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**POST-MINING AND CLIMATE
CHANGE EMERGING
ECONOMIC MODELS, AND
BEST PRACTICES**



CALS
Centre for Applied
Legal Studies


SARW
Southern Africa Resource Watch

EXECUTIVE SUMMARY

The aftermath of mine closures remains a multifaceted environmental, social and economic crisis for communities. The chief reason for the lack of reasonable and impactful management is that mining companies externalise the costs of environmental and economic rehabilitation to maximise profits. Many communities bear the burden of living with unrehabilitated mine dumps that are extremely harmful to health and well-being, which is in violation of constitutionally protected environmental rights. Derelict and uncompleted buildings testify further to the broken promises of mining companies who arrive in communities with tales of a better life.

This research report employs a desktop research methodology to critically examine existing and proposed mechanisms for promoting sustainable post-closure economies within the current climate crisis and the need for a just transition. This includes a critical reading of law and policy instruments and is informed by literature on these topics. Except for the environmental aspects of mine closure (which are equally applicable everywhere), this report focuses on the adequacy of the existing law and policies for communities and workers in areas dominated by minerals implicated in the fossil fuels value chain (such as coal). These communities and workers currently face the prospect of mine closure on a vast scale, and the intersection of ordinary closure impacts and climate justice issues is especially acute.

This report contains a high-level assessment of the extent to which existing and emerging South African law and policy about mining and climate change adequately addresses the following issues: the environmental aspects of mine closure; social and economic aspects of mine closure; the need for livelihoods for workers and communities impacted by climate change; the promotion of community and worker ownership; the promotion of gender equality; and the promotion of public education around mine closure, climate change and just transition issues. The report finds that the lack of concrete mechanisms is a critical limitation of existing instruments. The government's neo-liberal macroeconomic policy remains a significant obstacle to the scale of public investment and redistribution required for a just transition.

The research report also contains a high-level comparative survey of whether three neighbouring SADC¹ countries (Zimbabwe, Botswana and Zambia) have instruments in place that address the environmental and social and economic aspects of mine closure, climate change and the just transition. The conclusion is that South Africa has the most comprehensive law and policies of the countries surveyed in this report, with Zambia having the most existing or emerging law and policies.

The report contains recommendations on law and policy reforms that should be pursued to ensure environmental, social and economic justice for communities and workers facing mine closure in the context of the need for a just transition. These include, firstly, the following recommendations directly related to rehabilitation and mine closure: a law reform process to remove loopholes used by mining companies to avoid responsibility; strengthening existing mechanisms (such as social and labour plans) which have the potential to address socio-economic aspects of mine closure better and promote a just transition in mining-affected communities, allowing these mechanisms to serve as effective vehicles for a just transition in the mining sector.

The second set of recommendations concerns laws and policies directly relating to climate change and the just transition: the inclusion of clear parameters in law and policy for achieving procedural and substantive gender equality; a multi-pronged public education programme on climate change and the just transition; large-scale skills development programmes; and public works and green industrialisation programmes.

The final category of recommendations pertains to the fundamental policy shifts required for marshalling the resources to support a just transition for communities and workers. This report recommends a departure from the neo-liberal economic framework and, in particular, a shift in policy regarding Eskom (the South African electricity supply utility). This includes reconfiguring it as a utility with a public interest mandate and ensuring that it has sufficient funds to serve as an engine for a rapid transition away from reliance on fossil fuels.

1 The Southern African Development Community (SADC) is an intergovernmental organisation promoting cooperation among 16 Southern African countries.

INTRODUCTION

1.1.1 About the Fair4All Coalition

The Fair4All programme is implemented across 13 countries: Brazil, South Africa, Mozambique, Ghana, Nigeria, Kenya, Uganda, Occupied Palestinian Territory (OPT), India, Vietnam, Indonesia, Cambodia and Myanmar. The programme seeks to support civil society organisations (CSOs) to play their diverse roles as educators, mobilisers, creators and watchdogs in critical areas, which will enable global value chains to serve people and the planet before profit.

At a regional level, the Southern Africa Resource Watch (SARW) is in a consortium led by the Third World Network (TWN). At the country level, it leads the South Africa programme interventions. In South Africa, the programme is implemented with other partners, which include the Bench Marks Foundation (BMF), Business and Human Rights Resources Centre (BHRC), Centre for Applied Legal Studies (CALS), and World Wide Fund for Nature (WWF).

Project activities are implemented based on a contextual analysis of mining in Southern Africa.

The project focuses on research, dialogue, capacity building, and advocacy aimed at building a more responsible private sector, strengthening regulatory frameworks to prevent human, labour and environmental rights violations, and advocating for fiscal and trade reforms in the mining sector that benefit communities, empower women and youth and promote local content procurement. The project highlights the gendered impact of mining activities and aims to improve women's economic empowerment in the sector. This research report is a result of SARW's partnership with CALS to generate knowledge and information that can be used by the Fair4All programme.

1.1.2 About Southern Africa Resource Watch (SARW)

SARW is a regional non-profit organisation working in 12 SADC countries to promote the transparent and accountable use of natural resources, particularly minerals, oil, and gas. SARW advocates for and promotes participatory, transparent, and accountable utilisation of extractive resources in a manner that optimises transformative social and economic

benefits and inter-generational equity, with sensitivity to environmental and human rights impacts.

1.1.3 About the Centre for Applied Legal Studies (CALS)

CALS is a public interest law organisation based at the Wits School of Law. CALS practices human rights law and social justice work, specifically focusing on the following intersecting areas: business and human rights; civil and political justice; environmental justice; gender justice; and home, land and rural democracy. CALS uses a combination of theory and practice to advance human rights, primarily through research, advocacy and strategic litigation.

1.1.4 The importance of this research

This report is intended to stimulate discussion between communities, labour and other role players to equip communities to make inputs in law, policy and decision-making processes about mine closure and a just transition. These inputs can include campaign demands, opinion editorials, engagements with parliament, and written and oral submissions in formal law and policy-making processes, to cite a few examples.

1.2 Methodology

1.2.1 Desktop research

This report was compiled using desktop research to produce broad recommendations on the direction of law and policy reforms that the climate justice sector can advocate for, based on an analysis of systemic issues and gaps in existing law and policy. Fortunately, there is a significant body of research relating to systemic challenges regarding mine closure in South Africa, as well as debates in the public domain relating to mine closure, transition challenges, and the priorities of communities and workers.² This research report is qualitative, presenting the overall systemic law and policy context and proposing recommendations. This report is not founded on statistical analysis.

1.2.2 Limitations

Any references to causal relationships and empirical data drawn from climate and other natural sciences contained in this report are direct citations from scientific studies by authorities in the field. The authors of this report, with study backgrounds in law

² The main types of sources that have informed this report are:

- Reports, submissions and journal articles by academics, public entities and civil society organisations – In particular this group of sources have been used for illustrating the context, but also to ensure that this piece of research is cognisant of existing debates regarding law and policy;
- Law and policy instruments – This broad category of sources comprises legislation, regulations and policy instruments and framework documents. This research report draws extensively both on law and policy instruments currently in force and drafts that have been published for discussion but not yet in force or adopted
- Demands and proposals from communities and organised labour pertaining to mine closure and a just transition; and
- Case law.

and humanities, do not claim expertise in these other fields.

The law and policy recommendations contained in this report are of a high-level conceptual nature. The scope of this research report cannot accommodate fully-fledged model legislation or policy.



STATUS QUO: THE INTERSECTING IMPACTS OF MINE CLOSURE

2.1.1 Abdication of responsibility for environmental rehabilitation and the consequences for communities

All mining operations have a lasting impact, and will eventually close. This does not mean, however, that mining is a typical temporary land use.³ Mining not only fundamentally reshapes the environmental landscape but also has a lasting and disruptive economic, social and cultural impact on an area.⁴

As is documented in a growing body of research by public institutions, commissions and panels,⁵ and civil society organisations⁶, South African communities bear the environmental, social and economic costs of mining and mine closure. This represents the precise opposite of the intent of the environmental

management system in South Africa as the National Environmental Management Act (NEMA)⁷, the primary environmental management act, enshrines “polluter pays” as a fundamental principle.⁸ The principle exists due to the tendency of competing profit-maximising companies to transfer as many costs associated with production and consumption to the public to maximise their return on investment. This is referred to as the externalisation of environmental and other harms.

Communities living near mines undergoing or following closure (decommissioning, closure and post-closure phases) are at the receiving end of the resulting multifaceted crises when the economic heart of an area is removed without adequate rehabilitation and a viable economic alternative. These typically include

³ South African Human Rights Commission Hearing Report on the Underlying Socio-Economic Challenges of Mining-Affected Communities, 2018 (SAHRC Report) at 12;

⁴ Ibid.

⁵ Ibid at 26-28,30; High Level Panel, Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, 2017, parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf at. 59, 203, 264-271, 277, 448, 489-509.

⁶ Lawyers for Human Rights The impact and assessment of improper mine closures in South Africa: community perspectives on human rights (November 2022); Lawyers for Human Rights Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa (2017) Bench Marks Foundation, Policy gap series, bench-marks.org.za/policy-gap-series/

⁷ Act No. 107 of 1998.

⁸ Section 2 (4) (p) of NEMA.

environmental health impacts,⁹ unemployment and loss of livelihood opportunities,¹⁰ gender-based violence,¹¹ and other forms of crime.

