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In the wake of Diamond Mining: A Critical Assessment of Environmental Governance and Corporate Social Responsibility in the Namaqualand Coastal Region



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Abstract

The diamond mining industry has until recently been the main industry and employer in the Namaqualand coastal region of South Africa. The largest and most powerful of the diamond mining companies, De Beers, followed by Alexkor, a state-owned mining company, have between them established a number of company towns to accommodate their large labour forces, and established extensive security systems along the coast to protect their diamond mining rights, including extensive barbed wire fencing and security check points.

Colonial and Apartheid regimes confined non-white inhabitants of Namaqualand to 'Coloured Rural Reserves', enabling the further consolidation of mining interests, and providing convenient labour reserves. Moreover, the centrality of the mineral extraction industry to South Africa's industrial development throughout the twentieth century, led to minimal governmental regulation on companies to rehabilitate landscapes degraded by mining, or to respect the rights of local communities to customary land-based livelihoods.

Now that the large companies operating diamond mines along the Namaqualand coast have 'down-scaled' their operations, shifting core mining activities offshore, other economic 'sectors' are being promoted as alternatives to the mineral extraction industry. A combination of conservation areas, commercial fishing, mariculture and energy generation are among current proposals to 'develop' the region, with the potential to effect a 'coastal access revolution' that will open up the coast for livelihood opportunities for people previously excluded or disenfranchised by the pre-1994 dispensation.

This study assesses the social and environmental legacy that is currently being left in the wake of diamond mining along the north west coast of South Africa as a result of almost century of diamond mining. This involves an inquiry into the political, economic and ideological forces that enabled the establishment of the extractive industry, and a critical assessment of the role the industry has come to play in the region.

The study then explores how the obligations of neoliberalising mining companies to the people and natural environment of Namaqualand are being defined, negotiated and contested in the post-1994 context, through reviewing legislative, policy and corporate social responsibility approaches to environmental governance and social equity. A critical anthropological approach, influenced by the fields of political economy and political ecology, is pursued, drawing on ethnographic fieldwork in the Namaqualand coastal region, in order to evaluate the legacy being left in the wake of diamond mining, and to consider whether proposed alternative land uses and economic activities are likely to

depart from or help perpetuate historical patterns of inequality, elite enrichment, unsustainable development and environmental degradation that have been associated with diamond mining.

University of Cape Town

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List of Acronyms

ANC	African National Congress
BBBSEE	Broad Based Black Socio-Economic Empowerment
BBE	Black Economic Empowerment
CSA	Conservation International – South African Branch
CSIR	Centre for Scientific and Industrial Research
CSR	Corporate Social Responsibility
DA	Department of Agriculture now within DAFF
DAFF	Department of Agriculture Forestry and Fisheries
DLA	Department of Land Affairs
DBCM	De Beers Consolidated Mines
DEAT	Department of Environmental Affairs and Tourism, now DEA
DEA	Department of Environmental Affairs
DENC	Department of Environment and Nature Conservation, Northern Cape Province
DME	Department of Minerals and Energy, now DMR
DMR	Department of Mineral Resources
DPW	Department of Public Works
DWA	Department of Water Affairs
EEU	Environmental Evaluation Unit
EMP	Environmental Management Plan
FAMDA	Fishing and Mariculture Development Agency
GDP	Gross Domestic Product
HDSA	Historically Disadvantaged South Africans

ICMA	Integrated Coastal Management Act
LEAP	Living Edge of Africa Project
LRC	Legal Resources Centre
MCIAR	Mining Charter Impact Assessment Report
NCPG	Northern Cape Provincial Government
NCPFMSDS	Northern Cape Province Fishing and Mariculture Sector Development Strategy
NEMA	National Environmental Management Act
NFSD	National Framework for Sustainable Development
NGOs	Non-governmental Organisations
MPRDA	Mineral and Petroleum Resources Development Act
NRI	Namaqualand Restoration Initiative; later Nurture, Restore, Innovate
RSA	Republic of South Africa
SPP	Surplus Peoples Project

Chapter 1: Introduction

The post-1994 legislative and governmental transformation in South Africa held great promise for revolutionising systems of governance, social and economic entitlement, land tenure, access to resources, and environmental management, in ways that would change apartheid-era structures that were discriminatory, undemocratic and environmentally unsustainable. The new South African Constitution and legislation committed the post-1994 government to redressing racial injustice and achieving democratic governance, as well as ‘secur[ing] ecologically sustainable development and use of natural resources, while promoting justifiable economic and social development’ (Constitution, Act 108 of 1996, section 24, Bill of Rights).

Arguably, achieving justice after the racial dispossession, displacement and disenfranchisement of the majority ‘black’ and ‘coloured’¹ people of South Africa necessarily involves a substantial transformation of the national economy and structures of governance, into a new system of political and economic organisation that is more democratically accountable, just and sustainable in the long-term. In this new approach to governance, the rights and interests of those who have been historically marginalised, discriminated against, impoverished and exploited should be respected, and their inclusion and participation in decision-making processes, policy formulation and implementation, monitoring and evaluation, should become a priority.

Whilst extractive industries, such as the diamond mining industry, have generated a vast amount of wealth for a small elite of South African and foreign business people and contributed towards national economic growth (Bond 2008); these ‘gains’ have been achieved at the cost of large-scale environmental degradation, stark social exclusion and inequality, and the pursuit of short-term economic interest over and above long-term sustainability (van Wyk et al. 2009; Bregman, 2010). As the National Framework for Sustainable Development in South Africa (NFSD, DEAT, 2008) highlighted, much of the growth in economic activity (measured as a percentage increase in GDP) in South Africa ‘is achieved by consuming natural resources and degrading our habitat at accelerating rates with the inevitable consequence that future economic growth and development objectives will be prejudiced’ (DEAT, 2008, p. 7).

¹ Under the Apartheid government in South Africa (1948-1994) the population was officially classified into four groups: Black, White, Indian and Coloured. The Coloured group included people regarded as being of mixed descent, including people of Bantu, Khoisan, European and Malay ancestry. The [Population Registration Act](#) (30 of 1950), which formalised racial classification and introduced an identity card for all persons over the age of eighteen, specifying their racial group. Through the Group Areas Act (41 of 1950), the Apartheid regime forced those classified as ‘non-whites’ into separate townships and ‘homelands’ (or ‘Bantustans’) where they were denied many of the rights and privileges reserved for ‘whites’. Though these terms are used in the thesis, this must not be taken as an endorsement of the racial violence that has been perpetuated in their name, but as a pragmatic accommodation to contemporary normative usage in South Africa.

The NFSD further argued that 'the achievement of sustainable development is not a once-off occurrence and its objectives cannot be achieved by a single action or decision. It is an ongoing process that requires a particular set of values and attitudes in which economic, social and environmental assets that society has at its disposal, are managed in a manner that sustains human well-being without compromising the ability of future generations to meet their own needs' (DEAT, 2008, p. 6-7).

Since the 'discovery' of diamonds in the late 1920's, Namaqualand's abundance of diamond deposits both onshore and offshore enabled the development of a large mining sector which has for decades been the dominant economic industry of the region, and prime source of waged employment. The dominance of the diamond mining sector throughout the coastal zone, with the mining concessions in the hands of a few major companies, has also meant that public access to the coastal area has been historically extremely restricted; as has local community access to or ownership of coastal land and natural resources.

Decades of large-scale mining operations have had profound and long-term impacts on local communities, entrenching a wage labour system, and establishing mining towns and built infrastructure dependent on the mining industry. Now, with the contraction of the mining industry and a shift in mining from land-based to sea-based deposits, recent mass retrenchments have had a devastating impact on Namaqualand communities (CSA, 2008, LEAP, p. 2). It has been projected that the downscaling of mining at Alexkor and De Beers Consolidated Mines, as well as copper mining at Okiep, could eventually result in the loss of over 5000 jobs in the mining sector. (DEAT, FMSDS, 2003).

Furthermore, much of the coastal natural landscape has been transformed beyond recognition, leading to environmental degradation and disturbance of ecological processes, which have further adverse impacts on the lives of local communities (van Wyk et al., 2009).

This study thus seeks to assess the social and environmental legacy that is currently being left in the wake of diamond mining along the north west coast of South Africa as a result of decades of mining. This involves an inquiry into the political, economic and ideological forces that enabled the establishment of the extractive industry, and a critical assessment of the role the industry has come to play in the region.

The study then explores how the obligations of diamond mining companies to the people and natural environment of Namaqualand are being defined, negotiated and contested in the post-1994 context, through reviewing legislative, policy and corporate social responsibility approaches to

environmental governance and social equity. These new approaches are to be seen in local historical context, and the contemporary performance of mining companies is to be evaluated in light of their historical modus operandi and early overtures toward corporate responsibility in the 1990s. The findings of the research indicate where the provision of new approaches to Corporate Social Responsibility and environmental governance approaches are failing to secure substantial social and environmental rights.

A critical anthropological approach, influenced by the fields of political economy and political ecology, is pursued, drawing on ethnographic fieldwork in the Namaqualand coastal region, in order to re-evaluate the legacy of mining and consider whether proposed alternative land uses and economic activities (including conservation areas, tourism, fishing, mariculture and energy generation) depart from or perpetuate established patterns of inequality, elite enrichment, unsustainable development and environmental degradation that have been associated with diamond mining, and the system of governance out of which it emerged and helped sustain.

1.1 Theoretical orientations

Selected scholarship in the fields of anthropology, political economy and political ecology has highlighted that, there is nothing natural about natural resource management (Tsing, 1999, p.9). As Tsing (1999) writes, 'each word—natural, resource, management— has a complexly contaminated history. Each is embroiled in contemporary political fights, in which the term itself may help to establish positions. Each has become associated with characteristic sites of deployment in corporate and state planning' (p. 9).

Seeking to synthesise these approaches, throughout the study, consideration is thus given to how governance is being conducted, challenged and (re)formed by state actors, of various governmental departments, at local, provincial and national levels, mining companies, conservation agencies and persons who, by virtue of their occupation, knowledge and experience or powers of representation, control over finances, title deeds, information and other resources are in positions of authority. These actors include: mine managers and representatives, conservation park managers, legal advisors, fishers' association representatives, the national and regional directors of an international conservation non-governmental organisation, academics and researchers, land claimants, media reporters and local entrepreneurs. All of these have a role in defining and determining what legacy will be left in the wake of diamond mining and how Namaqualand's coast will be inhabited, its importance evaluated, its resources identified, accessed and used.

Yet the scope of influence and of these actors to achieve their vision or version of good governance, social equity and sustainability is understood to be shaped, and in some cases constrained, by existing hegemonic and institutionalised systems of management and control, enrichment and impoverishment, capitalist commodity production, and historically entrenched, racially hierarchical and elitist forms of privilege and entitlement.

Whilst the post-1994 political context in South Africa has provided an opportunity to challenge these established systems of governance, ownership and control; the way in which the South African state and national economy remain bound into international neoliberal political-economic systems has substantially shaped the country's developmental trajectory.

Thus, a critical approach informed by the fields of political economy and political ecology is required to elucidate why purported governmental and corporate endorsement of principles such as social equity and environmental sustainability is, in practice, failing to redress historical patterns of political and economic hierarchy and inequality, and change unsustainable and destructive use of the natural environment.

1.2 Aims and Objectives of the Study

The aim of the study is to describe and evaluate the legacy of almost a century of diamond mining for the Namaqualand coastal region in the Northern Cape Province of South Africa; and to determine whether post-1994 governing approaches to environmental management, socio-economic development and corporate responsibility in South Africa are adequate to the task of redressing established patterns of stark inequality, elite enrichment, unsustainable development and environmental degradation in the Namaqualand coastal region.

This involves addressing the following objectives:

- 1) Review of key South African legislation and policy promulgated post-1994, as well as an increasingly prominent 'Corporate Social Responsibility' (CSR) agenda, which have the potential to reform the extractive industry; with particular focus on frameworks intended to achieve goals of social equity, democratic accountability, and environmental sustainability.
- 2) Inquiry into the political, economic and ideological underpinnings of the diamond mining industry in South Africa; and a critical assessment of the role the diamond mining industry has come to play in the Namaqualand region. This includes a description of social and environmental

impacts of mining; as well as documentation of how mining companies are currently interpreting and implementing their social and environmental responsibilities.

- 3) Exploration of whether, in the context of Namaqualand, these governmental and CSR provisions and commitments are proving effective and adequate to the task of redressing a legacy of stark inequality, elite enrichment, unsustainable development and environmental degradation.
- 4) To discuss two key cases where communities in Namaqualand have attempted to challenge mining companies using existing legal and institutional frameworks, assert their rights and gain a stake in decision-making and resource-benefit processes.
- 5) To explore some of the socio-economic 'opportunities' that have been promoted as alternatives to the diamond mining industry; and to consider the extent to which these alternatives are likely to achieve greater social equality, democratic accountability and environmental sustainability; or whether these alternatives instead perpetuate past and present patterns of elite enrichment, unsustainable development, stark inequality and environmental degradation.

1.3 Methodology: Fieldwork and Interviews

Ethnographic fieldwork, participant observation and qualitative interviews were chosen as key research methodologies, as they enable unique insight into how complex issues are unfolding on the ground, and an opportunity to compare and synthesise the accounts, knowledge and experience of diverse role-players alternatively positioned vis-à-vis governing systems of power and authority, and differently impacted by current developments.

Ethnographic fieldwork was undertaken in Namaqualand during September (6-12th) and December of 2010 (4-18th), and January of 2011 (8-16th). Although these visits were relatively brief, they were eventful and productive, involving numerous in-depth interviews, guided tours, site visits and presentations made by mining company representatives and provincial government officials.

