



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

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- Times are tough – can existing rehabilitation funds be withdrawn and used as collateral for purposes of obtaining financial assurance for Annual and Mine Closure Rehabilitation?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



# FP11: 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

## FP III: Transparency



- 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



# 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

