



# Restorative Justice: A Driver for Sustainable Socio-economic and Developmental Growth in the Mining Industries

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## Abstract

*Restorative justice is not expressly envisaged in the mining and or environmental laws in South Africa. It is a principle which is often applied in criminal cases, be that as it may, it directly holds the perpetrators accountable for their unlawful conduct or activities. This to note, it is a maxim that may be applied in the mining industries to directly hold the erring companies liable or accountable for non-conformity with environmental prerequisites. It is used to encourage erring mining companies to be responsible for harm done to the environment and or affected mining communities and to some extent, it allows negotiations between the erring companies and affected communities to explore measures that may be put in place to ensure that future harm or hazards resultant from their activities are prevented if not totally avoided. It echoes the commitment of the Minerals Petroleum Resources and Development Act 28 of 2002 (MPRDA) and National Environmental and Management Act 107 of 1998 (NEMA) on sustainable and responsible mining. Instead of resorting to retributive justice wherein the erring companies are imposed with punitive sanctions, the restorative justice aims to ensure that mines take responsibility for harm caused or inevitable threat of harm and implement measures to circumvent it. The restorative justice would mean that all relevant stakeholders play their role in ensuring that environmental transgression is avoided or mitigated by those responsible for causing harm or hazards. This paper adopted a non-numeric method wherein legal jurisprudence, case laws and statutes were used. The author aims to explore restorative justice as progressive tool necessary to ensure that erring mining companies admit accountability and provide measures to remedy harm caused to the environment and tools to deal with the aftermath of the environmental transgression. It is concluded that restorative justice must be adopted in addressing environmental violations by mining companies and it is found that this principle encouraged transparent negotiation with affected people on ways to deal with the aftermath of the environmental violations. It is concluded that restorative justice is a driving tool for socio-economic and developmental growth in the mining communities.*

## INTRODUCTION AND AN OVERVIEW

In South Africa, the mining industries contribute immensely towards the growth of the economy and development of the communities within proximity of the mining activities (Lumani & Nyasia 2024). This to note, the mining industries are an influential tool or driver towards significant achievement of the developmental needs of the mining communities (Marti, Tolebo & Tur 2023). The extractive activities have associated impacts on the social fabric in respect of meeting the



Objectives outlined in the social and labour plans, such as contributing to growth in the socio-economic and developmental needs of the directly affected communities or mining communities within close proximity of the operations (Gumede 2022). While there are positive impacts, mining activities also have negative impacts on the mining communities within the vicinity of their operations (Darvishdoost, Souri & Rezaeinejad 2022).

In addressing these negative impacts posed by the mining industries to the mining communities or against the environment, the legislature has enacted the National Environmental Management Act (NEMA) to promote a sustainable and preserved environment (NEMA, 1997, s 28). NEMA introduced polluter pays or cradles to the grave principle in terms of which the erring mining companies are obligated to bear the costs of remediating the damage or harm caused to the environment. NEMA addresses the environmental management principles which inculcates the mining industries to put in, measures or tools that will drive sustainable and responsible mining (NEMA, 1997, s 2).

The Constitution of the Republic of South Africa (The Constitution) also reiterates that everyone is entitled to environment that is not harmful to their health and well-being (Constitution, s 24). Pursuant to this, Minerals Petroleum Resources and Development Act (MPRDA) makes a provision to the effect that mineral benefits must be equitable and mining industries must ensure that they contribute towards the socio-economic and developmental needs of the communities within proximity of their operations (MPRDA, 2002, s 2). Being that as it may, the reality depicts that the mining industries continue to adversely impact the communities within the areas of operations (Makua & Kola 2017). It is clear that the adverse impacts of the mining activities are remedied through the tools that are designed to address a particular harm done to the environment, and the erring company is obligated to bear the costs of remediation in terms of NEMA. Subsequently, the liability borne by the mining companies because of the harm or damage done to the environment within proximity of their operations is expressed in the polluter pays or cradle to the grave principle.