The initial research agenda had been informed by the focus of the Environmental Evaluation Unit at the University of Cape Town on issues of coastal access, in the context of the application of the Integrated Coastal Management Act (ICMA, 24 of 2008) throughout South Africa's different Provinces. However, through extensive background reading, and preliminary fieldwork research in Namaqualand, the scope of the study shifted to an assessment of the legacy diamond mining companies would leave for Namaqualand communities and their coastal environment. ICMA is thus considered along with other post-1994 pro-democratic legislation and policy frameworks as

potential means for redressing past injustice, and reducing stark inequality and poverty, whilst achieving environmental sustainability and ecological protection.

During September 2010, contact was made with local government officials, nature conservation authorities and mining company representatives, and a number of interviews were conducted. At this stage it was explained to interviewees that the scope of the study was still to be refined and determined, though some of the key areas of interest were outlined. During this trip, the Groen River estuary (see Figure 1, with Groen River estuary marked on south of map) was explored as a potential case study area, and stakeholders were interviewed who had been affected by and/or involved in a court case through which 'squatters' were evicted by the Department of Public Works (DPW)².

This initial scoping trip indicated the importance of researching the historical role and influence of diamond mining companies as key land owners with significant authority over the social, environmental and economic context of the region. Furthermore, preliminary research findings indicated that key political debates were being waged through legal claims to land and resources, and thus the implementation of key legislation and the process of making claims could be explored to gauge how justice, and social and environmental rights and responsibilities, were being defined, contested and determined in the post-1994 South African governance context.

Accompanying staff from Northern Cape Provincial Department of Environment and Nature Conservation (DENC) in December 2010, on a coastal tour as part of their effort to conduct a coastal access audit as stipulated by ICMA, enabled access to diamond mining areas controlled by Alexkor and De Beers, and provided an opportunity to gain a detailed understanding of how the department conceives of, and is attempting to realise environmental governance objectives in the Namaqualand coastal context. Participation in this tour provided a unique opportunity to observe how environmental governance is being conducted on the ground, through dynamic engagement between, local actors and authorities, including government officials from different departments, mining companies, conservation agencies, small businesses owners, land claimant communities and fishers' association representatives.

²A number of white families historically holidayed at the Groen-River estuary, particularly over the Christmas season. The holiday makers were taken to court by the Department of Public Works, the legal land owner of the site, in the 1990s, in order to evict 'squatters' who had erected permanent structures without permission. The DPW indicated that the site was intended to be incorporated into an extended Namaqua National Park. (A. Niewoudt, evictee, interviewed September 2010). The court found in favour of the DPW, and the 'squatters' were duly evicted. Yet the section south of the Groen River still remains outside of the National Park (Manager of Namaqua National Park, pers. comm., September and December 2010).

Furthermore, through attending the Marine and Coastal Educators Network Conference hosted in the Northern Cape in January 2011 (9-14th), a dynamic milieu of educators, conservation authorities, government officials, mining company representatives, and academics were engaged with for the purposes of the research. A number of key interviews and attendance at presentations and site tours became possible through participation in the Conference. Moreover, other Conference participants were able to provide valuable information and/or were able to indicate fruitful avenues of investigation, including providing a comparative perspective on the Northern Cape situation in relation to South Africa's other Provinces.

Whilst the selection of most interview candidates (see annex 4), was strategic, the list of key stakeholders and knowledge-holders was compiled in an interactive, adaptive way as the research progressed. In some cases interviewees identified key persons or groups who should also be consulted; in other cases representatives were sought from key agencies such as government departments, research institutions, conservation authorities, mining companies, land claimant communities, and local fisheries. Some interviews, presentations and conversations were not formally organised by the researcher, but occurred during participation in tours, events and discussions during field work visits.

The interview approach adopted was generally informal, qualitative, and fairly open-ended, with the average interview length reaching about two hours. Whilst a list of key topics and questions was prepared to beforehand, these were only a guide to facilitate discussion. The aim of the interview method was to invite interviewees to identify and explore issues they considered pertinent and to contribute their views and perspectives, so that research topics and key issues of concern could be identified. Given the research objective to describe and evaluate the social and environmental legacy of diamond mining, it was crucial to gather information and a range of perspectives from actors differently positioned vis-à-vis mining companies and governing authorities.

All interviews were recorded, with the consent of the interviewee and for those who preferred to communicate in Afrikaans, a research assistant who is a native speaker assisted with translation and helped to later transcribe these interviews. Recording the interviews enabled a present focus and engagement with interviewees that would have been difficult had hand written notation been used. All interviews were later transcribed verbatim in order to carefully analyse key themes, to check information and select direct quotations in the writing-up phase.



Figure 1: Map depicting the Namaqualand Coastal Region, Northern Cape Province, South Africa.³

1.4 Limitations

A key limitation of the research was also, in some ways an advantage. The fact that the final research focus was not initially determined before the first fieldwork visit was undertaken, meant that the

³ The boundaries of the Namaqua National Park have now changed. See maps and discussion in chapter 7.

research agenda changed in response to information provided by interviewees, participant-observations of unfolding developments in the Namaqualand region, as well as in discursive commentary of these. An opportunistic, though systematic, approach to gaining information, securing interviews and participant observation; and a broad, multidisciplinary literature review were in many ways beneficial to gaining an appreciation of how issues often treated as distinct – such as the diamond mining economy, coastal access, environmental governance and corporate social responsibility – are linked and co-dependent.

However, pursuing an iterative, adaptive research approach that spans across disciplinary boundaries runs the risk of introducing a number of theoretical perspectives and research themes, without exploring the nuances and complexities of each of these in adequate detail or depth to do them justice. Informed by an academic training based in the social sciences, particularly in social anthropology, the research reflects this disciplinary bias in its methodological and theoretical approaches, though attempts have been made to corroborate and consolidate research findings through cross-referencing with other studies and reports, including academic papers and interviews with conducted with specialists in a range of disciplines, such as law, marine biology, ecological restoration, environmental management and conservation.

The findings of the thesis could be further strengthened through more extensive and intensive investigation into the social and environmental impacts of mining activities and the repercussions of their termination; and further ethnographic research into the opinions, experiences and aspirations of local community members. This could be accompanied by identification of practical solutions to problems faced by these communities in the wake of mining.

Chapter 2: Literature Review

2.1 Theoretical Literature

Scholarship emerging from, and bridging disciplines as diverse as political economy (Ferguson, 1999, 2005; Newell, 2008; Bond, 2008; Hornborg 2009) , eco-socialism (Pepper, 1993; Peet & Watts, 2004; Lowy, 2005) , political ecology (Bryant & Bailey, 1997; Scoones, 1999; Forsyth 2003; Zimmerer & Basset, 2003; Fairhead and Leach 2008) ; geography (Harvey, 1996; Adams, 2008); and social anthropology (Escobar, 1995; Scott, 1998; Zerner, 2000; Tsing, 1998, 2005; Sawyer, 2004), has helped draw attention to the ways in which political ideology, hegemony and power come into play in systems of environmental management and programmes for economic development.

For example, in his work *'Seeing like a State'*, Scott (1998) employs a Foucaultian analysis⁴ to demonstrate the context out of which environmental management emerged in colonialist and capitalist programmes for bureaucratic governance. He argues that modernising political programmes undertaken by colonial states 'drew on the idea that nature could be understood, manipulated and controlled for social benefit through development of schematic (and increasingly scientific) knowledge' (Scott, 1998, in Adams, 2009, p. 47). In this work, environmental management, like other state sciences such as health, demographics and urban planning, is a bureaucratic science developed to enhance and extend state forms of fiscal governance and control over claimed territories and populations.

Tsing (1999), on the other hand, focuses anthropological attention on the 'open-ended, unpredictable process in which groups and institutions try to influence each other to redefine their respective projects. Environmental politics', she argues, 'is caught up in these definitional struggles' (Tsing, 1998, p. 6). From this perspective, governance is a contested terrain where state actors and institutions negotiate and interact with private companies, non-governmental organisations, workers unions and civil society groups; making use of, and in some cases, being challenged and subverted by alternative conceptualisations and informal systems of governance, entitlement and control.

⁴ Michel Foucault (1926-1984) was a French philosopher, social theorist and historian of ideas, whose critical studies of social institutions drew attention to the role of power, knowledge and discourse in society.

According to Sawyer (2004) 'critical anthropology attends to the culturally and historically specific formations emerging under globalization' and is thus well placed to analyse neoliberalism⁵ 'as an unstable process whose outcomes are far from certain' (p. 222). In Sawyer's work, neoliberalism is explored as both ideology and governing political-economic approach to national and international development. Sawyer's (2004) ethnographic analysis artfully explores how neoliberal reforms in Ecuador during the 1990s, particularly deregulation and liberalisation of the petrol mining industry, led to a crisis of governance, accountability and representation that spurred indigenous political resistance.

The field of political ecology, on the other hand, involves various attempts to link environmental issues with radical social studies (Adams, 2009, p. 197). Diverse and trans-disciplinary, scholarship in the field seeks to tie the logics, dynamics and patterns of economic change to the politics of environmental action and to actual ecological outcomes (Adams, 2009; Peet and Watts, 2004). Political ecologists incorporate a critical analysis of power and unequal relations between different actors to explain and interpret environmental outcomes, integrating ecological analysis with concern for social justice. (Bryant and Bailey, 1997; Zimmerer & Basset, 2003; Forsyth, 2003).

A synthesis of these radical scholarly perspectives is thus ventured throughout the study to provide a critical perspective on governing approaches to environmental management and corporate social responsibility in the Namaqualand coastal region.

2.2 Linking Environmental Governance, Development and Social (In)justice

As Hornborg (2003) argues, 'the age of fossil fuels has provided a minority of the world's population with an unprecedented source of power – in both a thermodynamic and political sense. But we are now beginning to realize that the combustion of fossil fuels has represented an illusory emancipation from land' (p. 243). Through imposing ecologically-ignorant modes of social organisation and resource use, narrow pursuit of 'economic' interest has turned the non-human environment into a limitless resource for linear industrialist processes of production, distribution and consumption (Peet, 1991; Pepper, 1993; Vlachou, 2004).

⁵ 'Neoliberalism' is a name given to the market-driven approach to economic and social policy based on neoclassical theories of economics that stresses the efficiency of private enterprise, liberalized trade and relatively open markets, and therefore seeks to maximize the role of the private sector in determining the political and economic priorities of the state. The term is most used by critics of neoliberalism; proponents refer to 'free market' economics, 'structural adjustment' and 'liberalisation'.

Hornborg (2003) thus proposes an alternative to capitalist economic accounting which treats critical social and environmental problems generated through industrial production as 'externalities' in order to 'reveal how the accumulation of money and technology in some areas of the world system occurs at the expense of the natural resources, environment and health of their peripheries.' (p.246)

Moreover, Cullinan (2010) argues that 'almost all of the "environmental crises" that threaten contemporary industrialised civilisation from climate change to the depletion of freshwater sources, are caused by ecologically unsustainable and harmful human practices.' (p.1) He suggests that 'one or the reasons why legal systems are failing to protect the Earth community is because they reflect the underlying belief that humans are separate from, and superior to, all other-than-human members of Earth whose primary role is to serve as "natural resources" for humans to consume' (Cullinan, 2010, p.1)

Cullinan (2010) thus advocates a new approach to law and governance, called 'earth jurisprudence', which would foster 'mutually beneficial relationships between humans and the other members of the Earth community', replacing governance systems that 'are designed to perpetuate human domination of Nature' (p. 2), which have been sustained by modernisation theory and the ideology of development.

2.3 Questioning the Ideology of Development

During the nineteenth century the concept of development was associated with a linear theory of progress, bound up with capitalism and Western cultural hegemony (Sachs, 1992; Crush, 1995; Escobar, 1995, 2004). Human societies, it was assumed, could all be located on a single civilisational trajectory, from origins in simple, primitive and savage social systems, to increasingly complex, large-scale, bureaucratically managed, and industrially sustained societies. This modernist ideology imagined the industrialising and urbanising state-governed modes of societal organisation of European countries to be at the forefront of an advancing historical process of human progress. This ideology, argues Adams (2009), was, throughout the nineteenth and twentieth centuries, spread through mercantilism and colonial imperialism.

After the Second World War, the United States of America took a lead role in shaping an international, 'post-colonial' developmental agenda. Whilst the Soviet Union had a competing vision for modernist society, it is the US 'free-market' neoliberal vision which has come to predominate since the end of the Cold War (Escobar, 1995; Tsing, 2005; Bond, 2000; Harvey 2007). According

to this vision, the ideal mode of social development involves a combination of urbanization, industrialisation, representative democracy and a governmental approach that enshrines the rights of private property, capital accumulation, and consumerism. (Sachs, 1992; Luke, 1997 Ferguson 2006).

During the Cold War era, the USA lead the way in establishing financial institutions, such as the International Monetary Fund (IMF) and World Bank, through which this development agenda could be pursued, and by offering 'developing nations' loans and AID 'donations' with directives attached promoting the US version of 'good governance'.

Failure of 'developing nations' to thus far meet development goals were, in the post- Cold War context, attributed to the incompetency and corruption of developing nation state governments; and to the misguided pursuit of expensive welfare programmes responsible for creating dependency among recipients populations, instead of 'empowering' them to become self-realising entrepreneurs in a deregulated market economy (Ferguson, 1999; Bond, 2000; Smith-Carrier & Bhuyan, 2010). Governments are thus primarily intended to establish the necessary legislation, infrastructure and institutions to make the expansion and consolidation of 'market forces' possible, and to enable corporations and aspiring entrepreneurs to fulfil their economic potential. (Ferguson 2006; Sawyer, 2004; Igoe and Brockington, 2007)

In the neoliberal imagination, the 'free market' can more efficiently and effectively allocate resources and drive development than the old model of the nation-state administrator. Yet a key irony of neoliberalism, according to Newell (2008) is that, 'contrary to narratives about state impotence, the architects of the contemporary global economy' have been assemblies of nation-states, particularly the EU, the US and Japan, now joined by the economic superpowers, China, India and Brazil (p. 1067).

