Mine Closure and Rehabilitation in South Africa: Moving Beyond Denial?

Professor Tracy Humby
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One can discern the same five figures in the way our social consciousness attempts to deal with the forthcoming apocalypse. The first reaction is one of ideological denial: there is no fundamental disorder; the second is exemplified by explosions of anger at the injustices of the new world order; the third involves attempts at bargaining (‘if we change things here and there life could perhaps go on as before’); when the bargaining fails, depression and withdrawal set in; finally, after passing through this zero-point, the subject no longer perceives the situation as a threat, but as the chance of a new beginning – or as Mao Zedong put it: “There is great disorder under heaven, the situation is excellent.

Slavoj Zizek Living in the end times (2010)
Issues

- Financial provision:
  - Transitional arrangements, trusts, insurance products and tax
  - Business rescue and insolvency proceedings
  - Transparency

- Closure v care and maintenance

- ‘To mine or not to mine’

- ‘Closure’ v post-mining
FP I: Transitional arrangements, trusts, insurance products, tax
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- Implications of not being able to use trust funds for Annual Rehabilitation and Mine Closure Rehabilitation

- Transitional arrangements and Financial Provision Review (cut-off 20 February 2017)

- Times are tough – can existing rehabilitation funds be withdrawn and used as collateral for purposes of obtaining financial assurance for Annual and Mine Closure Rehabilitation?

- Protection under s 37A of ITA: Consequence is punitive taxation (but Commissioner could reduce this to 0)
FP I: Transitional arrangements, trusts, insurance products, tax

- Shift in form of financial provision to more insurance products – many companies now offer mining rehabilitation guarantees

- Insurance seen as a more cost-effective way of making financial provision, although requires collateral

- But premiums not tax deductible (s 23L, ITA)

- Recommendations of Davis Tax Committee: Intergovernmental Task Team to look at tax implications of different forms of FP
FP II: Business rescue and insolvency proceedings
FPII: Business rescue and insolvency proceedings

- Consideration of closure issues in business rescue and insolvency problematic
- Transfer of mining rights/control not properly regulated
- NEMA & FP regs: Do they plug the holes?
- ‘Loss of control’ an opportunity for avoiding the issues
- Conscientisation of business rescue practitioners and liquidators
- Better articulation between business rescue, winding up and closure processes
Transparency tipping point – extractives have already crossed it

DEA’s Brave New Transparency World: Reg. 26(h) and 34(6) of 2014 EIA Regulations

Enforcement to combat ‘wait-and-see’?

‘Misunderstanding’ as a barrier to disclosure – how can we (govt, business, civil society) use this information to build trust and more productive relationships?
Closure or care and maintenance?

- Reduction in throughput associated with prospecting and mining activities a new listed EIA activity
- FP regs: Operating under ‘care and maintenance’ now requires approval
- Confusion over whether care and maintenance applies to individual shafts, or licence or holder itself
- Tightening the screws or further obfuscation?
‘To mine or not to mine …’

- Forward planning for mine closure entrenched part of regulatory model – 2014 EIA regulations
- A ‘living document’ over the mine lifecycle, coupled with FP
- But in some cases it is simply not wise to mine at all! (wetlands, high water yield areas …)
- In addition to forward planning for mine closure we need biodiversity planning tools with more teeth
‘To mine or not to mine …’

- **Tools:**
  - National Spatial Biodiversity Assessment
  - SPLUMA: National and provincial spatial development frameworks; municipal IDPS and SDFs; development principles
  - Bioregional plans, Local authority land use schemes (eMakhazeni Local Municipality)
  - Mining Strategic Environmental Assessment? (similar to Wind/Solar and Fracking SEAS)
  - No-go mining zones under s 49 of the MPRDA
‘To mine or not to mine …’

- And yet … Davis Tax Committees First Interim Report on Mining – recommends tax incentives to boost greenfields exploration
Closure v post-mining

- The myth of closure (management of residual and latent impacts, third party access, pass-the-parcel, dependent communities)
- Statutory closure standard: Unrealistic?
- Conceptual shift to ‘post-mining’
  - Harmony Gold’s biogas investment
  - Landscape architects
  - Uses for mining waste – Minerals to Metals Initiative at UCT
Conclusion