The argument posed by this paper is such that the statute or legislature only considered a punitive mode of addressing the socio-economic impact frustrations confronting the mining communities. This is to imply that the legislature imposes a fine as a penalty for the erring mining companies as opposed to restorative mode approach. The paper is of the view that there must be an introduction for a restorative justice approach in dealing with mining issues wherein the erring companies and the affected communities are afforded an opportunity to amicably address the adverse impacts resultant from the mining activities. This type of an approach will bring the perpetrator of the offence, mine, and the victim, community, together to find a way on how to address the harm caused to their environment and as well as an amicable way on how to prevent future irreparable harm from reoccurring.

Instead of imposing punitive sanctions or retribute penalties against the mining companies for harm done to the environment, the restorative justice approach will ensure that the mining



companies and the affected communities are accorded an opportunity to implement measures that are aimed at ensuring that harm done to the environment is counteracted and implement tools that are aimed at preventing it. It is argued in this paper that restorative justice approach will serve as a tool for driving socio-economic and development of the mining communities. This argument is necessitated by the fact that the mining communities will play a pivotal role in the negotiation of the measures aimed at future harm prevention as opposed to the imposing of punitive sanction wherein companies pay fines without addressing any future harm prevention.

McClellan *et al* opine that a successful integration of the restorative justice in environmental transgression issues will bring about sustainability and longevity in as far as environmental enjoyment and use are concerned (McClellan *et al* 2013). Ali shares a similar sentiment by alluding to the effect this tool may be used to redress negative socio-economic impacts resultant from the destructive mining operations (Ali 2017). This paper posits that it will take a collaborative effort from all stakeholders involved to ensure that this effective tool is successful and of benefit to the adversely impacted communities in the course of environment harm redress.

According to Humphrey, restorative justice is a tool that promotes social justice to the impacted communities and brings about healing or reparation to the affected communities (Humpreys 2005). Frank is of the opinion that this tool introduces restorative framework in which offender and victim or affected members of the communities participate collectively in environmental redress initiatives (Franks 2014). Kemp *et al* opine that integration of restorative justice is very crucial in creating a platform for the community engagement and participation (Owen & Kemp D 2013). The paper is of the view that it is essential that restorative justice framework be incorporated in environmental transgression disputes as it promotes community involvement and participation as envisaged in both NEMA and MPRDA which reiterates an inclusive community in matters affecting involving the environment within their vicinity. Collins asserts that collaborative participation from all stakeholders is key a successful implementation of restorative justice for the benefit of the impacted communities (Collins 2017).

## EXPLANATION OF KEY CONCEPTS

### Restorative Justice

The concept of restorative justice is not defined in mining and environmental context. It finds its expression in terms of the Criminal Procedure Act in which the offender may be given a lighter sentence in that there is a hope that the offender may be rehabilitated (Criminal Procedure Act, 1977, s 247). In the mining or environmental law context, it may be described as a process in which the erring mining company where appropriate, any other individuals or community members affected by an environmental harm resultant from mining activities or operations, participate together actively in the resolution of matters arising from the harm or hazard caused (Lotter 2020).

### Retributive Justice



The concept of retributive justice refers to imposing of a punitive sanction against the environmental transgressor as opposed to rehabilitative penalty (Kidd 2009). This means imposing of the sanction as expressed in the polluter pays or cradle to the grave principles which entail that he who pollutes must bear the costs of remediation.

### **Mining Communities**

The concept of mining communities refers to the directly affected members of the communities within proximity of the mining operations and are dependent on the mining for livelihood and development (Cronje & Chenga 2023). Mining Communities are often characterized by high level of poverty, unemployment as well as an inconducive environment resultant from the adverse impacts of the mining operations (Cole, Mathenjane & Van Zyl 2009).