Widespread problems include ownerless and abandoned mines, a lack of support for artisanal and small-scale miners in communities (and violent criminal syndicates dominating informal mining in some areas), confusion of ownership of land and responsibility for services between mines and local government, the passing on of closure liability by large mining houses to smaller companies which may go insolvent.¹² As dissected in an article by Humby, closure of the vast Blyvooruitzicht mine that commenced operating in 1942 in Carletonville, Gauteng represents everything that can go wrong about mine closure.¹³ First, inadequate financial provision for environmental rehabilitation. Only R10 000 was set aside for rehabilitation before the

conversion to a new order mining right¹⁴ under the MPRDA.¹⁵ While the conversion application EMPR included a financial provision of R75 026 023 and a trust fund had been established, it also stated that there was a shortfall of an undisclosed amount.¹⁶ Second, the attempt to pass on rehabilitation liabilities late in the life of the mine. An agreement to transfer interest in the Blyvooruitzicht Gold Mining Company (BGMC)¹⁷ from DRD-Gold to Village Main Reef Limited (VMR) was concluded albeit subject to a range of conditions including but not limited to the Minister of Mineral Resources' approval of the transfer (which did not ultimately materialise). This created a situation of uncertainty about who bears the liability. Third, the ordinary operation of the wind-up process under the Companies Act¹⁸ regarding payment of creditors takes priority over the imperative of protecting the financial provision and ensuring rehabilitation occurs. The board of directors of BGMC resolved in August 2013 to place the company under compulsory winding-up by court order and as a matter of urgency in terms of the Companies Act.¹⁹

9 See, for example, Bonnie Docherty, *The Cost of Gold: Environmental, Health, and Human Rights Consequences of Gold Mining in South Africa's West and Central Rand* (Harvard Law Sch. Int'l Human Rights Clinic Report, Oct. 2016) p. 1.

10 See, for example: Lawyers for Human Rights *The impact and assessment of improper mine closures in South Africa: community perspectives on human rights* (November 2022) at 49-50.

11 See, for example: Nonkululeko Njilo "Krugersdorp victim's ordeal: 'I closed my eyes, crying. Moments later, I was also raped, by three men'" (2022) *Daily Maverick*. Available at <https://www.dailymaverick.co.za/article/2022-08-05-krugersdorp-victims-ordeal-i-closed-my-eyes-crying-moments-later-i-was-also-raped-by-three-men/>

12 A well-documented example of a large mining company seeking to pass on environmental liability is Harmony Gold, which in 2007 sold a North West mining operation to Pamodzi Gold and sought to divest itself of its environmental liabilities. See T L Humby 'The spectre of perpetuity liability for treating acid water on South Africa's Goldfields: Decision in Harmony II' (2013) 31 *Journal of Energy & Natural Resources Law* 453.

13 T L Humby 'Facilitating dereliction? How the South African legal regulatory framework enables mining companies to circumvent closure duties' in Weiersbye & Others (eds) *Proceedings of the Ninth International Conference on Mine Closure*, Sandton, South Africa (2014).

14 The MPRDA, as part of the transitional provisions provided holders of rights under the prior dispensation with a five-year period for applying for the conversion of their old order rights to rights under the MPRDA.

15 T L Humby (2014) at 10, 12.

16 Ibid at 10.

17 The listed company that owned the operation from its inception.

18 No. 61 of 1973.

19 T L Humby (2014) at 11.

The application for winding up listed the trust fund for financial provision within the company's fixed assets with no specification of how it would be prioritised against ordinary creditors' claims.²⁰ Following the granting of the provisional winding up order, the liquidators sought to find a buyer for the mine to save jobs and provision of services; Goldrich Holdings (with a reported history of asset stripping) and non-payment of workers took place.²¹ The security and environmental situation rapidly deteriorated following the sale. A mine manager was arrested for illicit dealing in mine equipment, the allegation of non-payment of workers, and severe dust pollution due to a failure to manage slime dams.²² The regular operation of insolvency and company law superseding the urgent need for environmental rehabilitation shows the importance of legislative amendments to remove these loopholes.²³

As a result, many communities in areas like Carletonville have been left with toxic and radioactive water, soil and dust pollution, and other severe impacts.²⁴

The complex causal drivers include the inherent inclination of companies to externalise costs to maximise profit, the power imbalance between companies and communities (as well as gender inequalities), a lack of meaningful community participation and free prior and informed consent in closure management and planning, regulatory and governance failures, and gaps in laws and policies.

2.2 The devastation of local economies and failure to build an alternative post-mining economy

In addition to the toxic environmental legacy, the departure of mines from areas dependent on the sector is associated with capital flight, unemployment, and the societal ills that result. This includes organised crime, gender-based violence, and the spreading of communicable diseases.²⁵ This economic and social devastation has been documented in research²⁶ and observed first-hand by the authors of this report in visits to communities living with mine closure. Artisanal miners seeking to earn a living non-violently are criminalised²⁷ while violent syndicates proliferate and exploit the vulnerability of these miners.²⁸

20 Ibid.

21 Ibid.

22 Ibid.

23 Lawyers for Human Rights Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa (2017); T L Humby (2014); I Watson & Mark Olalde 'The state of mine closure in South Africa - what the numbers say' (2019) 119 Journal of the Southern African Institute of Mining and Metallurgy 639.

24 SAHRC Report at 27.

25 Lawyers for Human Rights The impact and assessment of improper mine closures in South Africa: community perspectives on human rights (November 2022) at 49-53; J K Filitz 'Mining for development? a socio-ecological study on the Witbank coalfield' thesis submitted in partial fulfilment of the requirements for the degree of Masters in Development Studies, in the Graduate Programme in the School of Development Studies, University of KwaZulu-Natal, Durban, South Africa at 22.

26 Ibid.

27 Lawyers for Human Rights The impact and assessment of improper mine closures in South Africa: community perspectives on human rights (November 2022) at 17-18 Bheki Simelane & Greg Nicolson 'Blood and gold – zama zamas dice with death in daily underground hell' Daily Maverick 13 November 2022 <https://www.dailymaverick.co.za/article/2022-11-13-blood-and-gold-zama-zamas-dice-with-death-in-daily-underground-hell/>

28 Lawyers for Human Rights The impact and assessment of improper mine closures in South Africa: community perspectives on human rights (November 2022) at 72.

Gendered impacts of environmental, social and economic dislocation

The impact of environmental degradation affects all people and communities. Still, it is felt most acutely by those segments of the population already in vulnerable situations, such as people with low incomes, women, and those in rural areas.²⁹ There is extensive documentation on the gendered nature of the disproportionate impacts of mining and how mining typically reinforces systemic gender inequality at different stages in the mining life cycle.³⁰ Mining and other forms of extractive industry impact “on women’s land and food rights through the theft, pollution and degradation of land and natural resources, including water and air, and through the loss of male labour to the mines as a result of migration, impacting on food production levels, and contributing to other opportunity costs in the labour-sending areas”.³¹ Rural women’s land rights are more readily disregarded in male-dominated decision-making processes, which results in the dispossession of land for independent agricultural production.³²

Multiple gendered impacts are associated with the arrival and operation of mines, specifically the poor management of mine closure in Southern Africa and the abdication of responsibility by mining companies and the state. Due to poor mine closure regulations, there are thousands of ownerless and abandoned mines in South Africa (mainly in and around Johannesburg). These pose a significant risk to communities in their vicinity.³³ This risk goes beyond the more obvious dangers, such as groundwater pollution and soil or air quality, which persist long after the mining activities end. Still, it can also impact the day-to-day safety of a community.³⁴ Proper mine closure and mine rehabilitation policies are essential in preventing harm to marginalised groups. It is trite that environmental degradation is racial and gendered. The excessive exposure of an already racially discriminated section of society to pollution and other environmental harms gives rise to environmental racism and an increased level of gender-based discrimination.³⁵ A recent example of the real threats to the well-being of black women in communities with abandoned mines has been the reports of gang rapes at abandoned mine sites in Krugersdorp, South Africa.³⁶

29 United Nations Human Rights Council A/HRC/28/L.19 Environment; Human Rights Council, Twenty-eighth session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

30 WOMIN (2020) Women, Gender and Extractivism in Africa: A Collection of Papers. Available at <https://womin.africa/archive/available-literature/>

31 Ibid at 9.

32 Ibid at 16.

33 David Hallows, *Toxic Futures South Africa in the Crises of Energy, Environment and Capital*, (KwaZulu-Natal: University of KwaZulu-Natal Press, 2011), p. 111. See also Oliver Balch, “Radioactive City: How Johannesburg’s Townships are Paying for its Mining Past,” *The Guardian*, available at <https://www.theguardian.com/cities/2015/jul/06/radioactive-city-how-johannesburgs-townships-are-paying-for-its-mining-past>

34 Bonnie Docherty, *The Cost of Gold: Environmental, Health, and Human Rights Consequences of Gold Mining in South Africa’s West and Central Rand* (Harvard Law Sch. Int’l Human Rights Clinic Report, Oct. 2016) p. 1.

35 Laura Pulido, “A Critical Review of the Methodology of Environmental Racism Research,” *Antipode*, vol. 28 (1996).

36 ‘14 suspects arrested in connection with rape of models in Krugersdorp acquitted — reports’ *Times Live* 27 October 2022. Accessed at: <https://www.timeslive.co.za/news/south-africa/2022-10-27-14-suspects-arrested-in-connection-with-rape-of-models-in-krugersdorp-acquitted-reports/>

There has been endemic gender-based violence in the mining-affected communities of Krugersdorp, with some community members stating:

Everything that is happening, we warned, would happen in March already, we knew this or something big was coming. Unfortunately, the issue is now in the spotlight because women not from this area were raped. We feel sorry for them. However, for this community, it is almost a norm that people get raped, and we hear gunshots every day.³⁷

Proper regulation of abandoned mines and mine closure policies can go a long way towards alleviating the gendered nature of environmental degradation in communities around abandoned mines.