Newell (2008) writes of these leading state governments: 'they are the agents that negotiated the trade treaties, created offshore finance, relinquished capital controls, restricted the power of unions and developed competitive strategies aimed at creating an attractive 'investment climate'' (p. 1067). These states have thus pursued an international political-economic agenda, which has effectively opened the way for corporate-led globalization, and instituted the role of the nation-state world-wide as 'regulator for', rather than 'regulator of' business.

2.4 Mainstream Sustainable Development

According to Escobar (1995), reality has been colonized by the development discourse to such an extent that those who wish to contest or resist its power have ‘to struggle for bits and pieces of freedom within it, in the hope that in the process a different reality could be constructed’ (p. 5). The idea of development, ‘and the idea of modernity that lies behind it, limit the extent to which alternative futures - of justice and a new international economic order –can be imagined’ (Escobar 2004 in Adams, 2009, p. 8).

According to Adams (2009), mainstream sustainable development⁶, is an ‘essentially reformist’ approach, which calls for a modification of current development practice, and not a radical shift in the goals and behaviour of powerful political and economic actors. Characterised by ‘market environmentalism’, ‘ecological modernisation’ and commitment to the ‘triple bottom line’ of social, environmental and economic sustainability, Adams argues proponents of mainstream sustainable development ‘hold that the world can literally grow out of global environmental and developmental problems, and consumption can be the engine through which sustainable development and livelihoods are to be achieved’ (Adams, 2009, p. 124).

Adams (2009) characterises the mainstreaming of ‘sustainability’ as integrating forms of ‘neopopulism’ and Western environmentalism into existing political and economic structures of societal organisation. Development practice is thus to be ‘greened’ in order to ensure its own sustainability. Capitalist forms of resource acquisition and utilisation; corporate control over systems of industrial production, trade, marketing and transportation are to be sustained; though these are to be more carefully managed according to ‘more technically sophisticated’ forms of accounting; enhanced technological efficiency; and the development of managerial systems able to assess, mitigate and, where possible, reduce, negative environmental impacts’ (Adams, 2009, p. 124-128).

Adams (2009) argues this version of more ‘sustainable’ development has successfully infused the mainstream of development rhetoric, if not so much achieved in practice, largely because it speaks the language of bureaucracies and politicians, and leaves the powerful position of corporations unchallenged. With promises of adjusting development policies and programmes to ensure the survival of humanity into perpetuity, and tweaking them to curb the worst excesses of industrial capitalism, the ‘juggernaut of development’ as politics- and business-as-usual can thus continue without addressing the ‘structural causes of poverty and environmental degradation’ that inhere in the pursuit of modernist development (Adams, 2009, p. 7).

⁶ As envisioned by the World Conservation Strategy (WWF, 1980), the Brundtland Report (1989) and the major international conferences at Rio (1992) and Johannesburg (2002).

2.5 Neoliberalisation of the Mining Industry

South Africa's industrial development over the last century has had at its core a Minerals Energy Complex (MEC), which has been established and maintained through the collaborative effort of the central government and private companies (Fine, 2008). Innes (1984) writes of the period following the granting of South African independence, 'South Africa transformed from an undeveloped chattel of imperialism into an aggressive imperialist power which exhibits many of the characteristics of a monopoly capitalist society' (p.241) Meanwhile, 'the economic and political strength which South African capitalism acquired through its monopoly transformation enabled the state to spread its influence throughout the whole of the southern African region during the 1960s and 1970s' (Innes, 1984, p.241).

In the 1980s, Fine (2008) writes, capital controls on the South African economy led to conglomeration across the economy and expansion of a huge and sophisticated financial system, which brought to power large South African conglomerate companies, such as the Anglo American Corporation. Owned and controlled by the Oppenheimer family, Anglo American diversified investments in gold mining into other mineral resources, as well as other industries, property, and finance.

Yet, the post-Apartheid context has seen MEC conglomerates pressing for 'liberalisation' of capital controls (Fine, 2008, p.3). South Africa's post-1994 macro-economic policies have thus facilitated the gradual disinvestment of conglomerates, which are seeking to globalise their investments and establish themselves as multinational corporations (.). Meanwhile, the government has sought to attract short-term capital inflows by way of compensation for conglomerate disinvestment; and to attempt to temper the worst excesses and consequences of this neoliberal transition (Fine, 2008, p. 4 and 7).

In his paper, '*Global Disconnect: Abjection and the Aftermath of Modernism*', Ferguson (2002) explores the socio-economic crisis left in the wake of mining industry contraction in Zambia during the 1970s. On gaining national independence, the Zambian copper mining industry became the stronghold of the national economy, revenues from which were intended to fuel the country's social and economic development, 'hooking citizens up into a national – and ultimately universal – grid of modernity' (p. 137). However these glorious 'expectations of modernity' were instead, by the mid 1970s, confronted with 'declining terms of trade, increasingly worked-out mines, and the crushing

burden of a debt crisis'. The nascent Zambian national economy thus underwent a 'profound contraction' (Ferguson, 2002, p.137).

Processes of urbanization, proletarianisation and industrialisation – imagined to be emblematic of the forward advance of modernisation – thus underwent a reversal, characterised by mass layoffs of mine workers, the depopulation of mining towns and the privatisation of a state-held mining company, with the rehiring of white, expatriate management, who had briefly been replaced by qualified black Zambians (Ferguson, 2002, p.137).

For many Zambians who had become enrolled in the copper-based modernisation project, the 'modernist story-line transformed in their lifetimes, from a marvellous promise to a cruel hoax.' (Ferguson, 2002, p. 137). The hope of entering into the path of financial flows and connectedness to a modern 'world society', with its promise of 'improved standards of living' and hitherto unimaginable opportunities for personal and social advancement; were thus curtailed by shifts of interests and strategies of trans-national investors, and instead, the country, like others on the continent, has been 'treated to a crash course in the most vicious aspects of free-market capitalism while being largely denied any of the benefits' (Smith, 1997, in Ferguson, 2002, p. 141).

Whilst copper mining continues within Zambia, and private companies continue to profit from the resource, the style of profitable extraction has become decidedly socially 'thin' (Ferguson, 1999). The idea that benefits from the mining industry should be used to develop the standards of living for the nation's wider populace – providing social goods such as electricity, housing, jobs, educational and welfare services – has been replaced by the need to attract capitalist investment on any terms, in order to compensate for declining terms of trade and escalating foreign debt.

Socially 'thick' modes of industrial development have thus been systematically disabled by a post-Cold War internationalised 'structural adjustment' agenda, which has empowered corporations and debtor nation-states and tied 'developing' country states into implementing neoliberal policies, at the expense of commitments to democratic accountability, to economic redistribution, to social welfare provision and the protection of social communities, both urban and rural; including their rights to land, livelihoods and natural resources; to education, good health and a safe environment.

As Ferguson (2005) highlights, it would be misleading to believe that the neoliberalisation of Africa has seen the abandonment of the continent by global capital, instead, it seems capital investment has become increasingly concentrated, and selectively territorialized (p. 378). The business of extractive industries, particularly mineral resource extraction, is booming. However, 'what is

noteworthy is the extent to which this economic investment has been concentrated in secured enclaves, often with no or very little benefit to the wider society' (Ferguson, 2005, p.378).

2.6 Neoliberal Governance and Democracy

Newell (2008) suggests that neoliberalisation of contemporary systems of governance has incurred a 'crisis of legitimacy', according to which there appears to be dwindling recourse for publics to hold increasingly powerful corporations accountable for their powerful influence over and detrimental impacts on social communities and the natural environment. Moreover, unlike the democratic nation-state, the supra-national private corporation need make no disguise of its mission of capital accumulation for its own sake, and for the exclusive benefit of its shareholders.

Swyngedouw (2005) mentions that 'governance-beyond-the-state' is certainly 'janus-faced' (p.1991). Whilst promising to be more inclusive and participatory and thus more genuinely democratic, flexible and situationally adaptive than established hierarchical and bureaucratic forms of state governance; in fact, he writes, it is not previously disenfranchised and marginalised social groups and individuals who are most likely to become 'empowered' by this process of 'de-statisation' of governance, but rather existing and new elite groups and private companies who are able to organise themselves into the informal, horizontally-organised and polycentric ensembles of power, characteristic of contemporary governance 'beyond the state' (Swyngedouw, 2005, p.1999).

Whilst, at least in theory, governments established according to the principles of representative democracy, are bound by their constitutions and formalised elective procedures to remain accountable to their citizenry; according to Swyngedouw (2005), a world in which state systems have been superseded or weakened by alternative organisations of power, might mean the loss of existing systems of popular representation, delegation and accountability, without substitute channels through which the majority of people can exercise political influence (Swyngedouw, 2005, p. 1991).

Indeed, Swyngedouw (2005) argues, the supposed 'withdrawal of the state' from the role of governance, might actually be interpreted as a technique for achieving neoliberal goals of privatization, deregulation and decentralisation of governance away from the nation-state (p. 1997); the up-scaling of governance to trans-national regulatory bodies and governing authorities favourable to the interests of corporate capitalism; and the downscaling of administrative government to 'local' and 'non-governmental' institutions and organisations.

Whilst proponents of neoliberalism believe policies such as privatization, deregulation, liberalization and decentralization will stabilize national economies and 'establish the conditions essential for democracy to flourish', Sawyer (2004) argues in her study of Ecuador's neoliberal transition, 'contrary to its intent, neoliberal changes provoked a crisis of governance and representation...As the state threatened to retract from its role, however theoretical, of protecting citizens and transnational business was given more independence, citizens felt that they had fewer channels through which to voice their concerns' (p. 93).

Sawyer (2004) argues that there is a 'fundamental inequality inherent in processes of transnational capital accumulation' (p.116). Whilst increasing oil production in Ecuador was supposed to offer the 'economic, political and social stability of a "modern" nation, bringing the country 'on par with those other liberalizing-globalizing economies around the world...it was the bodies and lives of subaltern subjects that enabled transnational capitalists to expand their profit margin. Comparative advantage included not simply enchanting foreign capital with attractive contracts. It similarly meant providing cheap natural resources, scant industrial regulations, cheap labour and a submissive population that would not protest' (Sawyer, 2004, p. 116).

2.7 Corporate Social Responsibility

On the other hand, the 'crisis of legitimacy' or 'democratic deficit' (Swyngedouw, 2005) generated through neoliberal governance has led to a counter call for corporations themselves to curb their own exploitative and harmful excesses and to commit to minimum social and environmental responsibility standards. Many large and powerful trans-national corporations have thus adopted environmental management systems and report adherence to the internationally recognised ISO 14001 standard⁷, to reassure critics and investors that they have moved beyond minimalist compliance with environmental regulations (Mason 2005).

Meanwhile, concern for human rights, social development and environmental custodianship have been incorporated into a framework for voluntary corporate compliance, known as corporate social

⁷ As with other ISO standards, the ISO 14001 environmental management standard is voluntary, with its main aim to assist companies in continually improving their environmental performance, whilst complying with any applicable legislation.

responsibility (CSR) (Murphy and Bendell, 1997; Arts 2002; Ite, 2004), embodied in guidelines such as the Global Reporting Initiative (GRI).⁸

Hamann and Acutt (2003) write that 'Corporate Social Responsibility' (CSR) 'is seen to express a new relationship between private capital and the public interest. The notion of partnerships is based on the belief in common interests and 'win-win solutions' (p. 256). Whilst governments have been required to relinquish regulatory control of private business and the financial sector, Hamann and Acutt (2003) argue, 'in its place was the notion of business as a partner in sustainable development, on par with all other 'stakeholders''(p. 256). Meanwhile, 'large companies and business associations are arguing for CSR on the basis of the so-called 'business case': a more responsible, strategic approach to environmental management, labour relations and community development should lead to better relationships and improved reputation, and hence greater profits' (Hamann and Acutt, 2003, p. 256).

Godden et al. (2008) argue that a recent 'world boom' in resource extraction offers 'unprecedented opportunities for indigenous and local peoples to build wealth and promote sustainable social and economic development' (p.1). Godden et al. (2008) mention key opportunities for 'unlocking the social and economic potential of resource booms for indigenous and local peoples'(Godden et al., 2008, p.2), including community consultation, equity and benefit-sharing agreements and investment of wealth generated from mining in the development of local economies, education, employment and training, and upgrade of local infrastructure.

These arrangements agreed between indigenous and local peoples, mining companies and relevant government authorities are interpreted as constituting a 'Third Space' beyond the dichotomies of public/private, state/business and society/economy, in which the interests of historical marginalised and excluded groups can be 'accommodated' in the resource extraction industry (Godden et al., 2008, p. 28) and local socio-economic development can be achieved through attracting corporate investment.

According to Godden et al. (2008) postcolonial governments have a crucial role to play in enfranchising historically disadvantaged and excluded peoples through recognising and enforcing

⁸ In 2009, the Global Reporting Initiative (GRI) was reportedly the most widely used reporting framework for performance on human rights, labour, environmental, anti-corruption, and other corporate citizenship issues. The GRI is used by more than 1,500 organisations from 60 countries to produce sustainability reports, including corporate businesses, public agencies, smaller enterprises, non-governmental organisations, industry groups and others. The GRI includes 'Sustainability reporting', whereby an organization publicly communicates their economic, environmental, and social performance. GRI seeks to make sustainability reporting by all organizations as routine as, and comparable to, financial reporting. (http://en.wikipedia.org/wiki/Global_Reporting_Initiative).

their human rights, as well as their rights to land and resources, which have been denied by racist and colonising political regimes. They argue that CSR needs to be combined with supportive government legislation, highlighting, 'law provides an important means of formalising relationships that have been forged at an economic and policy level – but also as an instrument that defines what those relationships are, and how they are to be managed' (Godden et al., 2008, p. 29).

Referring to recent government legislation in South Africa and the 'landmark' *Richtersveld* Constitutional Court decision⁹, Godden et al. (2008) claim 'preconceived ideas about property, discrimination, dispossession, communities and cultural identities in South Africa' are being significantly 'reworked', to the benefit of impoverished communities (p. 13).