## **RESTORATIVE JUSTICE BENEFITS**

### **Active mining community participation**

An active participation by the surrounding mining communities is a requisite to ensure that the affected communities are actively involved. One of the key benefits of restorative justice is its ability to strengthen communities by involving the communities through public participation or dialogues between the mining companies and the affected communities. Regular participation or engagement with the affected mining communities will create safer and more cohesive environments for everyone involved. In *Maledu v Itereleng Bakgatla Mineral resources*, the Constitutional Court (CC) held that the community had the right be consulted and to participate in the environment impact assessment process ((2018) ZAGPPHC 829). In addition *Xolobeni Mineral Sands Pty Ltd v Minister of Mineral resources* in which the court held that the community had the right to be consulted and to participate in the decision - making process ((2018) ZAECGHC 14).

It is without doubt that when the community's involvement in environmental redress contributes significantly towards the economic growth in that both the stakeholders are able to pave a way for benefit agreements that may uplift social and development needs of the communities. A similar sentiment is shared by Andy by alluding that restorative justice offers a tangible long-term community support and benefit in that it creates an environment for engagement amongst all relevant stakeholders to ensure that adverse impacts are redressed (Andy 2021). It is argued that restorative justice ensures that during environmental redress the well-being of the impacted members of the communities is put at the forefront (Haoxuan 2024). The paper posits that MPRDA and NEMA reiterates inclusivity in all decisions affecting the communities because they are directly impacted by the destructive mining operations.

### **All-inclusive-Holistic mechanism**

According to Llewellyn and Howse, holistic mechanisms facilitate reconciliation and reintegration, promoting social cohesion and community harmony, thus including community engagement, offender accountability, healing and reparation (Zehr 2002). Restorative justice



promotes social inclusivity amongst affected stakeholders and hearing all sides of the story. Dore and Batley are of the view that this tool is effective in promoting sustainable environment in that it promotes societal inclusivity in matters affecting and provides the communities with an opportunity to voice out their frustrations and propose mechanisms for redress (Adore & Batley 2022).

Mark opines that this approach provides a platform where the parties are afforded an opportunity for an interactive conversation as opposed to resorting to a litigation and this creates community -mining harmonized engagement which is beneficial for environmental sustainability and economic growth (Mark 2021). The paper opines that it is commendable to integrate this tool in that it promotes inclusivity and concerns of the communities in redressing harm caused to the environment.

### **Alternative dispute resolution (ADR) method**

Alternative Dispute Resolution (ADR) is a means to resolve disputes through means other than by approaching the ordinary courts (Stewart 2006). The communities surrounding by the mines are encouraged to try to resolve their issues through mediation process, where in some instances, the mediator will be appointed to facilitate the processes. This process offers the parties directly involved in a dispute an immediate and direct decision-making role in dispute resolution processes which are independent and free from Court adjudication.

Nwazi opines that this method encourages parties to a dispute to resort to mediation-conciliation route as opposed to litigation and this serves time and costs associated with lengthy litigation processes (Nwazi 2017). Ngomane is of the view that this method is beneficial to the affected communities in that it presents a platform where the offender and victim are able to engage amicably and propose measures aimed at environmental redress rather than purely relying on litigation for recourse (Ngomane 2018). The paper submits that courts must not hesitate in exploring integration of ADR or restorative justice tools when sentencing perpetrators on account of environmental transgression, in this way, the interest of the community members especially those directly impacted will be put at the forefront. In essence, restorative justice tool promotes a settlement route on environmental disputes so that interest of all those involved are considered or prioritized.

### **Preventative tools aimed at environmental sustainability**

Restorative Justice is aimed at environmental sustainability in that all relevant stakeholders collectively put in place measures that promotes responsible sustainability and socio-economical or development of the mining communities. This could only be achieved if the court could consider this mode and stakeholders engage to ensure that the environment remains productive even after mining' life span.

Restorative justice requires that stakeholders propose effective measures that may be put in place to redress or minimize harm if not totally prevent it. It fosters direct inclusive engagement of the relevant stakeholders and provides a platform for measures that may prevent future harm or



present hazards from recurring (Miranda 2021). It is focused on reparation or healing and restoring the relationship amongst all relevant stakeholders. The paper submits that it is a progressive tool that encourages prevention and reparation for those directly impacted.