Likewise, the intentional building of sectors that can create job security and living wages for women is crucial for alleviating the economic exclusion of women, which increases vulnerability to gender-based violence and lack of autonomy. Weakening the

foundations of patriarchy also weakens the basis for conformist or binary gender norms that harm LGBTQ+ community members.

2.3 Just transition issues

2.3.1 Creation of viable sectors based on clean energy in areas reliant on coal value chains

As identified in the Presidential Climate Commission (PCC) Just Transition Framework, the coal value chain is one of five value chains and sectors identified as particularly vulnerable in climate change.³⁸ This is due to the impact of the transition away from carbon-intensive sources of electrical generation and fossil fuels, and the resulting reduction in demand.³⁹

In the absence of interventions, mine closure and the well-documented social and economic impacts communities experience are likely to increase in coal-mining areas. The experience of mine closure to date in areas such as the Witbank⁴⁰ and the Witwatersrand Basin⁴¹ illustrates that market forces will not create an alternative economy. Still, the investment will tend to relocate to sectors of the economy (or simply into financial speculation) where there is the greatest ready return (profit) on investments, regardless of the social consequences. Without planning to ensure an

37 Nonkululeko Njilo "Krugersdorp victim's ordeal: 'I closed my eyes, crying. Moments later, I was also raped, by three men'" (2022) Daily Maverick. Available at <https://www.dailymaverick.co.za/article/2022-08-05-krugersdorp-victims-ordeal-i-closed-my-eyes-crying-moments-later-i-was-also-raped-by-three-men/>

38 At 11-12.

39 At 12.

40 J K Filizt 'Mining for development? a socio-ecological study on the Witbank coalfield' thesis submitted in partial fulfilment of the requirements for the degree of Masters in Development Studies, in the Graduate Programme in the School of Development Studies, University of KwaZulu-Natal, Durban, South Africa

41 FIDH & Lawyers for Human Rights Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility in South Africa (2017).

alternative green economy powered by sustainable energy sources, areas of the country affected by the transition will be abandoned to weather the costs alone.

Measures such as “nationalisation or taxation” are required to compel capital profiting from the fossil fuel-based economy and the exploitation of labour and land to pay the costs of building new economic sectors that can drive broad-based prosperity and rebuild and adapt crumbling infrastructure. There is also a need to finance socially owned renewables to provide livelihoods for communities.

Local government ownership of electricity generation and a range of forms of social ownership (including co-operatives, not for profits and trusts) are some models that can ensure the localisation of benefits.⁴² These models can be seen as complementary rather than mutually exclusive to a de-marketised public national energy utility playing a central role. Community social ownership fulfils certain functions of increasing access to electricity for the communities most in need.

While there have been documented successes of local government ownership, the high levels of unemployment and poverty coupled with the poor state of the finances of a large chunk of local

government would present challenges in much of South Africa. A recent report co-authored by Tracy Ledger and Mahlatse Rampedi shows how the “user pays” model of Eskom and municipalities⁴³ raising a significant proportion of revenue from electricity distribution is failing to deliver equitable access to electricity and to recover costs. This is due to the inability of a substantial proportion of residents to pay, given widespread poverty.⁴⁴ Even worse, more than half of South African households strictly ration electricity and regularly borrow money to pay for meagre amounts.⁴⁵

Social ownership models (complementing provision through Eskom) might provide more promising avenues for addressing access to electricity in a manner that promotes local livelihoods. All social ownership models will involve support for training, installation and maintenance costs. As beneficiaries of exploiting fossil fuel minerals such as coal, land dispossession and exploitation of black workers, mining companies must contribute towards sustainable local livelihoods. Further, mining companies have legal obligations as part of their social and labour plans (which will be discussed in chapter 3) to undertake local economic development projects⁴⁶ and also introduce measures for mitigating the socio-economic impacts of downscaling, closure

42 International Renewable Energy Agency (IRENA) ‘Community ownership models – innovation landscape brief’ (2020)

43 t the moment, there remains a patchwork mix of electricity supply directly from Eskom and from local government (who have the constitutional mandate), with a majority of municipalities having households supplied by Eskom alongside families provided by the municipality. T Ledger & M Rampedi (for Public Affairs Research Institute) *Hungry for Electricity* (September 2022) At 43.

44 Ledger & Rampedi (op cit) at 66.

45 Ledger & Rampedi (op cit) at 66.

46 Regulation 46 (c) (iii) of the MPRD Regulations.

and retrenchment.⁴⁷ Investment in socially owned renewables should form a part of these projects.

“Co-operatives are jointly owned by their members to achieve common economic, social or cultural goals based on the democratic principle of ‘one member, one vote’.”⁴⁸ Research has shown this is a feasible model for local empowerment and control.⁴⁹ However, at the same time, the ability of co-operatives to be scaled up and replicated widely beyond a small number of successes requires significant funding and capacity, and hence the need for state support.⁵⁰ This is very pertinent to South Africa, where mining-affected communities due to the factors identified elsewhere in the report, would not be in a position to provide the bulk of funding for co-operatives. Given that mining companies are beneficiaries of the fossil-fuel economy and colonialism, it is in accordance with restorative and redistributive justice that they provide funding for social ownership of renewables by affected communities.

Other models for community social ownership that could be utilised include non-profit organisations (NPOs), community property associations and

community trusts. Some community civics are already registered as NPOs. Whether held in trust by the state or by traditional leadership, community trusts in the mining setting have been associated with secretive agreements with mining corporations, with multiple communities reporting that they have yet to experience any tangible benefits.⁵¹ Furthermore, the legal framework for trusts in its present form is weak concerning transparency and democratic governance.⁵² As a result, the trust model should be cautiously approached.

In conclusion, several potential social ownership models exist, including co-operatives, not-for-profit community-based organisations, and trusts. The choice of the model at a local level will need to be made by the community based on how they are already organised. Support is required from the government and mining companies for the costs of training and infrastructure. It is important to note that mining companies have developmental duties towards workers and communities under the Social and Labour Plan (SLP) system (which will be discussed), which should be used to channel resources supporting such projects.

47 Regulation 46 (d) of the MPRD Regulations.

48 International Renewable Energy Agency (IRENA) ‘Community ownership models – innovation landscape brief’ (2020) at 8.

49 Global Subsidies Initiative at 26-27.

50 Ibid at 27.

51 S Mswana ‘Chief’s justice? Mining, accountability and the law in the Bakgatlabakgafela Traditional Authority Area’ (September 2014) 40 SA Crime Quarterly 21; G Capps and S Malindi ‘Dealing with the tribe: The politics of the Bapo/Lonmin Royalty to Equity Conversion Working Paper 8 (May 2017) Society, Work and Development Institute, University of Witwatersrand; M Phalane ‘Kgoshi accepted R175m deal while on Anglo Platinum’s dime’ Mail & Guardian (17 June 2016).

52 Land and Accountability Research Centre (LARC) Written Representations on the draft Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018 (31 August 2018).

2.3.2 Creation of decent work

South Africa has one of the world's highest unemployment rates, with an unemployment rate of 33.9 per cent in the 2nd quarter of 2022,⁵³ and the highest level of income inequality in the world.⁵⁴ The transition from an economy based on fossil fuels will, if not properly managed, lead to job losses of workers in the fossil fuel and energy sectors and will have a knock-on effect on local economies and employment levels.⁵⁵ At the same time, the need for both adaptation and mitigation measures will require large-scale public works programmes and new sectors that could absorb far more of the unemployed sections of the working class.

For a transition to be just, the work that it creates must be dignified and secure, paying a living wage, respecting workers' organisational and bargaining rights, and ensuring their say in decision-making. A just transition must include eradicating the apartheid wage structure and severe unemployment, contributing to South Africa's official status (28 years after apartheid) as the world's most unequal country in the Gini index.⁵⁶ Any strategies involving the erosion of labour rights are completely antithetical to any conception of a just transition.

2.3.3 Community and worker ownership and gender equity in the green economy

If left to the free market, the overriding logic of maximising profits through minimising wages and externalising impacts will prevail. What is required is conscious policies and initiatives towards democratised public ownership and social ownership to ensure that those most vulnerable to climate change and the economic shocks of transition are afforded real control over energy generation (social ownership) and decisions regarding extraction, production and distribution of the wealth generated. Further conscious measures are required for ensuring gender-responsiveness of planning processes and gender equity in the productive economy as well as a meaningful (for example, an upper bound poverty line)⁵⁷ basic income grant,⁵⁸ which is critical for offsetting the burden of unpaid reproductive labour of women with socialisation of care being the ultimate goal.

To raise the revenue needed for funding such measures increases in corporate tax rates should

53 Statistics South Africa media release quarterly labour force survey (QLFS) – Q2:2022 <https://www.statssa.gov.za/?p=15685>.

54 World Bank 'Gini Index (World Bank estimate – South Africa', available at <https://data.worldbank.org/indicator/SI.POV.GINI?locations=ZA>

55 PCC Just Transition Framework at 10, 11;

56 World Bank 'Gini Index (World Bank estimate – South Africa', available at <https://data.worldbank.org/indicator/SI.POV.GINI?locations=ZA>.

57 Basic income support at the upper-bound poverty line has been proposed by several civil society organisations and trade unions including Black Sash and SAFTU. <http://www.blacksash.org.za/index.php/sash-in-action/advocacy-in-partnership/basic-income-support>; <https://saftu.org.za/the-ancs-neoliberal-agenda-compromises-the-poor-even-further-excluding-the-poor-and-bungling-the-disbursement-of-the-srd-grant/>.