Hamann and Acutt (2008), however, are sceptical that this 'Third Space' offers a real transformation of unequal and hierarchical patterns of governance. They argue, 'in a world that is more unequal with a small number of trans-national corporations (TNCs) dominating each sector and exerting tremendous influence on governments, this concept of 'partnership and stakeholders' perpetuates the myth that there is a collective endeavour, and that all players are equal and conflicts of interest can be resolved by roundtables seeking consensus' (Hamann and Acutt, 2008, p. 257).

Where governmental regulation is weak and there is a deficit of institutionalised democratic recourses for publics, particularly for communities negatively impacted by corporate behaviour, 'where corporations perceive 'trade-offs' between fulfilling social and environmental responsibilities and sustaining economic efficiency, the temptation will be to give the impression of being responsible, perhaps making small, feasible changes to how things work (including cosmetic changes), so that demands for more significant changes can be precluded' (Hamann and Acutt, 2008, p. 259).

Certainly, many companies seek to demonstrate their green credentials through mentioning their ISO14001 certification. Yet with the ISO standards, organizations are responsible for setting their own targets and performance measures, with the standard serving to assist them in meeting objectives and goals and the subsequent monitoring and measurement of these. This means that two organizations that have completely different measures and standards of environmental performance, can both comply with ISO 14001 requirements (Federal Facilities Council Report, 1999).

⁹ Republic of South Africa, 2003, 'Alexkor Ltd and the Government of the Republic of South Africa v Richtersveld Community, (12) BCLR 1301 (CC) (Richtersveld). This case shall be discussed in detail in chapter 6 of this thesis.

Newell (2008) writes, 'Corporate Social Responsibility (CSR) is ultimately and inherently a product of the neoliberal political economy from which it emerged, and which it aims to legitimate and advance, reproducing its modalities, technologies of governance, and failings.' The new corporate responsibility hegemony casts companies that commit to improving on their poor records of social responsibility and environmental sustainability in the places where they operate as 'good corporate citizens', willing to do more than is necessary to win public appraisal and trust. These overtures are however, essentially reformist, based upon and rooted in historical relations of colonialist economic expansion and state formation.

The CSR agenda from this perspective is merely intended to ameliorate the adverse sociological and environmental impacts of extractive industry and obtain a 'social license to operate' for mining companies. By itself the CSR agenda, devised and implemented by mining companies themselves, has at its foundation the economic interest of the companies, and neither respect nor concern for the social, cultural, economic and environmental rights and well-being of local communities and indigenous peoples. CSR could thus be seen as a part of a hegemonic consensus about sustainable development that is enabling companies to get away with *seeming* to change their practice and approach rather than radically transforming their role, (ab)use of local communities and natural systems where they operate.

Cullinan's (2010) proposal for 'earth jurisprudence' conceptualises a much stronger role for legal and democratic participation in the shift from consumerist to sustainable society. The first step, he argues, is to 'expose the limitations of existing regulatory systems and how corporations have shaped the law so that it allows commercial interests to override the interests of local communities and facilitates the lawful degradation of Nature' (p. 5). Cullinan (2010) further suggests that local communities should be supported in moving 'beyond simply reacting to each attack on their health and wellbeing' and instead empowered 'to use the law proactively to support the establishment of sustainable, local economies' (Cullinan, 2010, p.5).

Cognisant of the fact that community wellbeing and sustainable livelihood depends upon ecological integrity and functioning, scholars and activists could thus support communities, government agencies and NGOs to a) (re)assert community rights to prohibit activities harmful to their wellbeing; (b) recognise rights for natural communities; (c) enable local governments and individuals to sue for damages to be used for the restoration of any damage to ecological communities; and (d) challenge corporations and governments who jeopardise the rights of human and natural communities in the pursuit of economic interest.

2.8 Environmental Governance and Social (In)justice in South Africa

With high rates of unemployment in South Africa¹⁰ and millions suffering income-poverty (Leatte, 2006), landlessness and restricted access to vital rights and resources (Cousins, 1997; Wisborg and Rohde, 2004; Lebert and Rohde, 2007; Benjaminsen et al. 2008; Bregman, 2010), it is critical that environmental governance and socio-economic development be transformed to re-embed economic enterprise within systems of democratic accountability, and environmental sustainability.

Whilst 'sustainability' has been conceived of as a balancing act between social, environmental and economic interests, as the National Framework for Sustainable Development (DEAT, 2008) in suggests, 'in South Africa, as in the rest of the world, the situation of continuing inequality, accompanied by a deteriorating resource base, makes it imperative for us to go beyond thinking in terms of trade-offs and the simplicity of the 'triple bottom line' (p. 14).

The NFSD recognises that 'social, economic and ecosystem factors are embedded within each other, and are underpinned by our systems of governance', and argues that, as preconditions to meeting economic and social development objectives, 'we must acknowledge and emphasise that there are non-negotiable ecological thresholds; that we need to maintain our stock of natural capital over time; and that we must employ the precautionary principle in this approach' (DEAT, 2008).

A number of governmental reports have indicated that South Africa is experiencing environmental crisis¹¹. According to the Southern African Millennium Assessment (2004) , 'the natural resources which contribute most to human livelihoods are declining in southern Africa...and many communities are facing increasing vulnerability due to changes in their environment, loss of natural resources and exposure to environmental hazards' (Friedmann and King, 2008 p. 32). Meanwhile, Friedmann and King (2008) highlight that the country is experiencing deteriorating air and water quality, with fresh water resources declining in quantity and quality. Almost all exploitable water sources have been tapped; groundwater reserves are being depleted faster than they can recharge, and freshwater flows are dwindling (Friedman and King, 2008, p.32).

¹⁰ In 2003, the official unemployment rate reached 37%; though this figure does not reflect those who could be considered 'underemployed'. (http://www.indexmundi.com/south_africa/unemployment_rate.html accessed 13/07/2011).

¹¹ According to a 2006 State of the Environment Report, South Africa's rich biodiversity is in a state of decline, as is critical ecosystem functioning. Almost 10% of the country's birds and frogs and 20% of mammals are threatened with extinction (DEAT, 2006). Meanwhile, 34% of South Africa's terrestrial ecosystems are classified as threatened in the 2004 National Spatial Biodiversity Assessment (DEAT, 2004). Marine ecosystems are also reportedly endangered by over-fishing, where twenty key commercial fish species have been overexploited to the point of population collapse. (Friedmann and King, 2008, p. 34).

Friedmann and King (2008) argue that this environmental crisis 'can unequivocally be said to be as a result of growing human consumption driven by a continually rising population and existing developmental models. The impacts are driven by factors such as overconsumption, overharvesting, and unsustainable development, trade, habitat fragmentation, land transformation, pollution and disturbance. Collectively, they are causing an overall and rapid decline in the quality of our environment and its life-sustaining ecosystems' (Friedman and King, 2008, pg. 35).

Crucially, for South Africa, Friedmann and King (2008) emphasise that the industrially strong national economy has been centred around a minerals-energy complex, dependent on a large but non-renewable supply of coal. Although coal is the most emissions intensive of all the fossil fuels, almost all of the nation's electricity in 2004 came from coal-fired power stations (Winkler and Zipplies, 2008, p. 117). 'Historically, South Africa's economic and industrial growth was fed by the energy-intensive extractive industries and the early 20th century saw the development of the electricity-supply industry to feed the booming mining sector. As the minerals-energy complex continued to shape the economy, there was an expansion in energy-intensive sectors' (Winkler and Zipplies, 2008, p. 116). In 1994, energy-supply industries and industrial energy use were responsible for 59% of all South Africa's greenhouse gas emissions (Winkler and Zipplies, 2008, p. 116).

According to Bond (2008) South Africa has witnessed GDP growth during the 2000s, but this does not take into account the depletion of non-renewable resources. If this factor plus pollution were considered, he argues, South Africa would have a net *negative* per person rate of national wealth accumulation¹².

Although the NFSD indicates that South Africa's *per capita* ecological footprint is currently well beyond the carrying capacity of the earth's ecosystems to sustain,¹³ this national average disguises the stark inequalities between upper and middle-class populations and millions of resource- and income-poor groups, who have been historically disenfranchised and excluded from wealth and privilege enjoyed by energy and resource-hungry lifestyles of the national elite.

Whilst wealthy consumers, provisioned by governments and corporations, are living well beyond the means of the earth's life-support systems to sustain; those suffering the effects of pollution,

¹² 'South Africa would have a net *negative* per person rate of national wealth accumulation (of at least \$2 per year), according to even the World Bank' (Bond, 2008, online, accessed 21/07/2011).

¹³ According to the NFSD (2008), using the World Wildlife Fund (WWF) estimate which gives the global "fair share" of 1,8 hectares per person 'if we are all to live within the carrying capacity of the planet's ecosystems', the South African average of 4.02 hectares 'means that we would need two planets if everyone lived like the average South African' (p. 16).

environmental degradation and resource depletion, are compelled to 'adapt' through eking out a living on the edges of overcrowded urban settlements or in degraded and impoverished rural areas (Harvey, 1990; Davis, 2004, 2006) tied into industrial systems of production and consumption, 'without chance of access to a share of global wealth'(Adams, 2009, p. 185). Meanwhile, industrial society continues to mine non-renewable resources, commodifying natural, human and immaterial resources to generate profit, and exercising hegemonic control over how the world's landscapes should be divided up, utilised and managed.

As Du Plessis (2008) highlights, 'wealthy people often control access to ecosystem services, and because of their higher levels of disposable income, are better buffered from changes in the availability of those services...By contrast, the poor often lack choices and are highly vulnerable to ecosystem changes that result in famine, drought or floods...Degradation affects their very survival' (p. 24). Capitalist political-economic organisation works to 'reward those in a structural position to profit from it, but only at the expense of others elsewhere' (Adams, 2009, p. 185). Indeed, Low and Gleeson (1998) argue that unequal exposure to environmental risks and other 'externalities' of industrial production falls along contours of class and race, indicating the existence of 'environmental racism'.

Furthermore, whilst a key strategy for meeting mainstream national and international ecological conservation objectives is through the expansion of conservation parks; critics argue that this approach can be experienced as a form of environmental apartheid, where protected areas are imposed on local and indigenous communities, who in many cases lose customary rights to land and resources (Cronon, 1995; Brockington, 2002; West, 2006; Benjaminsen et al., 2008). As Magome and Murombedzi (2003) have highlighted, 'game parks' and 'nature reserves' were historically imposed on colonial subjects by European colonisers, who had little respect for pre-existing modes of natural resource use, farming and hunting. Traditional forms of livelihood and ways of engaging with the land were often dismissed as primitive or prohibited as harmful.

European forms of social and economic development, urbanisation, industrialisation and commercial farming were promoted as the desirable path of 'development'. Meanwhile sections of 'nature' were cordoned off as 'wilderness reserves', from which humans were imagined to be separate, even while increasingly elaborate forms of scientific and managerial control were devised to maintain them (Cronon, 1995; Scott, 1998; Adams and Mulligan, 2003) . Nature reserves and game parks thus continued to be recreational areas for a governing elite during the Apartheid era in southern Africa (Magome and Murombedzi (2003).

Furthermore, Chapin (2004) highlights that calls in the 1980s and early 1990s among international conservation organisations for a 'democratization' of conservation and support for 'community-based' forms of 'natural resource management', has since fallen swiftly into the background, in favour of ambitious 'eco-region'-wide, 'strictly science-based' modes of conservation. Indeed, Hutton et al. (2005) suggest that we are seeing a 'back to the barriers' approach to nature conservation, which has meant a return to top-down, undemocratic and locally unaccountable approaches to environmental governance. It is this vision of 'wild Africa', without (local) people, that is receiving the support of influential conservationists, nationally and internationally. And it is the private property approach that is being pursued to bring areas under exclusive ownership, fence them, and where necessary (re)introduce selected wildlife populations (Igoe and Brockington, 2007).

Contrary to Bryant and Bailey's (1997) assertion that 'the environment in the Third World is largely a livelihood issue' (p. 159), an integrated understanding of the root causes of continuing environmental deterioration, inequality and poverty in South Africa, requires a critical perspective on historical and contemporary forms of political and economic decision-making and systems of organisation that thwart attempts to achieve democratic, equitable and environmentally sustainable governance and socio-economic development.

Chapter 3: Post-1994, A New direction in governance for South Africa?

The ANC Government, elected by South Africa's first democratic election in 1994, inherited a legacy of environmentally unsustainable industrial development, as well as a national society marked by the racist population policies of the Apartheid regime. The democratic government thus developed a new legislative and policy framework which promised to address this legacy and achieve a more sustainable and socially equitable form of national development.

The chapter thus introduces key legislation and policy relating to environmental management, coastal governance, land reform and reform of the mining industry, which have a bearing on systems of governance, resource use and development in the Namaqualand coastal region, post-1994. The promise and potential of new legislative and policy frameworks to achieve substantial social and environmental rights that have hitherto been denied is emphasised; though it is imperative to consider how these policy approaches are translating into practice. The chapter thus includes discussion on some of the key obstacles and challenges to achieving greater social equity, redress of historic discrimination, enhanced democratic participation and environmentally sustainable forms of socio-economic development through a legislative and policy-based approach.

3.1 The Constitution and NEMA

According to section 24 of the new Constitution, every person is 'afforded with the right to an environment which is not harmful to their health and well-being'. Not only is every person entitled to enjoy this right, but the Constitution also places a constitutional mandate on Government to protect the environment through reasonable legislative and other measures that prevent pollution, ecological degradation, promote conservation and secure ecological sustainable development and use of natural resources while promoting justifiable economic and social development (RSA Constitution, 108 of 1996, section 24).

According to Clause 24 of the South African Bill of Rights, everyone has the right: a) to an environment that is not harmful to their health and well-being; and b) 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' (Bill of Rights, 1996, section 24). The National

Environmental Management Act (NEMA, Act 107 of 1998) was introduced to institutionalise this Constitutional commitment to environmental entitlement.