### **Restorative as opposed to retributive approach**

Restorative approaches priorities healing, accountability, and reintegration, while retributive approaches focus on punishment and blame. This method seeks to repent the transgressor than imposing a punitive punishment with a collective involvement of the victims or affected community members on amicable ways on reconciling the harm done to the environment and its impact on socio-economic and developmental growth. This method requires the offender or environmental transgressor to take responsibility for harm done to the environment and ensure that the environment is rehabilitated (Devani 2023). The paper of the view that the aim must not be to punish but to rehabilitate and ensure that whatever harm that was caused has ben redressed and the victim is also afforded an opportunity to participate in the decision making. As a result, this method will ensure that there is active participation between the offender and victim in redressing harm done and proposing of futuristic potential threats. The paper submits that restorative justice must be integrated to foster the relationship between the transgressor and victim whilst at the same time catering for the reparation or restoration of the *status quo*.

## **CHALLENGES CONFRONTING RESTORATIVE JUSTICE IN THE MINING SECTOR**

### **Lack of appropriate regulatory framework mechanisms tailored for restorative justice mechanism**

Lack of specific provisions dealing with restorative justice in terms of NEMA or any legislation accept Criminal law. The lack of clear guidelines and oversight mechanisms compromise offender accountability in restorative justice processes (Zehr 2002). In addition, Johnstone asserts that, regulatory framework often neglect to involve communities in the development and implementation of restorative justice programs, limiting their effectiveness (Johnstone 2013).

### **Enforcement and implementation of the agreements**

According research by O' Connell, the problem is when agreements are not enforced and implemented, particularly in cases where companies have more power and resources than affected the communities (O' Connell 2017). Moffat *et al* are of the view that imbalances between companies and communities can hinder effective restorative justice processes , as companies may use their influence to avoid accountability (Moffat 2016). The paper submits that there is a need to implement laws and enforcement so that justice may prevail and promote socio-economic or developmental growth in affected mining communities.

### **Lack of capacity of facilitators for restorative justice**

Inadequate support and resources, facilitators may not receive sufficient support, resources, or supervision, hindering their ability to effectively facilitate restorative justice processes (Miers



2001). The paper submits that the relevant ministry must roll out trainings or workshops for facilitators of restorative justice to guide the stakeholders on the processes that are involved and implementation thereof.

## REGULATORY LEGAL FRAMEWORK ON RESPONSIBLE AND SUSTAINABLE MINING FOR ECONOMIC AND DEVELOPMENTAL GROWTH

### Minerals Petroleum Resources and Development Act

The MPRDA is aimed at ensuring that there is an equitable beneficiation of the mineral resources in South Africa and that the mining companies contribute significantly towards the economic growth and developmental needs of the communities within areas of their operations (MPRDA, 2002, s 2 (c)& (i)). To ensure that there is progressive realization of the rapid growth of socio-economic and development of the mining communities, there environment within which the mining operations occur must be protected, preserved and nurtured in such a way that it remains productive post-mining (Chenwi 2013).

Socio-economic and developmental growth in the mining communities or on areas within areas of mining operation can only take place if the environment is duly protected and preserved (McMahon & Moreira 2014). In *Mineral Development, Gauteng Region & Another v Save the Vaal Environment (Pty) Ltd*, the court pronounced that development cannot take place in a deteriorating or dilapidated environment ([1996]1 All SA 2004). Sustainable and or responsible mining is an essential mode to drive and or deliver a rapid growth in socio-economic and development of the communities within the area of mining operations (Kotze 2003). This implies that in order to deliver socio-economic and developmental growth towards the mining communities the environment must be conducive even after mining.