58 The upper-poverty bound poverty line was, as of 2022, R1417 per month. Statistic South Africa Statistical Release PO310.1 National Poverty Lines, 2022. Accessed at <https://www.statssa.gov.za/publications/P03101/P031012022.pdf>.

be considered⁵⁹ as well as measures to prevent capital flight, base erosion,⁶⁰ and other documented corporate tax avoidance strategies.

2.3.4 Reskilling workers and communities in areas dependent on greenhouse sectors

Workers and communities in areas that have been dependent on greenhouse gas emitting sectors (such as coal mining) must receive the training required to enable them to take advantage of work in the new sectors, for example, concerning energy, construction, green industry, technology, services, and care work. The creation of decent work, education and training needs to be aligned to ensure that workers needing to seek new jobs (and newer entrants amongst the working class) can benefit from them. To maintain the strength of trade unions, which is necessary to ensure decent work, training should as far as possible allow workers to stay in the same sector (and hence not need to leave existing trade unions or to work in non-unionised and precarious employment when they change workplaces).⁶¹

Adaptation for economic sectors, workers and communities vulnerable to climate change effects

Just as the transition will result in some energy generation and economic sectors (or sub-sectors) having to be phased out, climate change itself will have an adverse impact on many sectors of the economy.⁶² Agriculture in particular will have to adapt to changes in rainfall patterns, temperature increases, and increasingly frequent and severe extreme weather events.⁶³ In the absence of conscious planning and land reform (and reform of ownership patterns), large-scale agribusiness will weather the storm with the costs being borne by farmworkers, and subsistence and small-scale farmers in rural areas. Land dispossession and the failure of the government's housing programme to tackle apartheid spatial planning and building of quality housing for the majority mean that the black working-class are the landless majority and will lose their lives and homes in a perpetuation of environmental racism. Land reform and the tackling of spatial injustice need to be supported by a large-scale public works programme to build quality and resilient housing and other buildings and infrastructure for the majority while creating decent work.

59 For example, despite the imperative of redistribution, corporate tax rates today are far lower (28%) than they were during apartheid when they averaged around 45%. <https://www.ftomasek.com/olderrates.html>; <https://www.ftomasek.com/rates.html>.

60 Alternative Information and Development Centre (AIDC) 'Transfer pricing & erosion of tax, wage and local investment base in South Africa: Submission to the Davis Tax committee by Alternative Information and Development Centre (AIDC). Accessed at <https://aidc.org.za/download/Illicit-capital-flows/aidcDTCsubmis11.pdf>; African Monitor Report 1: state of illicit financial flows in South Africa: a scoping exercise (2017). Accessed at <http://www.africanmonitor.org/wp-content/uploads/2017/04/IFF-Report-1.pdf>

61 This issue has been identified by trade union representatives in dialogues on labour and the just transition attended by authors of this report.

62 The Presidential Climate Commission's Just Transition Framework identifies especially vulnerable sectors and value streams and the particular nature of the impacts they are likely to face. At 10-15

63 The Presidential Climate Commission's Just Transition Framework acknowledges agriculture will be an especially affected sector due to changes in temperature, rainfall patterns and other impacts. At 12-13.

2.3.5 Participation and public education around climate change and just transition

Public education around climate change and the just transition is vital for several reasons. First, public awareness of the basic scientific relationships between carbon emissions, climate change and real-world tangible impacts is vital to ensure the understanding of the problem needed to promote active public participation. Education is vital to the political economy of the just transition. The content would include understanding sectors of the economy likely to be affected by climate change or the energy transition (or both), as well as the sectors and linkages likely to emerge in the new economy.

Second, this education would include education on issues of economic power and social justice that need to be tackled. Different sections of capital have a vested interest either in a lack of transition (e.g., those investing in high-carbon sectors and resources like coal) or profiting from the transition at the expense of the public interest (e.g., independent power producers pursuing profits from high sales prices to Eskom at the expense of the public interest in accessible electricity). Education is also needed on the gendered impacts of climate change in relation to the economy and livelihoods (e.g., the impact of climate change on women's agricultural livelihoods).

Third, impacted communities must be equipped with a framework for making demands on government and corporations. Communities must be equipped with knowledge of alternative vehicles for protecting livelihoods, for example, understanding different forms of social ownership and co-operatives. This would also need to include a realistic account of the struggle to ensure that companies profiting from fossil fuels on communities' land contribute a significant proportion of their profits to fund socially owned renewables or co-operatives.

2.3.6 Need for a robust public utility to drive a just energy transition

While not the main subject of this report, the state of the public power utility must be addressed in planning a just transition. Electricity is a basic service required to meet a range of needs and live a dignified existence, and access cannot be contingent on the ability to pay. The commercialisation of Eskom since 1987, by which it raised capital commercially rather than receiving support "across the entire system of government finances"⁶⁴ and a "full cost recovery" revenue model based on recouping costs from households and municipalities in a context of high unemployment and poverty, is incompatible with the provision of electricity to all.⁶⁵ A public utility responsible for generating electricity is better

⁶⁴ AIDC, Trade Unions on Energy Democracy & Transatlantic Institute Eskom Transformed: Achieving a just energy transition in South Africa (July 2020).

⁶⁵ Ledger & Rampedi (op cit) at 66.

positioned to ensure a more rapid and cost-effective transition away from fossil fuels in energy generation as there will be no need to expend additional funds guaranteeing profits sufficient for independent power producers and additional time in negotiating contracts.⁶⁶ As the Alternative Information and Development Centre (AIDC) has argued, an Eskom that is rebuilt and de-corporatised⁶⁷ with a mandate based on principles such as democratic participation,⁶⁸ providing equitable access to electricity,⁶⁹ a public ethos,⁷⁰ quality and efficiency,⁷¹ and environmental sustainability⁷² is critical for marshalling resources for a just transition in relation to jobs and access.

To build a new green Eskom, the present poor financial position due to its vast debt (estimated to reach R500 billion by 2020),⁷³ would need to be addressed. Proposed measures to consider include, through meaningful consultation with labour, renegotiating

the loan with Eskom's public sector counterpart as the government pension fund (R359 billion debt) as suggested by AIDC. An important measure to pursue is the cancellation of odious debt by Eskom for projects such as Medupi and Medupi coal-fired power station, which are costly to build and riddled with documented corruption.⁷⁵

66 At 28, 129, 142

67 As AIDC and other civil society and labour organisations, in a joint report on transforming Eskom has stated: 'This is a process that started in 1987, culminating in the Act of 2001. The process pushed Eskom from being a world class public utility focused on meeting a public need, to one required to make a profit, pay dividends and taxes and act like a private company. It is this process of moving Eskom from a public utility to a corporatised one that has opened the door to many of the subsequent problems that beset it, such as its overwhelming debt, mismanagement, corruption, and so on.' AIDC et al (op cit) at 142.

68 Ibid at 137-139.

69 Ibid at 133-134.

70 Ibid at 136-137.

71 Ibid at 13-135

72 Ibid at 135-136.

73 Ibid at 25.

74 Ibid at 80-81.

75 Ibid at 81-83.

CLOSURE LAW AND POLICY LANDSCAPE FOR A JUST TRANSITION

3.1 Introduction

While regulatory and policy instruments cannot alone solve the issues identified in the previous chapter, a progressive framework designed to address these issues can create a more favourable environment for communities to influence outcomes in respect of mine closure and other issues that they face in the context of climate change and a reorganisation of energy sources and the economy. In recent years several legislative and policy reforms have been developed or proposed that either pertain directly to addressing gaps within already regulated fields (for example the current and draft Financial Provision Regulations and the draft Mine Closure Strategy) or are designed more specifically to address transition and planning of post-extractive economies (such as the Presidential Climate Commission's draft Just Transition Framework). This section is designed to provide a succinct overview of the existing and proposed legal and policy instruments relevant to the just transition issues identified above. It will also identify where there are gaps and shortcomings.

3.2 Assessment of the adequacy of the framework regarding environmental rehabilitation and mine closure

The environmental dimension of mine closure is subject to a significantly greater degree of regulation than the social and economic dimensions. The regulator of mine closure remains the Department of Mineral Resources and Energy (DMRE), but since 2015 the content and form of concurrent and closure rehabilitation is regulated under the National Environmental Management Act (NEMA),⁷⁶ and specifically the Regulations pertaining to the Financial Provision for Prospecting, Exploration, Mining or Production Operations (Financial Provision Regulations) under NEMA.⁷⁷

In particular, the current Financial Provision Regulations govern the provision for rehabilitation (scope, determination, form, securing the financial provision), "annual rehabilitation plans" and "final rehabilitation, decommissioning and mine closure

⁷⁶ Subsections 44 (aE), (aF), (aG), (aH) of Act No. 107 of 1998.

⁷⁷ GNR 1147, 2015.

plan[s]” (closure plans). Importantly, closure (and all plans) under the regulations are part of the environmental management programme (EMPR)⁷⁸ and are subject to the same public participation and transparency requirements. Holders of mining rights and permits have a legal duty to make the EMPR and any approved amendments available on their websites, on site, and on request. The use of “and” means that all these platforms must be used.⁷⁹

While the present framework is in many respects consistent with principles of sound environmental management, there are a number of gaps or loopholes that, together with problems of implementation, limit their effectiveness. First, while they apply to going concern operations, they do not explicitly apply to the thousands of ownerless and abandoned mines. Second, the law as it stands allows for large mining companies to sell off operations towards the end of life, thereby passing on obligations to companies less equipped to conduct environmental rehabilitation.⁸⁰ Third, in practice there are instances where ordinary insolvency claims or the wind-up process under the Companies Act prevent access to rehabilitation funds

with disastrous results for the most vulnerable, most notably in the Blyvooruitzicht mine.⁸¹ In relation to implementation, the principle regulator, the DMRE, does not prioritise compliance monitoring and enforcement in relation to investing (or requesting from treasury) appropriate resources.⁸² Even the limited compliance monitoring and enforcement action rarely results in material consequences (e.g., revocation or suspension of licenses).⁸³

3.3 Assessment of adequacy of the framework regarding social and economic aspects of mine closure

The DMRE published the draft National Mine Closure Strategy (draft Closure Strategy) in 2021⁸⁴ following a directive in the aforementioned SAHRC report.⁸⁵ The draft Closure Strategy represents a significant step forward in recognising the links between environmental and social aspects of closure. That planning must provide for environmentally sustainable activities compatible with local conditions.⁸⁶ It further recognises that closure planning must be proactive and start from the outset

⁷⁸ Appendices 3 (1), 4 (1) and 5 (1) of the Financial Provision Regulations.