According to the preamble of NEMA:

- Everyone has the right to an environment that is not harmful to his or her health or well-being;
- The State must respect, protect, promote and fulfil the social, economic and environmental rights of everyone and strive to meet the basic needs of previously disadvantaged communities;
- Inequality in the distribution of wealth and resources, and the resultant poverty, are among the important causes as well as the results of environmentally harmful practices;
- Sustainable development requires the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions to ensure that development serves present and future generations; and
- Everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures (RSA, NEMA, 1998, preamble).

Intended to ensure environmental management policies are integrated into the mandate of all organs of state, NEMA is regarded as the cornerstone of South Africa's sustainability planning policies (Friedmann and King, 2008, p. 37), the importance of which is emphasised by van der Linde and Feris (2010), who argue that 'the National Environmental Management Act can be described as one of the most progressive developments in environmental norm setting which guides individuals, institutions and government in environmental decision making' (p. 5). The preamble of NEMA outlined that, 'the law should establish procedures and institutions to facilitate and promote public participation in environmental governance; that the law should be enforced by the State and that the law should facilitate the enforcement of environmental laws by civil society'. NEMA thus provides for a range of key elements such as environmental principles, co-operative governance, duty of care, enforcement mechanisms and integrated environmental management.

Meanwhile, the Act elaborates on what is meant by environmental justice and social equity. According to the Principles of NEMA, 'Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons' (section 4. c); and 'Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human

well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination (section 4.d).

Out of NEMA have come a selection of specific laws, including: the Protected Areas Act (57 of 2003), the Biodiversity Act (10 of 2004), the Air Quality Act (39 of 2004), the Waste Act (59 of 2008), the Integrated Coastal Management Act (24 of 2008), and the Water Act (36 of 1998).

3.2 Protected Areas and Conservation of Biodiversity

The Protected Areas Act (PAA, 57 of 2003) provides for 'the protection and conservation of ecologically viable areas representative of the country's biological diversity, its natural landscapes and seascapes. It further provides for the establishment of a national register of protected areas, the management of these areas, co-operative governance, public participation and matters related to protected areas'. The Act makes provision for the declaration and management of protected areas which will form a nationally representative network of protected areas on state, private and communal land, in order to manage and conserve biodiversity and preserve the 'ecological character' of such areas (Objectives of the Act, sections a-d). The Act promotes 'sustainable utilisation of protected areas for the benefit of people', and 'participation of local communities in protected areas where appropriate' (sections e- f).

Meanwhile, the National Biodiversity Act (NBA, 10 of 2004) further promotes the sustainable management and conservation of biological diversity, outlining that indigenous biological resources must be used in a 'sustainable manner'. The Act defines ecological sustainability as use of a resource in a way and rate that (a) would not lead to its long-term decline; (b) would not disrupt the ecological integrity of the ecosystem in which it occurs; and (c) would ensure its continued use to meet the needs and aspirations of present and future generations of people (NBA, 2004, 1. definitions). Moreover, the National biodiversity Institute established by the Act is empowered to 'coordinate and implement programmes for the rehabilitation of ecosystems' (11. m.i) and to coordinate programmes to involve civil society in: the conservation and sustainable use of indigenous biological resources; and the rehabilitation of ecosystems' (11. n. i & ii).

According to the 2004 National Spatial Biodiversity Assessment, the current national system of protected areas and conservation areas does not afford sufficient protection to the majority of biomes and marine bioregions. The National Protected Area Expansion Strategy (2007) mentions that 'only four of the 11 biomes have more than their PA [Protected Area] target represented in the National PAS [Protected Area Strategy]. Similarly, only 19 (43%) of the vegetation groups and 141

(34%) of the vegetation types have their protected area (PA) target met within the National PAS (p. 6).

The National Biodiversity Strategy and Action Plan (DEAT, NBSAP, 2005), and the National Biodiversity Framework (DEAT, NBF, 2007) thus reflect the intent of Government to 'expand, consolidate and/or rationalise the protected area (system) through a range of implementation tools, focusing on priority areas for representation and persistence of biodiversity' (NPAES, 2007, p. 6). The 2007 National Protected Area Expansion Strategy (NPAES) proposes that, in order 'to meet the country's international and national obligations and commitments to the expansion of its National PAS, nearly 30 000 km² of terrestrial PAs will need to be incorporated into the National PAS by 2012, and nearly 120 000 km² by 2028' (DEAT & SANBI, NPAES, 2007, p.7). Two 'preferred mechanisms' for achieving this goal were identified: 1) For public land, the declaration of available, under-utilised and strategic parcels of public land in concordance with the relevant legal requirements for disposal of such land; and 2) For private land, contractual agreements with the affected landowners (p. 7).

Critics of this protected area expansion policy have highlighted the need to redress a historical legacy in which conservation agendas and exclusive access game reserves were imposed on rural communities, who were thus deprived of their right to derive a livelihood from the use of natural resources, whilst experiencing few of the benefits of protected areas (e.g. Murombedzi, 2003; Benjaminsen et al., 2008). Benjaminsen et al. (2006) highlight, in reference to Namaqualand, in view of a history of racial and social injustice, it is ethically problematic to privilege conservation of a maximum level of biodiversity and one particular perception of the ideal landscape at the expense of livelihood security and poverty alleviation.

Cognisant of this legacy, the National Protected Areas Act makes provision for derivation of a broad range of benefits from National Parks, including, 'spiritual, scientific, educational, recreational and tourism opportunities which are environmentally compatible; and contribution to economic development, where feasible' (PAA, 2003, 20. c & d). In the case of declaration of nature reserves, the Act further recognises the need 'to provide for a sustainable flow of natural products and services to meet the needs of a local community; to enable the continuation of such traditional consumptive uses as are sustainable; or to provide for nature-based recreation and tourism opportunities' (PAA, 2003, 23, c-e).

3.3 Integrated and Sustainable Coastal Management

The new Constitution and a growing awareness of the need for sustainable coastal development provided a 'positive climate for promoting effective coastal management in the interests of all South Africans' (DEAT, 1998). The 1998 government Green Paper, 'Towards Sustainable Coastal Development' proclaimed, 'For the first time in our history, the transition to a democratic Government in 1994 allowed all South Africans to enjoy equal rights of access to and enjoyment of the coast' (DEAT, 1998)¹⁴. The 2000 White paper for Sustainable Coastal Development further emphasised, 'in the past, coastal benefits were enjoyed only by a privileged few in South Africa. Proactive facilitation of sustainable coastal development projects along the coast is essential to begin to address the great inequalities of our past' (DEAT, 2000 White Paper, section 2.2.2).

The 2000 White Paper heralded a new government approach to marine and coastal governance that would be accountable to the needs and interests of coastal communities, ecologically sustainable and integrative, with the various government departments involved in marine coastal management working together with resource users and coastal communities to reach an equitable, accountable and sustainable form of environmental governance and socio-economic development.

The White Paper mentioned that 'harnessing and sustaining the development potential of our coast will require a significant change in thinking about how to plan and manage the coastal development process' (DEAT, 2000, White Paper, section 2.2.2). According to the White Paper, 'the interdependence between users and uses of coastal services requires a dedicated, co-ordinated and integrated approach to coastal management'. Such an approach will help to maintain the health of coastal ecosystems and the flow of services upon which coastal communities depend. It is only in this way that the full potential of coastal ecosystems will be realised and sustained (DEAT, 2000).

The Integrated Coastal Management Act (ICMA, 24 of 2008), which was finally promulgated in 2008, marks a culmination of this change in policy focus towards a more democratic and environmentally sustainable system of integrated coastal governance within the coastal zone. According to the preamble to the Act, 'whereas much of the rich natural heritage of our coastal zone is being squandered by overuse, degradation and inappropriate management'; and 'whereas the economic, social and environmental benefits of the coastal zone have been distributed unfairly in the past'; ICMA (2008) states the Government's intention to retain the coast 'as a national asset', with public rights to access and benefit from the many opportunities provided by coastal resources.

¹⁴ The 2000 White Paper contains substantial changes from the initial 1998 Green Paper. Thus the two are referred to separately.

This involves preserving, protecting and enhancing 'the status of coastal public property as being held in trust by the state on behalf of all South Africans, including future generations' and ensuring that the development and use of natural resources within the coastal zone is 'socially and economically justifiable and ecologically sustainable' (ICMA, 2008, preamble). Management of coastal public property and coastal resources, is thus to be according to the 'interests of the whole community' of South Africa. ICMA outlines that this 'means the collective interests of the community' determined by:

- a) prioritising the collective interests in coastal public property of all persons living in the Republic over the interests of a particular group or sector of society;
- b) adopting a long-term perspective that takes into account the interests of future generations in inheriting coastal public property and a coastal environment characterised by healthy and productive ecosystems and economic activities that are ecologically and socially sustainable; and
- c) taking into account the interests of other living organisms that are dependent on the coastal environment (ICMA, 2008, 1. definitions).

However, the pro-democratic move to 'opening up access' to historically excluded users and transitioning to a more popularly accountable, inclusive and participatory approach to coastal governance has in practice been tempered by a reluctance to shift away from a highly centralised regulatory approach, which gives priority to large-scale commercial industry, private land ownership and a natural science-based, single stock assessment approach to marine management.

As a 2006 report on the '*Biological, Social and economic impact of rights allocation in the BCLME Region*'¹⁵ highlights, the South African Government has attempted to retain tight regulatory control over every facet of commercial and artisanal fishing sectors, so that no fishing is permitted without governmental authorisation (EnviroFish, 2006, p. 3). This has been deemed necessary to halt over-fishing and depletion of fish stocks, and to ensure the 'optimum utilisation' and 'sustainable development of marine and living resources', balancing ecological conservation with the objectives of 'economic growth, human resources development, capacity building within fisheries and mariculture branches and employment creation' (EnviroFish, 2006, p. 3)¹⁶.

¹⁵ Benguela Current Large Marine Ecosystem, spanning the West coasts of South Africa, Namibia and Angola.

¹⁶ In reference to the Marine Living Resources Act (MLRA, 18 of 1998) and the General Fishery Policy, (DEAT, 2005).

The National Government, through the Department of Agriculture Forestry and Fisheries (DAFF)¹⁷, thus reserves the right to determine how rights of access to, use and sale of marine and living resources will be allocated, in a way strikes a 'sound ecological balance, consistent with the development objectives of national government' (EnviroFish, 2006, p. 3).

As according the FAO's Code of Conduct for Responsible Fisheries, South Africa's governance approach assumes, 'access must be limited to prevent over-exploitation resulting from open access...Closed access and regulated fisheries allow for effective management of natural resources exploited by certain persons. Where resources are held in trust by the government on behalf of citizens of the country, those privileged enough to be authorised to exploit fish stocks are able to account to regulating authorities how, much harvesting [they are doing] and at what profit.' (Envirofish, 2006, p.2, quoting the FAO Code of Conduct for Responsible Fisheries).

Whilst the White Paper for Sustainable Coastal Development (2000) committed the government to the alleviation of coastal poverty 'through proactive coastal development initiatives that generate sustainable livelihood options' and promotion of 'diversity, vitality and long-term viability of coastal economies and activities, giving preference to those that are distinctly coastal or dependent on a coastal location' (DEAT, 2000, section 7.2); in fact the governing approach has focused predominantly on ensuring the 'significant contribution' of commercial fisheries towards Gross Domestic Product (GDP), and their role as industrial sector employers, can be sustained.

Environmental sustainability has been interpreted as the need to manage, mitigate and reduce adverse ecological impacts and over-fishing of commercial fish stocks, through, amongst others, restricting the amount of allocated fishing quotas and designating Protected Areas (PA's) where marine harvesting can be forbidden or strictly limited.

This is despite South Africa's pledge to implement the SADC Protocol on Fisheries (2003), which committed the parties to promoting and enhancing food security, generating economic opportunities and safeguarding the livelihood of fishing communities; and to alleviating poverty of coastal communities in a way that ensures sustainable utilisation of renewable resources (Cullinan et al., 2005, p. 3-5).

The SADC Protocol on Fisheries commits the South African Government to, *inter alia*, 'develop and nurture small-scale commercial fisheries and optimise the economic and social benefits thereof; take measures to facilitate the provision of physical and social infrastructures and support services to

¹⁷ Previously through Marine and Coastal Management (MCM), a sub-section of the Department of Environmental Affairs and Tourism (DEAT).

develop artisanal, subsistence and small scale fisheries; and to involve and consult these fishers in the control and management of their fishing and related activities' (Cullinan et al., 2005, p. 3-5).

Yet, Cullinan et al. (2005) highlighted that, though a government Task Group¹⁸ recommended that a small-scale/artisanal fishery policy be developed, the South African government had yet to develop a legal and institutional framework that would recognise and support small-scale fisheries. The government has since drafted a small-scale fishery policy (DAFF, 2010), though this has yet to be promulgated. This has meant no special legal provisions have existed to protect and support small-scale commercial fishers (Cullinan et al., 2005, p. iii).

Furthermore, a 2008 study of small-scale fishery management in South Africa, on behalf of the Coastal and Marine Committee's National Environmental Advisory Forum, recommended that 'current institutional arrangements are not conducive to integrated fisheries and coastal zone management', and that 'national, provincial and local government institutional structures need to coordinate their activities', through adopting a 'holistic and integrated approach', which engages small-scale fishers in key decision-making processes that will determine their livelihood options (EEU, 2008, p. 3-4).

It is only through realising the inter-connections between factors such as poverty, unemployment, food insecurity and resource-depletion; and facilitating the participation and collaboration of those who have historically been excluded from systems of marine and coastal governance, that complementary livelihoods can be developed, which satisfy criteria for social, economic and ecological sustainability.