In terms of the MPRDA the holder of a mining right or permtoure that there are environmental management plans in place to address possible environmental damage resultant from the extractive activities (MPRDA, 2002, s 37). Failure to put in preventative measures to redress inevitable environmental harm resultant from the mining operations may lead to the mining permit or right cancelled and or revoked (MPRDA, 2002, s 47). The relevant ministry is empowered by the statue or law to ensure that licenses or permits of the erring companies are revoked and or cancelled in the event of non-compliance or non-conformity to the regulations aimed at environmental protection, preservation and or responsible mining. The paper is of the view that cancellation or revoking of the mining right or permit is not quite a commendable approach in that the damage to the environment would not be adequately redressed, as a result, it is submitted that in order to ensure that erring mining companies are held accountable for environmental harm by enforcing the restorative justice mode in which all relevant stakeholders are involved in repairing of the environment.

The paper holds a contention that instead of imposing punitive sanctions or penalties such as cancellation, costs of remediation, revocation of the harm done to the environment, the courts or relevant ministry must just be empowered to implement a problem-solving conciliation mode of



an approach which is a restorative justice. It is a view in this paper that restorative justice provides a promising framework within which stakeholders are encouraged to negotiate suitable or amicable tools and measures that may be put in place to ensure that harmed environment is redressed or remedied and future harm or hazards are prevented if not entirely circumvented.

### **National Environmental Management Act**

NEMA put an obligation on the holder of a mining right or permit to ensure that mining operations are carried in such a manner that promotes sustainability, socio-economic and developmental needs of the communities within areas of their activities (NEMA, 1997, s 2 (2), (3) & (4)). NEMA is clear on promotion of sustainable and responsible mining in that it requires the holders of a mining right or permit to put environmental management plans in place to alleviate any potential detriment to the environment. The paper asserts that in the event that harm is already caused to the environment as a result of mining, it is commendable that the directly affected members of the community and the erring mining company negotiate an amicable way in which such harm may be redressed and in the event of harm to health or livelihood of the communities, a similar restorative approach must be adopted to reach an amicable resolution to both the parties or stakeholders involved. The paper contends that if this type of an approach is realised or put in place, it will avoid unnecessary litigations between the relevant stakeholders and an amicable resolution will be reached.

In terms of Section 28 of NEMA....

*“Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment”.*

NEMA makes it clear that an erring mining company is obligated to bear the costs associated with remediation of the damaged environment. This echoes the objective of the polluter pays or a cradle to the grave principle which overemphasizes that he who pollutes must be liable for the costs of rectification of the harm caused to the environment. The paper contents this will not resolve the issue of holding the mining companies accountable and seeing to it that an amicable suitable resolution is reached between the relevant stakeholders. It is a fact that mining companies stand to profit a chunk of proceeds from their operations and with this being said or stated, imposing a fine or punitive sanction in the form of payment of sum of monies will not deter the companies from erring, therefore, it is commendable that the relevant ministry be authorised or empowered to adopt an approach or mode that seeks to involve all affected parties actively participate in the resolution relating to measures to redress harm done to the environment as well as the impact on livelihood and or health/well-being. In this way, the erring companies are afforded an opportunity to amicably engage with the affected members of the communities and collectively negotiate a suitable amicable mode of resolving harm done.



NEMA makes a provision to the extent that directors of the erring mining companies may be subjected to criminal proceedings because of non-conformity to the environmental laws or regulations (NEMA, 1997, s 34). This implies that NEMA empowers the courts to impose a sentence upon conviction of a director of non-compliance environmental and mining laws due to harm or hazard caused to the environment. with A clear example of is found in the case of *s v Blue Platinum Ventures (Pty) Ltd* in which the director of mining company was given five years suspended sentence with a condition that the damaged environment is rehabilitated. Indeed, the statute empowers the courts to impose sentences against the mining companies or directors as the juristic person can not be imprisoned. However, the opines that a restorative justice approach would have served a better outcome in this case, in that, the affected communities would have had their voice hear or voiced out their environmental damage, risk to their health or well-being resultant from mining operations and negotiated with the erring company a suitable amicable or problem-solving approach to redress harm or damage done.