⁷⁹ Regulation 13 of the Financial Provision Regulations provides that rights holders must do the following to publish the EMPR and approved amendments:

- (a) available on a publically accessible website of the holder of a right or permit, if such holder of a right or permit has such a website;
- (b) available at the site office of the prospecting, exploration, mining or production operation; and
- (c) accessible to the public on request.⁷

⁸⁰ T Humby ‘Facilitating Dereliction (note above) at 4.

⁸¹ Ibid at 8-9, 12-13.

⁸² At the time of hearings before the South African Human Rights Commission the following was the status quo: ‘Departmental enforcement capacity has not grown at the same pace as the mining industry. For the 1 757 authorised mining operations in 2016, there were 96 Environmental Mineral Resource Inspectors (EMRIs) employed by the DMRE and an additional 30 earmarked to receive training.’ SAHRC Report op cit at 76.

⁸³ At 77.

⁸⁴ draft National Mine Closure Strategy 2021 for Public Comments GNR 446 (21 May 2021).

⁸⁵ SAHRC Report (op cit) at 30.

⁸⁶ 4.1. of the draft Closure Strategy; paragraph 13 of CALS Comments on the draft Mine Closure Strategy, 2021.

of a mining operation,⁸⁷ and that a coordinated regional approach and alignment of role players is vital.⁸⁸

The first primary deficiency is a deficit of participation by a key stakeholder (the mining-affected communities) in the formulation of the draft strategy—none of the independent mining-affected community networks such as Macua-Wamua or Mejcon-SA was consulted in the process of developing the draft strategy.⁸⁹ Further, the draft strategy does not contain objectives or concrete measures that link mine closure to climate justice (including social ownership, climate jobs, etc).⁹⁰ The policy also does not engage with concrete barriers to meaningful community participation in decision-making, including a lack of recognition of free prior and informed consent, lack of transparency in the mining sector and disparities in access to technical knowledge.⁹¹ The draft Closure Strategy fails to acknowledge or propose tangible measures for addressing the marginalisation of women in decision-making and in the economy.⁹² Finally, a fatal flaw of the draft Closure Strategy is that reform of the empowering legislation is required to address many of the challenges.⁹³

3.4 Assessment of adequacy of the framework regarding livelihoods

As outlined above, there is a need for a legislative mandate and a regulatory and policy framework for creating climate jobs on a mass scale, including public works jobs and in new sectors. In addition, planning for the livelihoods of workers and communities in sectors and regions dependent on fossil fuels is imperative. Living wages are more likely where workers are organised into trade unions. Therefore, transition planning should be conducted in collaboration to maximise the prospects for unionising. This includes, where possible, livelihoods in equivalent sectors (for example, jobs in renewable energy for workers in coal-fired power plants). This is valuable because it enables sectoral trade unions to maintain cohesion, lowering the barriers to ensuring that the new workplaces are unionised.

The Climate Change Bill,⁹⁴ at the time of writing, subject to the parliamentary public participation process, recognises the importance of job creation and decent work at the principle level. Section 3 (d) requires interpretations of the act to be guided by the principle of:

87 4.2 of the draft Closure Strategy; paragraph 14 of CALS Comments on the draft Mine Closure Strategy, 2021.

88 4.3 of the draft Closure Strategy; paragraph 16 of CALS Comments on the draft Mine Closure Strategy, 2021.

89 Paragraph 18 of CALS' Comments on the draft Mine Closure Strategy, 2021.

90 Paragraphs 22-23 of CALS' Comments on the draft Mine Closure Strategy, 2021.

91 Paragraphs 25-31 of CALS' Comments on the draft Mine Closure Strategy, 2021.

92 Paragraph 32 of CALS' Comments on the draft Mine Closure Strategy, 2021.

93 These include non-recognition in the Act of communities' right to Free Prior and Informed Consent and an absence of mechanisms in the Act for addressing disparities in power.

94 B9 – 2022.



contribution to a just transition towards low-carbon, climate-resilient and ecologically sustainable economies and societies which contribute to the creation of decent work for all, social inclusion and the eradication of poverty.

At an operational level, however, there is no specific mandate for concrete plans to create the different types of green jobs discussed above. It does, however, require the development of Sector Adaptation Strategy and Plans that are based on a spatial mapping exercise of "risks and vulnerabilities, areas, ecosystems and communities that will arise and that are vulnerable to the impacts of climate change" and "determines measures and mechanisms to manage and implement the required adaptation response."⁹⁵

The Presidential Climate Commission (PCC) is a multi-stakeholder advisory body formed by President Cyril Ramaphosa and cabinet in September 2020 with the mandate to "oversee and facilitate a just and equitable transition towards a low-emissions and climate-resilient economy". The PCC comprises representatives from business, labour, civil society, and research and academic institutions.⁹⁶

The commission has developed a Framework for a Just Transition in South Africa (Just Transition Framework). The Just Transition Framework is strong about identifying the correct principles and values of a just transition, identifying sectors and values that are particularly vulnerable, and identifying essential policy areas. The basic principles are distributive, procedural and restorative justice.⁹⁷ The sectors and value chains are the coal value chain, the automotive value chain, agriculture, and tourism.⁹⁸ The framework identifies three key policy areas for the just transition: human resources and skills development; industrial development, economic diversification and innovation; and social protection measures.⁹⁹ The first relates to skills development to take advantage of green jobs, and the second entails measures to create new sectors and linkages that would create new jobs.

The Just Transition Framework, however, either do not address or acknowledge but does not provide a resolution to several critical issues and questions. These include who should finance the process and how sufficient funds will be made available for education. Secondly, how does one ensure that working conditions are improved (including measures to remove barriers to unionising and the reversal of recent restrictions on collective action)? Thirdly, how does one ensure the new sectors are labour-intensive? Fourthly, it is still being determined whether the bulk

⁹⁵ Section 19 (1) (b) of the Climate Change Bill.

⁹⁶ Presidential Climate Commission Website. <https://www.climatecommission.org.za/>

⁹⁷ Just Transition Framework at 9-10.

⁹⁸ Ibid at 10-15.

⁹⁹ Ibid at 16-20.

of energy generation should remain in public hands.¹⁰⁰ The most fundamental challenge of the Just Transition Framework is that it is limited by the globally dominant neo-liberal economic policy¹⁰¹ that the South African government has consistently adhered to since the beginning of the democratic dispensation. This framework reduces the state's role in the economy, precluding redistributive measures (taxation, nationalisation etc.), expansionary fiscal policy, and capital controls, which are crucial for ensuring that human needs are not subordinate to profit-making in the economy and that wealth derived from dispossession and exploitation is channelled **on a sufficient scale**¹⁰² into education and training, creation of decent work, addressing systemic gender inequality, and rebuilding a public energy utility capable of realising fair access to energy as a public good. Such measures are critical to ensuring just transition principles so that distributive justice can be a concrete reality and not a distant aspiration.

The final but critical legal instrument relevant to a just transition in the mine closure matrix is the Social and Labour Plan (SLP). Under the MPRDA every mining company, as a prerequisite for receiving and retaining its mining right, must develop and provide for¹⁰³ comply with,¹⁰⁴ and report on its compliance with its SLP.¹⁰⁵ The SLP comprises, in particular, legal bindings commitments regarding human resources development,¹⁰⁶ local economic development,¹⁰⁷ procurement,¹⁰⁸ and management of downscaling and retrenchments.¹⁰⁹ Local economic development critically includes poverty alleviation and income-generating projects, which should be tailored towards the creation of green, socially owned sectors and livelihoods.

The downscaling and retrenchment measures must include:

100 Deciding on this question is listed as a short term decision that needs to be taken. This is not surprising given the divergent positions of, on the one hand, the Ramaphosa administration and big business, who favour a greater private sector role in energy generation and, on the other, organised labour, which opposes the involvement of the private sector due to risks of higher tariffs, further job losses and increased concentration of wealth. Just Transition Framework at 26.

101 The economic geographer David Harvey defines neo-liberalism as essentially an approach in which markets are assumed to be the best way of organising society and the main role of the state is to facilitate markets. D Harvey 'Neo-liberalism as creative destruction' (2006) 88 Annals of the American Academy of Political and Social Science 22-23.

102 Scale is critical, especially given already-existing extreme levels of unemployment and inequality, to ensure that no one gets left behind in the transition to a green economy. There is a very high likelihood that retraining and industrial development measures of some form will occur given government policy commitments expressed in the Just Transition Framework and elsewhere. What is doubtful, however, is that without a change in economic policy, it will occur on nearly a sufficient scale to ensure a just transition.