3.4 Land Reform

The revolutionary voice of the ANC pre-1994 politicised land, making it a key symbol of dignity, freedom and hope. In the public imagination, substantial land reform would lead to an end of poverty, racial oppression and inequality in South Africa (Hall, 2009). The position of the ANC in 1994 was, 'Land is the most basic need for rural dwellers. Apartheid policies pushed millions of black South Africans into overcrowded and impoverished reserves, homelands and townships. In addition, capital-intensive agricultural policies led to the large-scale eviction of farm dwellers from their land

¹⁸ The Subsistence Fisheries Task Group Report ("SFTG Report") recommended the creation of a small-scale fisheries sector in order to cater for those fishers who did not fit the subsistence criteria, who wished to gain access to commercial fishing rights but would operate at the lower end of the commercial fishing spectrum. (Cullinan et al., 2005, p. 12).

and homes...Only a tiny proportion of black people can afford land on the free market.’ (ANC, 1994, 19, in Hall, ed., 2009, p. 1).

The apartheid legacies of dispossession and poverty were addressed through a legislative framework which sought to formalise informal and traditional systems of land tenure; to redistribute land to the landless and those confined by policies such as the Natives Land Act¹⁹ to overcrowded ‘homelands’; and to restore land or provide compensation for those whose land rights were denied through racist government policies. The three-pronged government approach included, ‘fostering the conditions that facilitate equitable access to land’ through land redistribution; ‘provision of tenure security or comparable redress to those whose tenure is legally insecure’, through tenure reform; and ‘restoration of land rights or equitable redress’ through restitution (Constitution, Act 108 of 1996, section 25 (5-7)).

The promise of the new government was to radically transform patterns of land ownership and land use in a way that would be pro-poor, and supportive of rural communities in meeting their living from the land (May and Lahiff, 2007; Lebert and Rohde, 2007; Ntsebeza and Hall, 2007). The target was set at 30% of agricultural land to be redistributed to black South Africans.

However, as of 2008, around only 4% of white-owned agricultural land had been redistributed through all aspects of land reform combined (Hall, ed., 2009, p. 2). Whilst approximately one thousand land redistribution projects had achieved the transfer of 2.2 million hectares of land through land redistribution by July 2006; only one million hectares had been transferred through land restitution. Moreover, as Lahiff (2008) highlights, much of this land actually remains incorporated into nature reserves and state forests, and, in terms of restitution agreements between claimants and the state, is not accessible for direct use by the restored owners (p. 4).

Usually land redistribution has taken the form of a ‘willing-buyer, willing-seller’ agreement, where the Land Commission negotiates purchase of a farm the owner is willing to sell at the going market price. This land is then redistributed to large groups, which form a Community Property Association²⁰ or other legal entity to own and manage the land jointly. Alternatives have included part-ownership through for instance equity sharing arrangements on commercial farms; or state ownership where a Municipality holds the land in trust for community use as a commonage pasture.

¹⁹ The Natives Land Act 9, 1913, prevented African peoples from purchasing non-agricultural land, and confined them to historic or traditional lands, thereby reinforcing the exclusion of African peoples from the more commercially-oriented sectors, and placing the bulk of land in white ownership. (Godden et al., 2008, p. 11).

²⁰ The Communal Property Association (CPA) is a juristic person formed by a group, in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution (Communal Property Act, 28 of 1996: Preamble).

Critics have blamed a 'minimalist' approach to land reform for the disappointing performance of government (SPP, 2004; May and Lahiff, 2007; Hall 2009). Due to the 'Property Clause' in the new Constitution, the powers of the government to expropriate land from existing land owners; limits right of restitution to only those cases occurring after 1913; and ensures a market-based programme is pursued to achieve land redistribution (Cousins, 1997). According to the organisation the Surplus People's Project (SPP), this is despite a 'broad-based consensus within society that the current market based land reform strategy would not resolve the agrarian question in our society. The most significant impediments include property relations (willing buyer, willing seller approach) and the limited role of the state' (SPP, 2004, p.4).

Lahiff (2008) highlights, 'the combination of a private property regime –modelled on the prevailing system of freehold in South Africa – and group ownership creates multiple tensions, which to date have barely been acknowledged in South African policy debates'. Whilst the Department of Land Affairs facilitates the establishment of Communal Property Associations, as according to the Communal Property Act (CPA, 28 of 1998), the DLA provides no continuing support to CPA's to ensure they fulfil their intended functions and meet criteria for social equity and democratic accountability.²¹

Monopolisation of resources by group leaders or powerful individuals and uncertainty regarding access to and utilisation of resources, as well as 'widespread problems of inadequate and inappropriate planning of resettlement projects, a chronic lack of support from state agencies and a general failure to make effective use of land for the benefit of group members' (PLAAS, 2006, quoted in Lahiff, 2008, p.8) is leading to a situation where the majority of beneficiaries of land restitution projects 'are receiving no material benefit whatsoever from restitution, whether in the form of cash income or access to land' (p.9)

Lahiff (2008) identifies as a key problem official reluctance to accept the need for 'more radical restructuring of the [agricultural] sector – in particular, a transition from large-scale commercial farming to smaller, low-input, family-based production that would include at least a portion of self-provisioning' (p.5). Continuing to prioritise large-scale, capital intensive agriculture for a commercial market, The Department of Land Affairs has forced land-seekers to organise themselves into groups and to pool their resources in order to collectively attempt to manage large farms as a single commercial unit (Lahiff, 2008, p.5).

²¹ The Constitutional Principles of the Communal Property Association, outlined in the Communal Property Act (28 of 1996) include: fair and inclusive decision making; equity of membership democratic processes; fair access to property; accountability and transparency; security of tenure; sustainability; and compliance to legislation and constitution. (Quoted in Lahiff, 2008, p.3.)

In some cases, where communities lack the necessary skills and resources to do this, the Commission on Restitution of Land Rights (CRLR) has imposed a model of 'strategic partnerships' where farm management is turned over to a professional (usually white) farm manager or outsourced to commercial management companies for a number of years (Lahiff, 2008, p.5). But more commonly, 'large groups have been simply incapable of implementing the imposed business plan, and strongly discouraged from exploring alternative models of land use, with the result that resource use, and benefits of participants, have fallen far short of expectations' (Lahiff, 2008, p. 5-6).

In addition, Wynberg and Sowman (2007), highlight that there has been a significant neglect of long-term environmental sustainability considerations in land reform. They argue that the political objective of attempting to fast-track land reform settlements has contributed to a situation where over 80% of land reform projects are failing to meet their developmental aims (Diako et al., 2006) or achieve environmental conservation and sustainable livelihood outcomes.

Although the Director General in 2001 and the Minister of Land Affairs in 2003 formally recognised 'the need for incorporating environmental issues into land reform processes, in order to improve the quality of land reform', agreeing to policy guidelines to establish 'sound land use practices and enhance the quality of land reform delivery to improve sustainability and livelihood opportunities for land reform participants' (DLA, 2003, p. vii, quoted in Wynberg and Sowman, 2007, p. 790); according to Wynberg and Sowman (2007), these principles were never institutionalised or implemented (p. 790).

Wynberg and Sowman (2007) argue that a key problem is that environmental factors are seldom integrated into planning and decision-making processes in land reform cases, or across other government departments and agencies. Instead, environmental safeguards are often perceived as a hindrance to economic development (Wynberg and Sowman, 2007). Whilst the Constitution and NEMA promote an integrated environmental management approach which is to be applied to the formulation and implementation of all policies, programmes, plans and projects; in reality, environmental management remains a 'highly fragmented legal landscape' and government departments continue to 'work in silos, tightly linked to their political mandates, priorities and sectoral budgets' (Wynberg and Sowman, 2007, p. 789).

3.5 Reforming the Mining Industry

Prior to the 1994 election, the ANC had threatened nationalisation of South Africa's diamond mines, pronouncing its commitment to ensuring more of the diamond wealth produced by the industry

would be enjoyed by the previously disadvantaged non-white majority of the nation (Roberts, 2007). The 1955 ANC Freedom Charter stated 'the mineral wealth beneath the soil, monopoly industries and banks shall be transferred to the ownership of the people as a whole' (ANC, 1955 Freedom Charter, clause 3). Whilst white-owned mining companies had extracted much mineral wealth from the country, according to the Government's Department of Finance, in 1993-4, the year before the election, the taxes paid by the diamond mining industry totalled just 1.2% of the value of the diamonds it sold (Roberts, 2007, p. 303).

A direct nationalisation of mining industries in order to ensure it met the requirements of the new democratic order would likely have been met with significant resistance from the industry²². Mandela, South Africa's first democratically elected President, thus pursued a reconciliation strategy that moved away from direct nationalisation, proposing instead that mining companies should reform themselves voluntarily to ensure their structures and benefit flows should be more equitable.

Yet, in 2002, the new government officially (re)claimed the country's minerals 'for the Nation', legislating to vest mineral rights in the government. According to the Mineral and Petroleum Resources Development Act (MPRDA 28 of 2002), the mineral resources of South Africa belong to 'the people of South Africa', and are held in trust by the state for the benefit of all South Africans²³. The MPRDA legislates 'equitable access to, and sustainable development of, the nation's mineral and petroleum resources' and necessitates environmental protection and rehabilitation in cases of mine-closure.

According to section 38(d), mining lease holders 'must as far as is reasonably practicable, rehabilitate the environment affected by prospecting or mining operations to its natural or predetermined state, or to a land use which conforms to the generally accepted principle of sustainable development'. Sections 24.3 (b-d) and 39(1) also require that mine operators conduct Environmental Impact Assessments (EIAs) and submit Environmental Management Plans (EMPs) as well as Social and Labour Plans (SLPs) to the Department of Minerals and Energy (now DMR) to be approved before mining leases will be granted or renewed.

²² Indeed, according to Roberts (2007), by the time of the release of a government research paper suggesting the country's mineral resources should belong to the state, DeBeers had already established a Swiss entity, 'De Beers Centenary', to divert its revenues away from the tax reach of the new South African government (p. 305). In addition, the company had already shipped out South Africa's gems to stockpile in London prior to the 1994 elections. (p.306).

²³ Mining companies now have to apply for mining leases from the state, and the largest leases will be for 30 years, renewable.

A 'Mineral Regulation Branch' of the Department of Mineral Resources (replacing the DME) has been established to 'ensure the execution of the provisions of the MPRDA, 2002 through processing applications, issuing or granting rights and permits, approving environmental management programmes (EMPs), monitoring performance, undertaking corrective actions and issuing closure. The directorate is also responsible for reporting on the performance of the "environmental right" in terms of South Africa's Constitution to the South African Human Rights Commission on an annual basis' (DMR official website, accessed 18/07/2011).

Mining activities also come under the jurisdiction of specific environmental management legislation. For example, according to the Air Quality Act (39 of 2004), communities are to be protected from air pollution by 'providing reasonable measures for the prevention of pollution and ecological degradation' (Mohamed, 2006, p. 35 ref. Air Quality Act, 39 of 2004). Specifically in relation to mine closure, the Act requires that within 5 years prior to cessation of the mine, the owner must notify the Minister of DEAT of post-mining rehabilitation plans and measures to prevent atmospheric dust pollution, which must use the 'best practicable means'.

Meanwhile, the Water Act (36 of 1998) should ensure that the owner or person in control of a water resource has the responsibility of avoiding pollution of the water resource and is liable for damaged cause, costs of clean-up and remedial expenses for benefits derived from polluting activities. Mining companies are required to submit Environmental Management Programme Reports to the Department of Water Affairs, and their management programme should involve systems and structures of water use that avoid contamination of clean water systems with polluted water, that will remain functional for at least 50 years subsequent to mine closure (Mohamed, 2006, p. 35).

In 2002, the Department of Minerals and Energy (DME, now DMR) also promulgated a Broad-Based Socio-Economic Empowerment Mining Charter for the South African Mining Industry (DME, BBSEE Mining Charter, 11 October 2002). The Mining Charter established the objective of achieving 26% black ownership of South Africa's mining assets by 2014; and further highlighted seven key areas that are thus to be transformed through a Broad-Based Socio-Economic Empowerment (BBSEE) approach. These include: 1) human resource development, 2) employment equity, 3) migrant labour, 4) mine community development, 5) housing and living conditions, 6) procurement and 7) beneficiation and procurement.

However, the 2009 Mining Charter Impact Assessment Report (DMR, 2009), the first governmental review of reform of the industry indicated the 2002 targets had not been met (See annex 1). Whilst

the target for black ownership of mining enterprises had been set for 15% within the first five years; in fact only 8.9% black ownership had been achieved (p. 17). Transformation of the sector had been disappointingly slow and top management and technical positions continue to be dominated by white men and women (p. 16-17), who earn more than their black counterparts, regardless of skills or experience (p. 9).

The Mining Charter Impact Assessment Report found that 'progress on employment equity [has been] minimal'²⁴; and a 'narrow' black economic empowerment approach is evident, in which mining companies make use of 'handpicked individuals disguised as representing the broader interest of host communities' (DMR, MC IAR, 2009, p. 10).

Moreover, the review found 'no direct link between proposed and implemented community development projects as far as affected communities are concerned.' The disjuncture between company CSR projects and local community needs and interests was determined to be the 'result of inefficient consultation processes, poor, or lack of collaboration with communities and lack of alignment to established LED [local economic development] frameworks' (DMR, 2009, MC IAR, p. 10).

The 2009 review criticised empowerment deals on the grounds of their 'structural malaise', through which Black Economic Empowerment (BEE) entities were placed in an 'invidious financial position' through being tied into repaying high interest loans on acquired assets that in numerous cases continued beyond the predicted life of the mine and had 'onerous conditions attached', thus discouraging broader Historically Disadvantaged South African (HDSA)²⁵ participation (DMR, MC IAR, p. 18). A disappointing 9% of HDSAs achieving ownership in the mining industry is further undermined when the incidence of 'fronting'²⁶ of HDSA individuals is taken into consideration.

The updated BBSEE Charter for Mining and the Minerals Industry, which amends the MPRDA of 2002 (DMR, 2010), thus reinforced the earlier commitment to redressing the results of past or present discrimination of HDSAs in the mineral and petroleum industries and secondary industries.