In this case, the court imposed a suspended prison sentence against the director coupled with a condition that rehabilitation must be rolled out, however, risk to the well-being and health of the communities within the vicinity of the said mining operations was disregarded and the impact non-conformity to the environmental regulation had on the members of the society or directly affected communities was not addressed. This is a blatant disregard of the interest of the rights of the affected communities particularly on their health and or well-being as well as the social fabric. It is submitted that a restorative justice approach or mode of a resolution might have assisted the court to ensure that justice is done or administered to all involved or affected stakeholders.

### **Constitution of the Republic of South Africa, 1996**

In terms of the Constitution:

*“Everyone has the right to an environment that is not harmful to their health or wellbeing’, and to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that (i) prevent pollution and ecological degradation;(ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development”.*

The mining companies must conduct their operations in such a way that promotes the objective of section 24 of the Constitution. The spirit and purport of section 24 of the Constitution can be realised only if the mining companies put in place rigorous environmental management plans, assessment impacts tools and preservation measures whilst actively engaging on directly affected communities for an amicable resolution on the harm caused to their environment, health and or well-being. The restorative justice is an inclusive approach in which directly affected vulnerable members of the society are granted ample opportunity to actively participate in the decision making on activities that negatively or adversely affect them. This assertion is echoed



by Murcott who contends that the relationship between mining communities and the environment is inextricably intertwined and interwoven in that it aligns with the perspective that in any dispute involving the environment, the vulnerable mining communities or directly affected members of the society must actively participate and their environmental frustrations resultant from environmental detriment must be addressed (Murcott 2023).

The only way in which the environmental frustrations of the mining communities are addressed or hear is through the principle of restorative justice in the adjudication or settling of environmental disputes resultant from the deadly mining activities or operations. The right to an environment that is not harmful to health or well-being is an intrinsically part of human life and rights of the mining communities (De Wet E & Du Plessis A 2011).

Coggin maintains the Constitution guarantees a right to an environment that is ecologically sustainable (Coggin 2021). The paper argues that to drive socio-economic and developmental growth in the mining communities albeit the environmental harm, there must be an active model that involves all relevant stakeholders to actively engage in decision making regarding redress of the damage caused to the environment, health and well-being.

### **Mines Health and Safety Act**

In terms of the MHSA, the mining companies are obligated to ensure that their operations promote the purport and spirit of the constitution in so far as the environmental protection, water quality and biodiversity are concerned (Barter 2024). The MHSA does not only impose a duty for environmental protection towards the mining communities but also obligates the mines to ensure that the work environment is conducive and the working conditions are not detrimental to their employees' health and or well-being. The restorative justice platform or approach would open gates for amicable negotiations if the employees were exposed to detrimental harm or hazard, how the impairment has affected them and what suitable redress would be required and or satisfactory to the said employee and the erring company. This is to imply that both the parties to the incident will have a platform to engage collectively and conclude agreements regarding a redress mechanism. Rice argues that the MHSA is designed to ensure that the employer or mining companies' priorities the health and well-being of the workers or employees whilst at the same time putting preservatory and protective measures to the environment (Rice 2017).

The paper maintains that to drive and deliver rapid growth in socio-economic and development of the mining communities, there must be an open platform in which there is intensive collaboration between all the stakeholders. This is necessitated by the fact that the mining companies can not deliver sustainability without an assistance of those directly affected, more particularly on suitable harmonious measures that may be put in place tom redress environmental injustices or detriment ensuing from the mining operations. This harmonious approach may be achieved if communities are granted the platform to engage the mines regarding measures to be put in place and how impact of their health or well-being may be remedied.



## IS RESTORATIVE JUSTICE A TOOL FOR DRIVING ECONOMIC AND DEVELOPMENTAL GROWTH?

The paper posits that it is without doubt that a restorative justice approach entails a promising framework that encourages a problem-solving conciliation of a dispute in as far environmental detriment is concerned. This principle makes a provision for an active open engagement or participation amongst all relevant stakeholders in the mining industries to see to it that there is a satisfactory redress on environmental harm caused or health and well-being of the members of the communities where mining operations are taking place.