103 Section 23 (1) (e) of the MPRDA.

104 Section 25 (2) (f) of the MPRDA.

105 Section 25 (2) (h) read with Section 28 (2) (c) of the MPRDA.

106 Regulation 46 (b) of the MPRD Regulations

107 Regulation 46 (c) of the MPRD Regulations.

108 Regulation 46 (c) (vi) of the MPRD Regulations.

109 Regulation 46 (d) of the MPRD Regulations.

- (i) The establishment of a future forum
- (ii) Mechanisms to save jobs and avoid job losses and a decline in employment
- (iii) Mechanisms to provide alternative solutions and procedures for creating job security where job losses cannot be avoided; and
- (iv) Mechanisms to ameliorate the social and economic impact on individuals, regions and economies where retrenchment or closure of the mine is inevitable.¹¹⁰

These measures should involve skills training and investment in viable alternative economic sectors for both the mine's workforce and the impacted community. Further, complementary to these measures are the requirement that local economic development projects address poverty alleviation and income generation.¹¹¹

In practice, having read this section of numerous SLPs, it has been common in mines not facing closure in the 5-year SLP cycle, to recite the regulations in this section rather than providing concrete initiatives. The ability to create new alternative sectors is a lengthy process that cannot be deferred until mine closure is imminent. Challenges detected in the course of prior research on the content of SLPs by CALS include the failure of 84 per cent of surveyed SLPs to specify the

inclusion of communities (and not only management and labour) in the future forum,¹¹² and the lack of integration of the environmental aspects of closure regulated under NEMA and these socio-economic aspects.¹¹³

The SLP legal framework is a potential vehicle for enabling a just transition in areas facing mine closure. However, it would be more effective if there was more regulatory guidance on the objectives of income-generating projects and downscaling and retrenchment measures to advance the just transition, and on ensuring the inclusion of communities on future forums. Moreover, companies spend on local economic development is not commensurate with either the impacts or (during periods of minerals booms)¹¹⁴ the earnings of companies. There is currently no legislated formula for calculating companies' minimum contribution to SLPs. Finally, while now provided for in the amended MPRDA regulations, the complex issue of alignment between SLP projects of multiple mines (to achieve scale) while ensuring community participation requires more guidance than is present in the brief provision that has been added.¹¹⁵

110 Ibid.

111 Regulation 46 (c) (iii) of the MPRD Regulations; Social and Labour Plan Guidelines (2010) at 19.

112 Centre for Applied Legal Studies The Social and Labour Plan Series Phase 1: System Design Trends Analysis Report (2016) At 71.

113 Ibid at 72.

114 For example, Anglo American Platinum in 2022 reported a combined spend of R350 million on community development and dividend pay-outs to community trusts and R33.1 billion paid to shareholders. This means that the amount paid out to shareholders was nearly 95 times more than what was spent on community development even if one factors in dividends paid out to trusts.

115 Regulation 45 C of the MPRD Regulations as inserted by the MPRD Amendment Regulations, 2020.

3.5 Assessment of adequacy of framework regarding community and worker ownership

As it stands, nothing in the existing climate change or mine closure law or policy consciously promotes a combination of public ownership by a democratised and de-corporatised Eskom and social ownership by community and worker co-operatives, as well as support for household energy generation (if social). Neither are there plans to ensure that large corporations pay the costs of state investment, setting up community and worker co-operatives, and installing renewable infrastructure in households. Mechanisms such as taxes and nationalisation of big businesses or strategic sectors are not part of the current just transition law or policy mix, which is currently constrained by the neo-liberal policies championed by the private sector and adopted by the democratic South African state since 1996.¹¹⁶

3.6 Assessment of the adequacy of the framework regarding gender equality

Gender equality is addressed in the Climate Change Bill at the level of principle, most notably in Section 3 (f) which recognises:

... the need for decision-making to consider the unique needs and circumstance of localities and people that are particularly vulnerable to the adverse effects of climate change, including vulnerable workers and groups such as women, inferior and rural women, children, especially infants and child-headed families, the aged, the poor, the sick and the physically challenged.

This is addressed, albeit not in all dimensions, in the PCC's Just Transition Framework recently adopted by the cabinet. The framework, however, despite declaring its allegiance to progressive climate justice principles, suggests few concrete mechanisms to ensure the justness of the transition, and there are no concrete proposals to address the many forms of gendered inequalities in the context of the colonial-apartheid legacy and 21st Century neo-colonial capitalism.

¹¹⁶ In 1996, the first democratically elected government adopted the neo-liberal GEAR macro-economic policy, which was resisted by organised labour and the left as a betrayal of the economic justice aspirations of the anti-apartheid struggle.

There are no provisions for promoting women's social ownership, women's representation in decision-making (including about rural land), relieving women's care burden (e.g., universal basic income at a decent level, steps towards the socialisation of care work), and no effective remedies for gender-based violence.

3.6 Assessment of the adequacy of the framework regarding public education

Neither the Climate Change Bill nor the Just Transition Framework recognises the importance of public education on climate change, distinct from the also vital issue of skills development (recognised in both). This public education needs to not only ensure a basic scientific understanding, but also address climate change's social and economic challenges and its likely trajectories (including alternative scenarios of no transition, an unjust capitalist transition, and a just transition).

Such a plan must contain a concrete analysis of current gaps, required interventions, and costing. Further, there is no concrete plan for mass education involving the working class through trade unions, community networks, civics and CBOs (devoted to environmental justice, gender justice, economic justice, anti-racism etc.), student organisations or other working-class formations.

3.7 Overall assessment of the adequacy of current law and policy

South Africa has law and policy (final or before decision-makers) that addresses environmental rehabilitation, socio-economic benefits for mining-affected communities and workers, climate change mitigation and adaptation, and just transition issues. These, however, require enhancement to create more concrete mechanisms to ensure skills training, job creation, public education and gender justice, and legislative amendments to remove loopholes in some instances (e.g. environmental rehabilitation framework). A major challenge, however, is the neo-liberal macroeconomic policy and approach to overcoming Eskom's crisis. As a result, the existing policy cannot support the expanded role of the state and investment in education, skills development, public works etc., that are required for the transition to be genuinely just.

COMPARATIVE SURVEY OF NEIGHBOURING JURISDICTIONS: POST-MINING CLOSURE REGULATORY AND POLICY INSTRUMENTS in ZAMBIA, BOTSWANA AND ZIMBABWE

4.1 Zambia

4.1.1 Existence of a framework governing environmental aspects of mine closure

The primary law governing mining in Zambia is the Mines and Minerals Development Act No 11 of 1995 (MMDA). The closure procedure of a mining project is fully set out in the Mines and Minerals (environmental) regulations promulgated in terms of the MMDA. Part II of the regulations houses environmental impact assessment regulations, and article 6 provides that:

1. A developer may apply to the Director for a partial or complete mine closure.
2. The application referred to in sub-regulation (1) shall include an audit report on the environment surrounding the mine site, which shall be prepared by an independent person.

3. A mine site shall be closed within sixty days of the application referred to in sub-regulation (1) after all the conditions under these Regulations have been met.
4. The Director shall issue a closure certificate for any mine closed, and the mining right or permit or part thereof shall be cancelled by the Minister.

The key objectives that arise from the government's mining policy are listed on the government's website as follows:

- To make the private sector the principal producer and exporter of mineral products.
- To provide the development of a small-scale mining industry, which has the potential to significantly contribute to the economy.
- To promote the development of gemstone mining and facilitate liberalised marketing arrangements.

- To promote the exploration and exploitation of industrial minerals and energy and to encourage establishing a ferrous industry.
- To reduce the danger of ecological damage arising from mining operations and damage to the health of workers and inhabitants of the neighbourhood through air, water, and land.
- To promote local processing of mineral raw material into finished products for added value.

4.1.2 Adequacy of the framework governing environmental aspects of mine closure

Despite these provisions having been made in the mining policies, many concerns have yet to be raised by civil society about the impacts that mining activity has had in various areas in Zambia. These concerns culminated in the World Bank-funded Zambia Mining and Environmental Remediation and Improvement Project (ZMERIP), which was established to target post-mining affected communities in Chingola, Kabwe, Kitwe and Mufulira municipalities.¹¹⁷ Chief among the impacts of post-mining closure is high levels of lead in the soil in areas of the mining town of Kabwe due to “unsustainable mining operations and inadequate rehabilitation or closure of mining sites” after the closure of one of the lead metal mines in 1994.¹¹⁸

The project comprises four key components: remediation of contaminated hotspots; enhancing institutional capacity for environmental governance and compliance; reducing environmental health risks through localised interventions; and project management, monitoring and evaluation. Whilst these components do not translate into government policy *per se*, when read together with the mining legislation, they give an idea regarding the model adopted and the main principles in that jurisdiction for closure and remediation. This encompasses health and safety, environment, economic and financial impacts, and the community’s relational impacts. This model is the most clearly codified in comparison to those of Botswana and Zimbabwe (as will be seen below).

4.1.3 Existence and adequacy of the framework governing social and economic aspects of mine closure

The legislative and policy framework needs to provide for the social and economic aspects of mine closure. Whilst ZMERIP attempts, to a more significant extent, to address these, the policy framework itself does not. Recommendations will speak to the role government should play, not only in policy but also in practice, regarding the social and economic aspects of mine closure.

¹¹⁷ Zambia Mining and Environmental Remediation and Improvement Project, 17 December 2020 ([Zambia Mining and Environmental Remediation and Improvement Project \(worldbank.org\)](#))

¹¹⁸ Ibid.

4.1.4 Existence and adequacy of the framework governing just transition issues

Zambia adopted the National Policy on Climate Change in 2016. The policy identifies the economic sectors, regions, and social groups likely to be impacted by climate change and measures to address climate change. It identifies the following principles: sustainable response to climate change, compliance with international obligations, resilience building, collectiveness and inclusiveness, consultative approach, ecosystem integrity, and complementarity of initiatives. The policy also contains measures for mitigation and adaptation.