²⁴ 'White South Africans continue to occupy top management positions, earning more than blacks, regardless of skill or experience'. (DMR MC IAR, 2009, p.8).

²⁵ 'Historically Disadvantaged South Africans' refers to South African citizens, category of persons or community, disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa, 1993, (Act 200 of 1993) came into operation, which should be representative of the demographics of the country.' (MPRDA, No. 28 of 2002, 1. Definitions).

²⁶ According to the DMR Mining Charter Impact Assessment Report, 2009, "Fronting", whereby a HDSA individual is hired to fulfil BBSEE criteria, but remains excluded from real decision-making fora, is an insult and indictment to the broader objectives of the Mining Charter' (p. 19).

Meaningful participation, according to the Amendment, should take the form of involvement of HDSAs in ownership and management of mining interests and socio-economic investment in mining communities to improve their welfare, educational and employment opportunities (DMR, 2010, p. iii). The amendment emphasised the need to integrate the socio-economic development of mine workers, host communities and major labour sending areas, and areas which were becoming 'ghost towns', due to irresponsible practice of the mining industry.

3.6 Discussion: Fast-Tracking Economic Growth in South Africa

Despite a much-acclaimed new environmental management policy framework, the 2006 South African Environmental Outlook Report clearly indicated that there has been a serious lack of implementation and enforcement, and that South Africa's ecosystem processes and natural resource base have continued to decline (DEAT, 2006).

Friedmann and King (2008) report that environmental policies have been increasingly been actively undermined by the very government that shaped them (p. 37). They criticise the promulgation of strategies such as the Government's Accelerated and Shared Growth Initiative for South Africa (AsgiSA, 2006) for fast-tracking an agenda for economic growth that seems to be premised on 'unlimited natural resources and an environment with limitless resilience and recuperative ability' (Friedmann and King, 2008, p. 36). Indeed, according to AsgiSA, the Environmental Impact Assessment process, established by NEMA in 1998, is listed as a key constraint on achieving its ambitious targets.

Friedmann and King (2008) argue that non-implementation of NEMA is coupled with similar attacks on environmental legislation by politicians who see it as an inconvenience to their plans for economic development. They claim that 'the Department of Minerals and Energy Affairs (DME) is arguably the government department responsible for the single greatest contribution to environmental destruction across the country as a result of coal and mineral mining, water and air pollution, and habitat loss. It has increasingly been able to circumvent NEMA', as the MPRDA positions the DME beyond NEMA's jurisdiction for the process of granting approval for mining permits (Friedmann and King, 2008).

In response to this criticism, the MPRDA was amended in 2008 (Minerals and Petroleum Resources Development Amendment Act 49 of 2008). According to the Amendment, environmental authorization in respect of mining activities was transferred to the Department of Environmental Affairs (DEA), under NEMA (National Environmental Management Amendment Act 62 of 2008).

Both the DMR and DEA agreed to effect the necessary legislative changes to the MPRDA and NEMA, so that ‘the transfer of this function would then be effective 18 months from the date on which the last amendment act came into effect’ (CER Report, August 14 2010). Yet, the Center for Environmental Rights reported in 2010 that the Minister of Mineral Resources had yet to bring the Amendment to the MPRDA into effect.²⁷

Meanwhile, according to Bond (2008), South Africa’s post-apartheid government has reneged on its visionary social and economic promises in favour of pursuing neoliberal policies, which ‘excus[e] the Growth, Employment and Redistribution [GEAR] policy²⁸ while departing from it’. Bond argues that ‘the rise of the ‘developmental state’ is a matter of appeasing critics of the government’s economic and social policies. In particular, there has been the failure to address high and worsening levels of unemployment and impoverishment while black economic empowerment has mainly flourished as a source of elite enrichment’ (Bond, 2008, online, accessed 21/07/2011).

Although, new policies and legislation relating to social equity, environmental governance and the transformation of the minerals sector post-1994 seem extremely progressive and democratically empowering; this perception needs to be tempered with a grounded assessment of how legislative and policy commitments are being translated into action.

The power of South Africa’s diamond mining industry to circumvent or ignore calls for enhancing democratic accountability and adherence to higher standards of social and environmental responsibility, needs to be understood through exploration of the historical context in which mineral extraction industries became established as the ‘backbone’ of the country’s national political-economy (Innes, 1984) and conglomerated into powerful monopolistic corporations (Fine, 2008). The way in which the Minerals Energy Complex of South Africa has been adapted and changed post-1994 then needs to be considered in order to critically evaluate the governing approach to national development that has gained ascendancy in the post-Apartheid context, and to consider how this governing approach is currently determining the course of events in the Namaqualand coastal region.

²⁷ According to the CER Report, August 14 2010, although the ‘National Environmental Management Amendment Act 62 of 2008 was promulgated on 5 January 2009, and came into effect on 1 May 2009, making all the necessary changes to NEMA’; the Minerals and Petroleum Resource Development Amendment Act 49 of 2008 was promulgated on 19 April 2009, but has not yet been brought into effect by the Minister of Mineral Resources.’ (<http://cer.org.za/virtual-library/mineral-and-petroleum-resources-development-act-2002/> accessed 19/07/2011).

²⁸ The Government of South Africa introduced the Growth, Employment and Redistribution (GEAR) strategy in 1996. The policy set government the goals of achieving sustained annual real GDP growth of 6% or more by the year 2000 while creating 400,000 new jobs each year. GEAR was meant to increase investment, especially Foreign Direct Investment, in the country to help achieve these goals.

Chapter 4: The Diamond Mining Industry, Past and Present

4.1 Historical Background to the Diamond Mining Industry

With the discovery of diamonds along the north-west coast of South Africa by prospector, Jack Carstens, in the 1920s, diamond diggers, merchants and foreign investment flooded into what had previously been perceived as a remote and desolate corner of British Empire. On seeing this influx of diamond hunters roaming the sands of Namaqualand, white farmers, who had historically staked out their farms on land from which indigenous San and Khoi people had been disenfranchised, J. Carstens wrote, 'For us to be on the hunt for diamonds in their territory was the greatest joke they had ever heard. The idea was crazy' (Carstens, 1962, p. 69).

Yet the diamond rush would see most of the coastal land of the region bought up by mining companies, and, with the facilitation of an array of Government legislation, national policies and international investment, Namaqualand's coastline became monopolised under the control of a small number of diamond companies. The two major companies that have long dominated diamond production along the Namaqualand coastline are De Beers, a multinational diamond mining company, and Alexkor, which has historically been wholly owned by the government of South Africa.

Roberts (2007) writes that De Beers was originally established by Cecil Rhodes as the 'ultimate imperial company' (p. 83), intended to fund the extension of the British Empire in southern Africa. As Prime Minister of the Cape, Rhodes used the Cape legislature to pass laws securing cheap labour, resources and capital necessary to exploit diamond deposits at Kimberley, and by 1892, De Beers had consolidated its control over all the mines at Kimberley (Van Wyk et al. 2009). Furthermore, 'after securing the Charter for the British South Africa Company, Rhodes secured all diamond rights in Bechuanaland (Botswana); Southern and Northern Rhodesia, and eventually a controlling interest in Premier Mine, near Pretoria, for De Beers' (Van Wyk et al. 2009, p. 7).

When new diamond fields were discovered along the Atlantic coastline, with abundant alluvial deposits that could be mined at a cost of 1% of their value, 'thousands of diggers poured into the area between Kleinsee and the Orange River'²⁹. The diggers threatened to seize the fields by force' (Van Wyk et al. 2009, p. 7). The Government promulgated 1927 Precious Stones Act (No. 82 of 1927) to prevent flooding of the market with cheap gems. The Act made it illegal to be found in possession of diamonds not registered with the police. Any diamonds confiscated under this Act

²⁹ The Orange River marks the current political border between Namibia and South Africa. The river is also known as the Gariep or Great River.

would then go to the London Diamond Buying Syndicate, formed in 1893 to market the gems of all South Africa's main producers.



Figure 2: Map showing the contemporary Northern Cape Province which includes the Namaqualand coast in the west and Kimberley in the east, both key historical sites for diamond mining.

Van Wyk et al. (2009) write, 'this set the tone for the mining industry throughout the history of South Africa From this time on the industry continued to exert undue influence over government, with the lines between the industry and the state, and the interests of powerful mining personalities and powerful political personalities often blurred' (Van Wyk et al. 2009, p. 7).

The Union Government³⁰ wished to open mining opportunities to white nationals eager to mine along the coast. Thus eighty kilometres of the Namaqualand coast was brought under government control and an Amendment to the Precious Stones Act made it illegal to prospect on private or Crown land without a license (Precious Stones Amendment Act of 1927, Proclamations Nos. 50 and 51). Sixty percent of the diamonds found by those given licenses were then to be sold to the Government to market itself. 'Non-whites' were not allowed leases or to mine their own stones. Black and coloured people were however employed by whites to mine for them, using picks and shovels. Roberts (2007) even reports that the government organised races for prospective miners to peg claims on land newly released for mining.

With the defeat of Germany in World War One, Ernest Oppenheimer, a German entrepreneur, secured the rich diamond field of South West Africa from the German Government³¹. Initially Oppenheimer, operating through his company Anglo American, was in competition with DeBeers. But in 1926 Oppenheimer finally got a seat on the Board of DeBeers and in 1929 he was appointed Chairman of the company. This effectively joined a South African mining monopoly with the London-based marketing syndicate, uniting DeBeers and Anglo American³² under the Oppenheimer family empire.

Roberts (2007) writes that the South African Government was wary of the Oppenheimer's control over South Africa's diamonds, even while they appreciated the Syndicate's ability to fix prices and ensure South Africa's diamonds were guaranteed market advantage (p. 91-92). The Government stipulated it would retain the right to supervise the marketing of the former German diamonds, thus becoming business partner in the diamond trade. The Diamond Control Act of 1925 (no. 39 of 1925, section 16:1) gave a government control board the power to fix diamond quotas, set minimum prices, to demand and receive diamonds from producers and to create a monopoly for both diamond sales and exports. The Union Government also sought to establish a diamond cutting

³⁰ The Union of South Africa was a dominion of the British Empire, established in 1910 with the unity of the previously separate colonies of the Cape, Natal, Transvaal and the Orange Free State. The Union was superseded by the Republic of South Africa in 1961 under the Apartheid national government (http://en.wikipedia.org/wiki/Union_of_South_Africa, accessed 2/08.2011).

³¹ In 1917, with considerable backing from the financier J.P. Morgan, Oppenheimer formed the Anglo American Corporation of South Africa, Ltd., to exploit the east Witwatersrand goldfield. Two years later he formed Consolidated Diamond Mines of South West Africa, Ltd. (reformed as the Namdeb Diamond Corp. in 1994). (Encyclopaedia Britannica. Search: Sir Ernest Oppenheimer).

³² Anglo American is a global mining company headquartered in London, United Kingdom. Founded as a gold mining company, the Anglo American Corporation (AAC) became the majority stakeholder in the De Beers company in 1926. Two years later, the AAC began mining in the Zambian copper belt. Currently, Anglo American is a major producer of diamonds, copper, nickel, iron ore and metallurgical and thermal coal and the world's largest producer of platinum, with around 40% of world output. It has operations in Africa, Asia, Australasia, Europe, North America and South America. (http://en.wikipedia.org/wiki/Anglo_American_PLC accessed: 20/07/2011).

industry in South Africa, in order to reserve the largest gems for white South African cutters (Roberts 2007).

Though the 'roaring twenties' in the USA provided an eager market, consuming 80% of the world's production (van Wyk et al., 2009, p. 9), with the US stock market crash in 1929, De Beers took the lead in reigning in production and trade in diamonds, initiating a new Syndicate. The Diamond Corporation Limited, of which the government was a member³³, had the power to fix production quotas for mining companies, and to ensure that uncut diamonds could only be sold at three locations, Kimberley, London and Amsterdam, at predetermined prices (Van Wyk et al., 2009, p.10).

The Diamond Corporation also negotiated with companies mining diamonds in the Belgian Congo (now the Democratic Republic of the Congo), Angola and British West Africa (now Namibia) to ensure they also sold through the Syndicate, agreeing to its terms. Van Wyk et al. (2009) write, 'thus the Namaqualand diamonds became locked into a global producing and marketing cartel which set up an economic relation of dependence between African production and European marketing which skewed the industry in favour of London, Antwerp and after World War 2, Tel Aviv' (p. 10).

4.2 The ANC Government and the Diamond Mining Industry

In 2006, DeBeers Consolidated Mines (DBCM) officially merged with Ponahalo Investments, a Black Economic Empowerment (BEE) entity, with the latter acquiring 26% of the ordinary capital share in DBCM from De Beers Soci t  Anonyme.³⁴ Ponahalo Investments is controlled by Ponahalo Holdings, a 'dormant company, which has never engaged in any commercial activities' but which is a BEE company. The transaction enables DBCM to comply with the 2002 Mining Charter. According to Ponahalo's Chairperson, Manne Dipico, former Premier of the Northern Cape Province and current Chairman of the Board of De Beers South Africa, "Ponahalo will play a valuable role in supporting the transformation of DBCM, creating significant wealth for its shareholders and beneficiaries and generally adding value to the wider South African economy" (M. Dipico, quoted by Brown and Mackenzie, 8/11/2005, *Mail and Guardian online*, accessed 18/07/2011).

³³The Diamond Corporation was a producers' association, 'in which each member, including the government (who was also a producer) received a fixed percentage of trade, and the sale of diamonds became the fixed preserve of the Diamond Trading Company Limited, which was a subsidiary of the Diamond Corporation Limited'. (Van Wyk et al, 2009, p.9.)

³⁴ Competition Tribunal, Republic of South Africa, 'In the large merger between: Ponahalo Investments (Pty) Ltd and De Beers Consolidated Mines Holdings (Pty) Ltd: Reasons for Decision', Case No: 12/LM/Feb06.