The directly affected mining communities within proximity of the hazardous operations are granted an ample opportunity to engage with the environmental transgressors on suitable or amicable measures to be put in place to ensure that the environment remains sustainable, useable and productive even after mining. The transgressor is also accorded an opportunity to engage the stakeholders on measures to redress the injustice done to the mining communities' health, well-being and the environment. Heffron concludes any injustice done to the environment must be rectified so that the status *a quo* is attained, or sites return to former use (Heffron 2020). The papers asserts that restorative justice is an appropriate mode or mechanism to ensure that there is a progressive realisation of the socio-economic and developmental growth within mining communities.

### CONCLUSION

The paper concludes that a restorative justice is a tool necessary to drive a successful socio-economic and developmental growth within mining communities. It is an approach that encourages a problem-solving conciliation mode amongst all the relevant stakeholders in the mining industries and inculcates the environment transgressor to adopt measures or tools that redress the environmental injustices or hazards resultant from the mining operations. Restorative Justice aims to address environmental and social impacts of mining through an amicable restorative mode in which all relevant stakeholders are collectively involved in the environmental damage redress process. It encourages an amicable collaborative approach in redressing the environmental transgression resultant from the mining activities

### RECOMMENDATIONS

Therefore, considering the above postulated findings, the paper or study recommends as follows:

- The legislature must promulgate relevant policy that is explicitly aimed at implementation of the restorative justice approach in the environmental management and ensure that all relevant stakeholders carry out this approach in environmental transgression redress.
- The relevant ministry must put in training facilitators for the affected communities, erring companies to ensure that the process unfolds smoothly.



- Conducting of workshops and campaigns on the effectiveness of the restorative justice as opposed to retributive justice to all the relevant stakeholders in the mining industries inclusive of the affected mining communities.
- The relevant ministry must adopt a problem-solving conciliation mode of collaboration amongst all the relevant stakeholders in addressing the environmental transgression and restorative justice approach.
- Implementation of the active monitoring and evaluation processes to ensure that there is restorative justice takes effect or progress made regarding restorative justice.
- Develop a framework which will provide guidance to the courts or judiciary to consider imposition of restorative justice principle when sentencing mining companies for environmental harm or hazards caused.

Train relevant stakeholders on pros and cons in adopting the restorative or problem -solving conciliation mode approach towards environmental harm redress.

## List of References

Barter H. (2024) Comprehensive Guide to Mine Health and Safety Law in South Africa: Protecting Workers and the Environment. Retrieved on the 27 Augst 2024 at <https://www.bartermckellar.law/mining-law-explained.com>

Brian J.P. (2011). The use of restorative justice for environmental crime. EPA Victoria seminar on restorative environmental justice, Melbourne.

Chenwi L. (2013). Unpacking "progressive realisation", its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance. *De Jure Law Journal* 46(3).

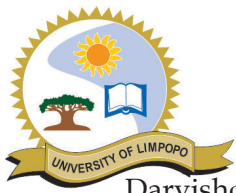
Coggin T. (2021). Recalibrating Everyday Space: Using Section 24 of the South African Constitution to Resolve Contestation in the Urban and Spatial Environment. *Potchefstroom Electronical Journal* (24).

Constitution of the Republic of South Africa, 1996.

Cole M.J, Mathenjane M and Van Zyl A.T. (2009). Assessing coal mine closures and mining community profiles for the 'just transition' in *South Africa Journal of the Southern African Institute of Mining and Metallurgy* 23(6).

Criminal Procedure Act 51 of 1977, as Amended.

Cronje F and Chenga C.S. (2023). Sustainable social development in the South African mining sector. *Development Southern Africa* 26(3).



Darvishdoost T, Sourì M and Rezaeinejad I. (2022). Sustainable Development in the Mining Industry: Opportunities and Challenges in Iran's Mining Sector. *Asian Journal of Economics, Finance and Management* 8 (4).