Zambia is presently in the process of developing a Bill that it is reported "will facilitate the enactment of the law in parliament to, among other objectives, strengthen coordination of the response to climate change; enhance the regulation of carbon markets including ensuring environmental integrity and benefit sharing in the proceeds of the carbon markets with local communities."¹¹⁹ It is further reported that the Bill will introduce the climate change fund to be a source of resources for supporting national climate change mitigation and adaptation programmes and projects.¹²⁰ This Bill, and the reported review of the climate change policy to include green economy aspects, are steps in the right direction. It addresses just transition considerations in Zambia and potentially

provides for a good mechanism, which other African countries may consider as the basis for policy reform towards sustainable post-closure economies.

4.2 Botswana

4.2.1 Existence and adequacy of the framework governing environmental aspects of mine closure

Mining activity in Botswana is regulated by the Mines and Mineral Act (MMA) 17 of 1999. Part XI of that Act houses withdrawal of applications, surrender and termination of mineral concessions provisions. Section 75 provides that:

1. Subject to the provisions of section 47 and of any condition in his mineral concession, the holder of a mineral concession may surrender the area covered by his mineral concession or part thereof by-
 - Giving the Minister not less than three months' notice of his intention to surrender the whole or part of the area concerned;
 - Complying with any reasonable requirement of the Director of Geological Survey or the Director of Mines as to the rehabilitation and reclamation of the concession area.
2. If the application for surrender is in respect of

¹¹⁹ 'Zambia expedites climate change law' Farmers Review Africa 29 September 2022. Accessed at <https://furtherafrica.com/2022/09/29/zambia-expedites-climate-change-law/>

¹²⁰ Ibid.

part only of the area covered by the mineral concession, the holder thereof shall-

- If it relates to a mining area, provide a diagram of the area to be surrendered;
- In the case of any other mineral concession, provide a reliable plan of the area to be surrendered;
- Give results of prospecting carried out; and
- Demarcate the mining area in the prescribed manner.

3. A surrender shall be without prejudice to any liability or obligations incurred by the holder about the area surrendered before the date of surrender.

- Following compliance with subsection (1)(b) by the holder, the Minister shall-
- If the surrender is about the whole area covered by a mineral concession, cancel such concession; or
- If the surrender is in respect of part only of the area covered by a mineral concession, amend the concession accordingly.

The national priorities of Botswana's government are focused on managing the trade-off between income-generation and environmental sustainability. These priorities are reflected in the country's sustainable development goals, including coordination of multi stakeholder partners, promotion of broad ownership of progress by all relevant stakeholders, strengthening issue-based coalitions and platforms, and leveraging more excellent knowledge, capacities, and resources.

Despite claims that Botswana is amongst the potential role models in sub-Saharan Africa, from whom other countries can learn,¹²¹ it has little to offer as regards the environmental impacts of mining. There is no transparent system regulating mine-closure. The only regulations in terms of the MMA include, among other things, that the closure must comply with directives of the Director of Geological Survey or the Director of Mines "as to the rehabilitation and reclamation of the concession area". This implies that the said government officials have some responsibility regarding regulating mine closure and the processes that ought to be followed for rehabilitation or other post-mining environmental desirables.

Having said this, the cardinal development planning principles from Botswana's independence in 1966 have been sustained development, rapid economic

121 H Besada & B O'Bright 'Policy Impacts on Africa's Extractive Sector: Botswana, Diamond Dependence, and Diversification in the Post-Diamond Period' (2018) 15 Revenue Governance, 86-105. Accessed at [Policy Impacts on Africa's Extractive Sector: Botswana, Diamond Dependence, and Diversification in the Post-Diamond Period \(erudit.org\)](https://erudit.org/en/revues/rg/2018-1/1012212.html)

growth, economic independence, and social justice.¹²² These planning principles have found expression in Botswana's planning with little to no mention of regulating what happens after a mine has closed. This is evidenced by the Long-Term Vision for Botswana (Vision 2016) which some in civil society have said downplayed environmental sustainability to some extent.¹²³ Unlike what seems to be a more extensive model for Zambia, which potentially covers all aspects of health and safety, environment, economic and financial impacts, and the community relational impacts, the Botswana model has loopholes in as far as mine closure models are concerned. Perhaps this is partial because Botswana has experienced a rather sustainable mining terrain with very few instances where mines have had to close. The resultant environmental, health and other impacts that would flow from such closure, have not been experienced yet.

4.2.2 Existence and adequacy of legal and policy frameworks governing social and economic aspects of mine closure

Botswana also does not have a clearly defined policy framework on the social and economic aspects of mine closure. Apart from the five-year National Development Plan adopted in 2017, which defines

the country's medium-term development goals and strategies (including as part of the plan a community-based natural resources management programme and the renewable energy-based rural electrification programme), there does not seem to be a focused policy framework addressing the social and economic aspects of mine closure in the current climate crisis. Again, this is potentially because the country has not begun to experience the economic and social impacts that countries such as South Africa and Zambia have already experienced.

4.2.3 Existence and adequacy of legal and policy frameworks governing climate change and a just transition

Along with partners and the support of the International Labour Organisation (ILO), the government of Botswana has (as of January 2022) launched a project called "Addressing Climate Change and Promoting a Just Transition to a Greener World of Work in Botswana".¹²⁴ The project will, among other things, "analyse linkages between the economy, decent work, gender equality and the environment and identify priority sectors that present vital needs and potential for a just transition including for the promotion of gender equality and for economic

122 B K Asare & MBK Darkoh 'Socio-Economic and Environmental Impacts of Mining in Botswana: A Case Study of the Selebi-Phikwe Copper-Nickel Mine' (2001) 17 EASSR 1 - 42. Accessed at [BismarckDarkoharticle.pdf](#).

123 Ibid.

124 International Labour Organisation Request for proposals – gender-responsive just transition country analysis: Opportunities and challenges for a Just Transition in Botswana. Accessed at https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---ilo-pretoria/documents/article/wcms_834568.pdf

and social inclusion of vulnerable groups”.¹²⁵ Much as the Kabwe project in Zambia promises to be one that will be used as a pilot project for policy reform and development on the just transition aspects; this one will be used for similar objectives which will also potentially cover aspects of gender justice, broad-based community participation, livelihoods and local economic empowerment in the just transition policy frameworks.

4.3 Zimbabwe

4.3.1 Existence of a legal and policy framework governing environmental aspects of mine closure

Zimbabwe is home to over 800 mines, some of which have been shut down over the past two decades for various reasons regarding Zimbabwe’s laws.¹²⁶ However, given Zimbabwe’s economic crisis, it seems there is no actual model for procedures regarding the closure of mines. The interest is rather to keep the operations going due to the job losses and other economic impacts on the community that inevitably flow from the closure of mines. In fact, in many instances, the unions in Zimbabwe and other stakeholders are more interested in resuscitating operations that were closed for one or another reason.¹²⁷

The primary piece of legislation regulating mining in Zimbabwe is the Mines and Mineral Act which, while subject to amendments, was promulgated in 1961,¹²⁸ in a historical context before modern environmental justice movements and awareness of climate change.¹²⁹ The provisions of the Act do allow for a right mining holder to abandon rights upon a written application to the Board through the Mining Commissioner.¹³⁰ Unlike Zambia and Botswana, there seems to be not much interest in writing or expanding on the models for mine closure to avoid the environmental challenges that are often associated with inadequate rehabilitation or incorrectly shut down mines and mining sites.

4.3.2 Existence and adequacy of a legal and policy framework governing the social and economic aspects of mine closure

Section 251 of the Mine and Minerals Act seems to be the only framework on Zimbabwe’s social and economic aspects. It requires mine owners to submit royalties not later than the tenth day of each month to the Commissioner of the Zimbabwe Revenue Services. The relevant regulations to give effect to this section were recently amended (in October 2022).¹³¹ These regulations now compel mine owners to pay royalties in monetary form and in kind to the Revenue Services. These regulations seem to be the only framework that can potentially address social and

¹²⁵ Ibid at 1.

¹²⁶ ‘Ten mines that Zimbabwe should urgently revive’ Mining Zimbabwe 14 December 2018. Accessed at <https://miningzimbabwe.com/ten-mines-that-zimbabwe-should-urgently-revive/>.

¹²⁷ ‘The sad effects of Zimbabwe’s shutdown mines’ Mining Zimbabwe. Accessed at <https://miningzimbabwe.com/the-effects-of-zimbabwes-shutdown-mines/>.

¹²⁸ Mine and Mineral Act No.38 of 1961.

¹²⁹ Global Legal Group International Comparative Legal Guide - Mining Laws and Regulations Report 2023 Zimbabwe at 1.1 Accessed at <https://iclg.com/practice-areas/mining-laws-and-regulations/zimbabwe>

¹³⁰ Ibid at 16.1.

