4. Transformative actions
5. Incentives / Sanctions
LANDOWNER

HURDLES

Exclusivity issues
Reversionary rights
Abandoned mines

CORRECTIONS
Scenario 1

LAND OWNER & MINING COMPANY

Scenario 2

LAND OWNER

MINING COMPANY
Sale of land to 3rd party
Return use of land to Landowner

Mining Phase:
- Extraction
- Rehabilitation

Post-closure:
- Commercial Agriculture
- Agri-Processing
LANDOWNER

HURDLES

Exclusivity issues

Reversionary rights

Abandoned Mines

CORRECTIONS

Co-operation Agreements

Expropriation / Forced Sale
1. Inefficient status quo

2. Ideal future

3. Decommissioned

4. Transformative actions

5. Incentives / Sanctions
### Changes Required

#### Behavioural
- Redefine business needs
- Rethink corporate social responsibility
- Reimagine local economic development
- Collaborative partnerships

#### Policy/Legislative
- Pro-active lawmaking
- Redefine rehabilitation standards
- Incentives for innovative rehabilitation methods
- Foster & promote entrepreneurial economy
THANK YOU
mlia@uct.ac.za