De Wet E and Du Plessis A. (2011). The meaning of certain substantive obligations distilled from international human rights instruments for constitutional environmental rights in South Africa. *African Journal of Human Rights* 10.

Glasson J et al. (2012). *Introduction to Environmental Impact Assessment*. Routledge 1.

Gumede H. (2022). The socio-economic effects of mechanizing and/or modernizing hard rock mines in South Africa. *South African Journal of Economic and Management Sciences* 21(1).

Hunkeler. D. Saur.K. and Rebitzer, G. (2008). *Life Cycle Management*. Springer. (2)

Johnstone G. (2013). *Restorative Justice, Ideas, Values, Debates*, Routledge 6

Kidd M. (2009). Alternatives to the criminal sanction in the enforcement of environmental law. *SAJELP* 9.

Kotze L.J. (2003). The constitutional court's contribution to sustainable development in South Africa, *PER/PELJ* 60(3).

Lotter A. (2020). Mine(d) Over Matter: Restorative Justice in the Mining Industry. Minerals in Africa. Retrieved 26 August 2024 from <https://law.uct.ac.za/mineral-law/articles/2020-02-05-part-2-mined-over-matter-restorative-justice-mining-industry>

Lumadi V.W. and Nyasha S. (2024). Technology and growth in the South African mining industry: An assessment of critical success factors and challenges. *Journal of the Southern African Institute of Mining and Metallurgy*, 124 (4).

Makua P and Kola O. (2017). Harmful mining activities, environmental impacts and effects in the mining communities in South Africa: a critical perspective. *Environmental Economics* 8(4)

*Maledu v Itereleng Bakgatla Mineral Resources (Pty) Ltd* (2018) ZAGPPHC 829.

Marti A.R, Tolebo A.V and Tur A.R. (2023). Developing models to assess the social impact of mining: An exploratory study through necessary conditions analysis (NCA). *Journal of Science Direct* 83.

McMahon G and Moreira S. (2014). The Contribution of the Mining Sector to Socioeconomic Public Disclosure Authorized and Human Development. *Extractive Industries for Development Series* 30.



Miers . D. An International Review of Restorative Justice . Crime and Justice .28.11-46.

Minerals Petroleum Resources and Development Act (MPRDA) 28 of 2002.

*Mineral Development, Gauteng Region & Another v Save the Vaal Environment (Pty) Ltd [1996] 1 All SA 2004.*

Moffat K. (2016). Restorative Justice in the Mining Sector. Journal of Cleaner Production.133. 1030-1038.

Murcott M. (2023). Minding the Gap: The Constitutional Court's Jurisprudence Concerning the Environmental Right. Constitutional Court Review 13.

*Mkungwini Community v Anglo American Platinum Ltd( 2019) ZAGPPHC 155.*

National Environmental Management Act 108 of 1997.

O' Connell. P. (2017).Restorative Justice and Environmental Harm . *Environmental Justice* . 10 (4) . 123- 128.

Rice G. (2017). The Origins, Structure and Objects of the Mine Health and Safety Act. Drill Roll Safety Series.

*S v Blue Platinum ventures 16 (Pty) Ltd & Matome Samuel Maponya (sentencing proceedings: unreported, Naphuno Regional Magistrates' Court Case No. RN126/13 9 January 2014).*

Stewart W.J. (2006). Collins Dictionary of Law. Retrieved 03 September 2024 from <http://legaldictionary.thefreedictionary.com/alternative+dispute+resolution>.

Wood C. (2003). Environmental Impact Assessment: A Comparative Review. Longman.  
(1)

Xolobeni Mineral Sands Pty Ltd v Minister Resources (2018) ZAECGHC 14.

Zehr H. (2002). The Little Book of Restorative Justice. Good Books .5

Zutshi A. and Sohal, A. S. (2004). Environmental Management System Adoption by Australian Organizations. *International Journal of Management Reviews*, 6(2): 167-184.