¹³¹ Fungai Chimwamurombe & Nontokhozo Hope Moyo ‘Understanding The New Mining Royalties Regulation In Zimbabwe’ Mining Zimbabwe 23 November 2022. Accessed at <https://miningzimbabwe.com/understanding-the-new-mining-royalties-regulation-in-zimbabwe/>.

economic aspects of closure because it is claimed that the royalties will be used for “social services and infrastructure projects, with a key focus on the mining, energy and agricultural sectors to stimulate economic growth” according to the Zimbabwean Minister of Finance, Minister Mthuli Ncube.¹³²

4.3.3 Existence and adequacy of legal and policy framework governing climate change and just transition

Zimbabwe does not presently have a climate change act or bill before parliament but the cabinet has recently announced an intention to introduce a Climate Bill that “will provide for the management of climate change through climate change mainstreaming, climate change risk and vulnerability assessments, coordination and implementation of adaptation actions, and integration of responses to climate change and its impacts across all sectors.[1] The principles of the Bill include the establishment of a Climate Change Authority of Zimbabwe; a regulatory framework for enhanced climate change mitigation and adaptation actions; finance mechanisms for increased resilience and promotion of low carbon development; measures to mainstream climate change; and the establishment of a carbon trading regulatory framework”.¹³³

4.4 Conclusion

The conclusion from this initial desktop survey is that, overall, South Africa has more comprehensive and developed law and policy frameworks that pertain to the issues of mine closure and just transition addressed in this report. Of the neighbouring countries surveyed, Zambia has the most existing or developing law and policy instruments that speak to issues of mine closure, climate and the just transition. It has a framework for the environmental (but not the socio-economic) aspects of mine closure, a climate change policy and a Climate Change Bill that is being developed. It is therefore probably the best candidate for a more in-depth critical comparison of law and policy instruments, although with the proviso that a Climate Bill is still being developed (whereas in South Africa, it is before parliament).

132 Godfrey Marawanyika & Ray Ndlovu ‘Zimbabwe gives first details of new mining royalty policy’ Bloomberg. Accessed at <https://www.timeslive.co.za/news/africa/2022-11-25-zimbabwe-provides-first-details-of-new-mining-royalty-policy/>

133 Michelle N Chitando for ZELA ‘The Climate Change Bill: lessons for Zimbabwe’ 7 October 2022. Accessed at: <https://zela.org/the-climate-change-bill-lessons-for-zimbabwe/>

RECOMMENDATIONS TOWARDS PEOPLE CENTRED MINE CLOSURE

5.1 Introduction

While South Africa is relatively advanced in terms of a legal and policy framework with regard to mine closure, mining social benefits, climate change and just transition, there remain numerous gaps and loopholes, especially with regard to concrete mechanisms capable of meaningfully addressing community social and economic aspects of mine closure in the context of climate change. In this section, a number of broad avenues for reform will be proposed. These recommendations are in three categories. They include recommendations pertaining directly to mining and mine closure, recommendations pertaining directly to climate change and just transition instruments, and finally recommendations for more fundamental economic policy changes that are required to ensure the redistribution and resources required for a genuine just transition in mining-affected communities and elsewhere.

5.2 Remove rehabilitation loopholes through law reform

There is a need for a law reform process to remove the present loopholes that allow large mining companies to divest themselves of liability for environmental rehabilitation late in the life of mine. This should include prohibiting sales of mining operations and transfers of mining rights at a certain point in the life of the mine. Further, community participation should be expressly required for any transfer of ownership or transfer of mining right. The wind-up provisions of the Companies Act, for example, should be amended to protect the financial provision, and NEMA and the Environmental Impact Assessment (EIA) regulations should provide express insulation of the financial provision from any insolvency claims.

5.3 Strengthen existing mechanisms such as social and labour plan systems to serve as an effective vehicle for just transition for communities and workers

SLPs have the potential to contribute towards the just transition, but reforms are required to make them more robust and geared towards this purpose. First, there should be an express requirement that poverty alleviation, income-generating projects, and measures to address downscaling and retrenchment be geared towards creating sustainable local economic sectors and livelihoods for communities and workers. Second, the downscaling and retrenchment section should include training and jobs in environmental rehabilitation so that the rehabilitation required by NEMA and the Financial Provision Regulations can be a lever for skills development and the creation of temporary jobs (which should lead to other potential jobs in the environmental management sector). Third, the NEMA and EIA public participation process now applicable to SLPs requires fine-tuning to cater for the nature of SLPs as a developmental process. Third, a formulation for minimum SLP spend needs to be developed to ensure that sufficient resources are available for projects capable of yielding large-scale benefit. Fourth, more guidance is needed on SLP collaborations between mining companies to enable more co-ordinated projects that preserve individual mining companies duties to communities.

5.4 Legislative and policy parameters to promote gender inclusivity of participation and gender-responsive projects

In all planning processes for just transition-related projects, consultation must include processes targeted at women, youth, LGBTQI+ and other marginalised people. Any job creation mechanisms must employ at least 50 per cent women. Gender inclusivity of consultation and benefit needs to be written into any legislation, regulation and guidelines (for example in enhanced SLP participation processes).

5.5 Public education on climate change and just transition

There needs to be a legislative mandate for a multi-pronged public education programme. The programme should be targeted especially at learners and youth (who will be especially impacted by climate change), and communities and workers who stand to be especially impacted either by climate change itself or by the transition, as identified in the Just Transition Framework. The programme should be developed by the Department of Basic Education and the Presidency in consultation with climate academics, trade unions, community civics and civil society organisations. The design of workshops and lessons should be interactive so as to encourage critical thinking and agency. Key components would need to include integrating

climate change and climate justice into the school curriculum, radio programmes in all languages, short clips for social media, and community roadshows.

5.6 Large-scale skills development programme needed

Whereas the above public education programme would focus on deepening understanding of climate change, a skills development programme is required to ensure that no one below retirement age is jobless as a result of the phasing out of sectors such as coal mining. This programme must be closely aligned with a green industrialisation and economic development strategy to ensure that training matches actual jobs. Both programmes need to be fully costed and funds allocated.

5.7 Public works programmes and green industrialisation programmes required

South Africa needs conscious programmes aimed at ensuring the creation of decent work on a scale sufficient not only to prevent increased unemployment (as value chains such as coal decline) but also to decrease the already-extreme levels of unemployment and wage inequality. Two main components would include a large public works programme (examples include repairing crumbling infrastructure, building new infrastructure vital for reducing carbon footprint such as rail, and rebuilding

houses to withstand extreme weather) and a green industrialisation strategy. Both will require an extensive budget, which in turn requires a change of economic policy.

5.8 Departure required from a neo-liberal economic framework and austerity

To marshal the resources needed for a just transition about public education, skills training, a public works programme and green industrialisation, the prevailing neo-liberal policy of the government will need to be abandoned, based as it is upon low taxes for the wealthy and corporations, reduction in government spending (austerity) and liberalised capital controls. The new economic policy would need to be fiscally expansionary (except in times of high growth), redistributive, and geared towards increasing the role of the public sector in the economy and its capacity to plan. This would include a reversal of plans to unbundle Eskom. Instead, the mandate of Eskom must be revised from being a corporatised entity to an entity with a public mandate to provide reliable and cheap electricity to meet households' needs and support the economy. Eskom should build renewable and sustainable energy generating capacity on a large scale to achieve the most rapid possible energy transition. This requires, as recommended by AIDC, democratising its governance and renegotiating its debt to equip it to play this role.



CONCLUSION

The vast and intersecting environmental and socio-economic impacts associated with mine closure are likely to be more acute in the following decades as the coal value chain in particular (including coal mines and coal-fired power stations), is likely to decline.

This will call for the enhancement of legal frameworks and policies that can be divided into three categories: firstly, those bearing directly on mining such as the NEMA Financial Provision Regulations, and social and labour plans; secondly, those taking directly on climate change and climate justice such as the Climate Bill and the Just Transition Framework; and thirdly, the broader context that includes government's overall economic policy and the manner in which the crisis of the public energy utility is handled.

ANNEXURE 1:

LIST OF ACRONYMS AND GLOSSARY

Acronyms

BMF	Bench Marks Foundation
BHRRC	Business and Human Rights Resource Centre
CALS	Centre for Applied Legal Studies
CSO	Civil Society Organisation
ICMM	International Council on Mining and Minerals
MACUA- WAMUA	Mining-Affected Communities United in Action – Women Affected by Mining United in Action
MECJON-SA	Mining and Environmental Justice Community Network of South Africa
MPRDA	Mineral and Petroleum Resources Development Act 28 of 2002
NEMA	National Environmental Management Act 107 of 1998
NPO	Non-Profit Organisation
OPT	Occupied Palestinian Territories
SADC	Southern African Development Community
SARW	Southern African Resources Watch
SLP	Social and Labour Plan
TWN	Third World Network
WWF	World Wide Fund For Nature

Glossary

Community	Individuals and groups from working class and oppressed sections of society who have in common significant impacts in relation to mining, climate change and other environmental justice issues.
Decommissioning	Defined by the ICMM as “the process that begins near or at the cessation of mineral production and ends with the removal of all unwanted infrastructure and services”.
Environmental justice	A philosophy of environmental governance that is a response to the manner in which negative environmental impacts disproportionately fall on working-class and poor black communities. It requires that the harms and benefits of activities impacting on the physical environment be equitably distributed and that vulnerable groups play a central role in decision-making regarding the environment.
Just transition	The principle that the transition away from a fossil fuel economy occurs in a manner that prioritises the interests of affected communities and workers including secure well-paid jobs, energy justice, and support for adaptation to the impacts of climate change.
Mine closure	Mine closure occurs when rehabilitation has occurred and the mining company has successfully applied for a closure certificate which transfers the liability from the mining company to the state.
Post-closure	The period following the formal closure of a mine; this especially pertains to environmental management plans and measures that are still required following closure.
Rehabilitation	This refers to measures, required under the National Environmental Management Act, to restore the environment either to its natural and pre-determined state (prior to mining) or to a land use compatible with sustainable development.
Social and Labour Plan	Social and Labour Plans comprise of legally binding commitments in respect of, in particular, human resources development, local economic development, and planning for downscaling and retrenchment which are a condition for the right to mine in South Africa.
Spatial planning	This involves mapping and understanding the characteristics of a specified area (municipality, province, country, etc.) and identifying areas where different forms of land use and development should occur. Spatial planning accommodates notions of strategic planning that link land use and spatial development to attaining socio-economic goals



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