

South Africa

Mine closure laws under fire

Although SA's mine closure and rehabilitation laws are the most advanced in the world, they are flawed.

Sungula Nkabinde | 6 May 2016 02:20



According to the Centre for Environmental Rights (CER's) Catherine Horsfield, there are 6 000 derelict and owner-less mines in South Africa, where the failure to ensure adequate closure, often complicated by insolvency, has not only resulted in vast environmental challenges such as acid main drainage, but also the socio-economic degeneration that follows when surrounding communities are plunged into depths of poverty when the stimulus of a once-thriving mine disappears.

"But it is not surprising, because only in the last 15 years did regulators start to think about what we need for post-closure outcomes," said Digby, who believes that the legacy of poorly-closed sites in South Africa has seen over 100 000 jobs shed in the gold industry over the last 20 years, and that this has been the reason for the 70 000 or so illegal miners (also known as the 'Zama Zamas') who risk their lives to earn some kind of living.

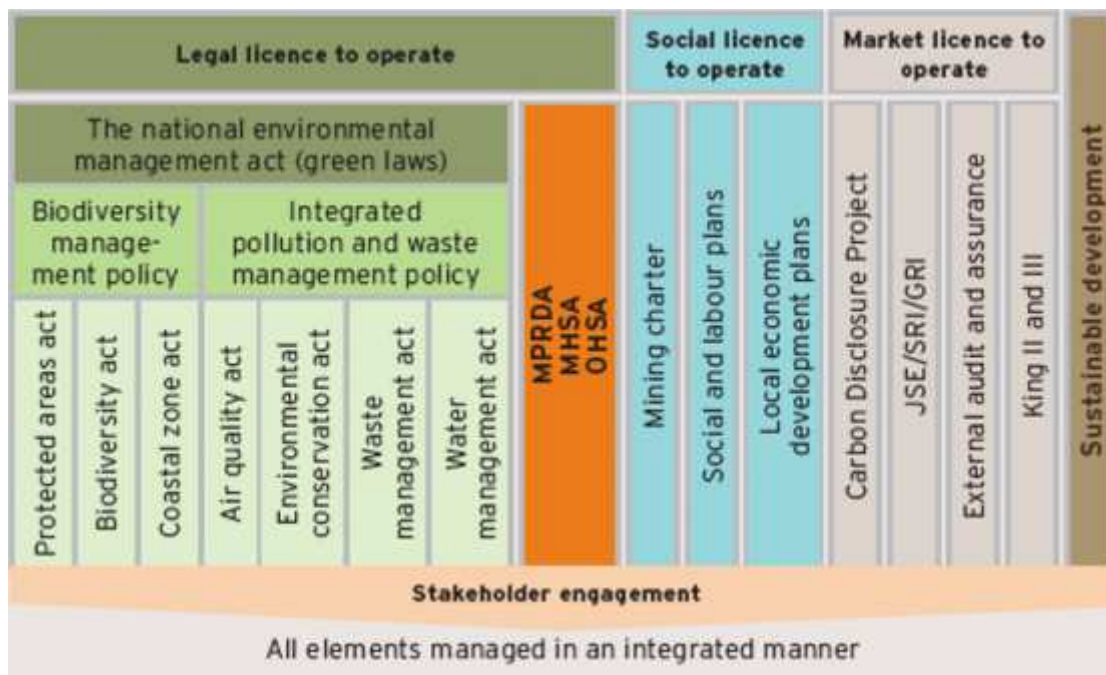
There is a concerning level of legal and policy uncertainty around the treatment of mine closure and rehabilitation, a seminar held by the CER at the Sunnyside Hotel on Thursday revealed.

The problem of quantifying and policing mining companies' accountability in ensuring that the environmental damage and the socio-economic aftermath of mine closures are addressed is a global one.

Although many steps are being taken to address the issue, there remains uncertainty over how closure is defined. There is still a need to legally clarify the difference between temporary cessation, partial closure, 'warehousing' and care and maintenance – and the legal obligations thereof.

Professor Caroline Digby, director of the University of the Witwatersrand (Wits) Centre for Sustainability in Mining and Industry, said that, although enforcement is lacking, South Africa is the most forward-thinking in its efforts to include socio-economic impacts in the costs of rehabilitation.

Numerous obligations for mining licence holders in SA



Source: Exxaro

Said Digby: "All the green laws, the MPRDA (Mineral and Petroleum Resources Development Act), the Mine Health and Safety Act and the Occupational Health and Safety Act and the social obligations...We actually have quite a lot of legislated requirements or obligations (but there are still many issues that remain unresolved)."

In the main, the confusion is with regard to the laws that govern the mining industry's environmental rehabilitation provision obligations, which have recently been removed from the MPRDA and transferred to the National Environmental Management Act (Nema).

The former was promulgated by the Department of Mineral Resources (DMR) and the latter by the Department of Environmental Affairs (DEA).

“The DEA became the department that would look at doing at the legislative framework for the environmental aspects of mining, but the DMR would retain the competencies in terms of implementing that,” said Dee Fischer, chief director of integrated financial management at the DEA.

But this has led to more challenges, not least of which are around the financial provisions that need to be made towards rehabilitation – covered in more detail [in this article](#).

Said Fischer: “Since the promulgation of the regulations – specifically in the last couple of months when companies are starting to get ready to implement the new requirements – there are quite a lot of concerns about the regulations. People have woken up to some of the provisions that were there and are starting to realise the implications, and it seems like we’ve done a lot wrong.”

Toothless law

What irked many at the seminar was that, because the law is supposed to be implemented by the DMR, which is arguably less concerned about environmental issues than the DEA, it is toothless, with few companies seemingly being penalised for transgressions, thus disincentivising many companies from investing in rehabilitation spend (it could be perceived as a waste).

Professor Tracy-Lynn Humby from the Wits School of Law said the integrity of the relationship between the two departments is being tested, but she doubts whether anything can be done to resolve the problem through law.

Said Humby: “I don’t think it’s possible to go back (and change the legal roles or powers of either department) partly because a single environmental system has been written into the Nema as a kind of threshold for changing anything.... It’s Section 50 of Nema....We simply have to make enforcement work. How that political relationship plays out between the DMR and DEA.... I wish DEA every strength.”