The investment company intended to achieve this by using R10 million a year of its dividend income to make investments in South Africa, setting aside R5 million a year over the first 10 years for trusts for the benefit of disadvantaged women, people with disabilities and communities around DBCM's mines. The balance of Ponahalo's dividend income was to be used to pay off its debt to South Africa's Standard Bank, which had funded the purchase (Brown and Mackenzie, 8/11/2005, *Mail and Guardian online*).

However, according to a 2010 news report, Ponahalo Investments was struggling to pay off its debt, and DBCM threatened to withdraw its dividend policy, on the grounds that it was having to pay a 'disproportionate' dividend to the BEE entity. Chief Financial officer of De Beers, S. Brown told reporters De Beers "could not continue with the disproportionate dividend policy because it created expectations among other shareholders that dividends would be caught up. There would be interest to pay on unpaid dividends", he said (McKay, 23/07/2010, *Mining Mx online*, accessed 18/07/2011).

Van Wyk et al., (2009) suggest that the Ponahalo deal indicates that the new ANC Government has forged its alliance with the mineral and energy industries, in a way that implies continuity and business as usual rather than a radical restructuring in favour of redressing the stark gaps between rich and poor; and substantial integration of environmental and social sustainability objectives into business practice. They write, 'South Africa is probably the only country in the world where several former Premiers suddenly emerge as leaders in the corporate world in minerals in which their provinces Sexwale (Gauteng) in gold' (van Wyk et al., 2009, p. 21).

Whilst Roberts claimed in her 2007 work that the ANC Mbeki government sought a share in the DeBeers Company similar to the deals struck by the Namibian and Botswanan Governments with De Beers³⁵. In return DeBeers wanted the Illicit Diamond Buying Act to remain in force, outlawing the public possession of rough diamonds, and maintaining the existing monopoly (Roberts, 2007, p. 313).

According to Roberts (2007), De Beers pre-empted Black Economic Empowerment legislation and decided to 'empower' a number of black-run companies by selling mining rights where De Beers was not currently mining. However, one company thus 'empowered', the New Diamond Company [NDC], remains substantially under control of De Beers, agreeing to sell to them all its finds and remaining 'partner' to De Beers in any enterprise related to the mining and marketing of diamonds (p. 315).

³⁵ The Namibian Government acquired shares in De Beers' Namibian branch, forming 'Namdeb'; whilst the Botswanan Government has shares in 'Debswana'.

Meanwhile, the ANC Government attempted to 'privatize' Alexkor in 2003, awarding an initial management contract to the Nabera consortium, a Black Economic Empowerment (BEE) group of companies. Their plan had been to sell a 51% share of the company, retaining 49% state ownership (Roberts, 2007, p. 316). However, following an unprecedented court case, Alexkor was compelled by the Supreme Court of Appeal in 2003 to restore land and mineral rights to the Richtersveld Community³⁶ (the case will be discussed in detail in chapter 5).

4.3 The Changing Diamond Mining Industry of Namaqualand

The two major companies, Alexkor and De Beers Consolidated Mines have long dominated diamond production along the shores of Namaqualand in the Northern Cape. Alexkor³⁷ operates from the Orange River mouth to just south of Port Nolloth, while De Beers operates from Alexkor's border to slightly north of the Olifants River (See Figure 3). De Beers Consolidated Mines secured a monopoly, gaining title to 270,000 hectares of land along the coast. Around these major concessions are a number of smaller concessions operated by companies like Trans Hex Investments³⁸. There are offshore and onshore mining activities in the west coast area. Three companies dominate the offshore diamond industry: De Beers Consolidated Mines (mainly mid-to deep-water concessions), Alexkor (mainly shallow-water concessions) and Trans Hex (shallow and deep-water concessions).

Onshore mining methods have changed dramatically over the decades, from the use of picks and shovels, or even picking by hand by moonlight, to mechanical extractors and concentration devices, to today, where 'large mining plants process millions of tons of gravel per year, utilising heavy-media separation, cyclones and x-rays in the concentration process' (Van Wyk et al., 2009, p.10).

³⁶ Republic of South Africa, 2003, 'Alexkor Ltd and the Government of the Republic of South Africa v Richtersveld Community', (12) BCLR 1301 (CC) (Richtersveld).

³⁷ Alexkor Ltd was established in 1989 when the State Alluvial Diggings was taken over from Government and transformed into Alexander Bay Development Corporation. Since 1992 Alexkor Ltd. was run as a public Company with the State as its sole shareholder.

³⁸ Transhex was established in 1963 as Buffelsbank Diamante as contractor to the Small Business Corporation of South Africa to prospect on the state-owned Komaggas farm. The company acquired additional mines through the 1970s and 1980s, becoming Transhex Beleggings in 1973. A 50% share in Transhex was acquired by the Rembrandt Group in 1980, and the company became listed on the Johannesburg and Namibian stock exchanges. The company currently operate two mining operations directly in South Africa (Baken and Richtersveld) along the Orange River, as well as shallow-water marine mining and through a contracted company at the Baken concession. The company are also initiating mining operations in Angola (www.transhex.co.za).

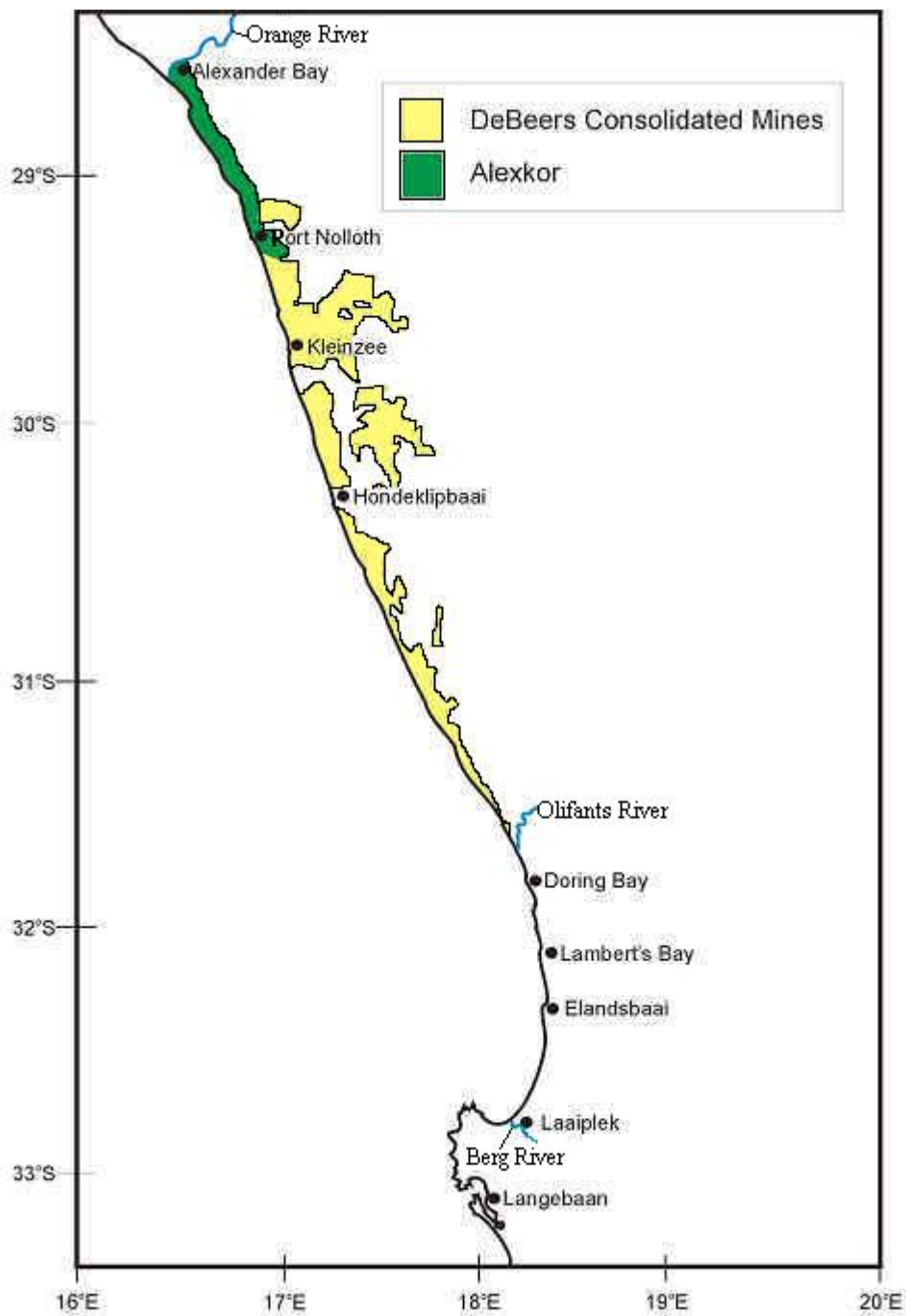


Figure 3: Map depicting the onshore mining concessions of De Beers and Alexkor

Marine mining off the west coast of southern Africa began in the 1960s, but operations were halted due to an oversupply of diamonds. Whilst some near-shore, shallow water diamond diving continued, deeper water and more intensive marine mining only took off in the 1990s. According to van Wyk et al. (2009), 'These deep-water operations now represent the pinnacle of technological development in the diamond mining industry, requiring dedicated mining vessels, complex electronic navigation systems and specialised remotely operated mining tools' (p.10).

A company representative for De Beers explained that there were three forms of mining taking place, including shore-based diving, inshore small vessel mining, and deep-sea mining. The third method is undertaken by large ships, which he compared to 'oil rigs', and which stay out in the deep ocean for months at a time. The crew arrive and depart by helicopter, staying on board for up to a month at a time. Crew operate 'remote vehicles that actually crawl on the ocean floor'. Guided by cameras, the operators of these machines suck up selected gravels to be processed on board, before dumping waste gravels back into the sea (DBCM Town Manager, pers. comm., September 2010).

Van Wyk et al. (2009) reported that 'De Beers, which commands 90% of the diamond output in South Africa - estimates that the global retail market for diamond jewellery grew from US\$20-billion in 1980 to more than \$56 billion in 2003, with sales of diamond jewellery pieces tripling in the same period' (p. 18). Yet, due to reputed decrease in demand and an 'unfavourable global economic environment', top mining companies predicted in 2008 that they would reduce production by up to 40% (Hanard, 2008, CE of Antwerp World Diamond Centre, quoted in van Wyk et al., 2009, p. 18), which would inevitably have a detrimental impact on South African communities dependent on the mines.

Downscaling, retrenchments and mine closure in South Africa have thus occurred, despite the fact that, according to Godden et al. (2008), in recent years a number of countries have seen an 'unprecedented boom in resource extraction' (pg. 1). Bond (2008) suggests that the discrepancy is explained by a concerted shift of corporate funding flows and primary share listings to overseas stock markets.³⁹

Bond (2008) highlights that, though 'businesses did invest their South African profits', this was 'not mainly in South Africa: dating from the time of political and economic liberalization, most of the largest Johannesburg Stock Exchange firms — Anglo American, DeBeers, Old Mutual, SA Breweries, Liberty Life, Gencor (now the core of BHP Billiton), Didata, Mondi and others — shifted their funding flows and even their primary share listings to overseas stock markets. The outflow of profits and dividends due these firms is one of two crucial reasons South Africa's current account deficit has soared to among the highest in the world...and is hence a major danger in the event of currency instability' (Bond, 2008, online, accessed 21/07/2011)

³⁹ 'Most of the largest Johannesburg Stock Exchange firms — Anglo American, DeBeers, Old Mutual, SA Breweries, Liberty Life, Gencor (now the core of BHP Billiton), Didata, Mondi and others — shifted their funding flows and even their primary share listings to overseas stock markets.' (Bond, 2008, <http://www.mediationsjournal.org/articles/developmental-state-distraction>).

According to the company's website, De Beers' mining efforts are currently focussed on its Botswanan Jwaneng open-cast mine, which is reportedly 'the richest diamond mine in the world', producing 11.5 million carats in 2009; offshore marine deposits in South African and Namibian waters; and new mines in Canada. The new Victor Mine in Ontario, Canada, which was opened in 2008, involved expenditure of a billion dollars to construct the mine, processing plant, workshop, warehouse, offices, fuel storage, pit dewatering, accommodation, airstrip, potable water facilities, sewage treatment works, waste management facilities, 100 tonne trucks, large front-end loaders, dozers and support equipment.⁴⁰



Plate 1: DeBeers' 'dragliner' at Namaqualand Mine has facilitated the company's large-scale excavations in search for diamonds⁴¹

Meanwhile, De Beers decided to halt production and sell its South African Northern Cape Mines in Kimberley⁴² and Namaqualand.

⁴⁰ De Beers also opened their other Canadian mine, Snap Lake, in 2008, which required comparable construction costs. (online: www.debeersgroup.com accessed 21/07/2011).

⁴¹ De Beers claim that the machine is now assisting with the rehabilitation effort at Namaqualand Mines (DBCM Environmental Manager, presenting on MCEN Tour, January 2011).

⁴² Finsch Mine, west of Kimberley, was sold to Petra Diamonds Limited for R 1.425 billion in 2011 (De Beers Group, January 2011, online, accessed 1/08/2011). Petra Diamonds also bought De Beers' underground mines at Kimberley in 2007.

4.4 Discussion

According to Bregman (2010), 'Namaqualand first came to the attention of colonists because of its copper wealth' (p. 63). As Bregman (2010) highlights, whilst copper mining in the 1800s proved to be a highly lucrative industry, the main beneficiaries were only a small number of companies, whose fortune was made possible by the labour of impoverished Namaqualanders (p. 74) and the despoliation of the natural environment.

While the mines were responsible for entrenching a 'wage labour system', which tied the fate of employees to the boom-and-bust cycles of an export-oriented mining economy, little of the fortune made from copper were experienced by Namaqualanders, even as they were enrolled in its generation. In the wake of copper mining in the 1930s, Carstens (1962) wrote that Namaqualanders were 'in absolute poverty...it really is a wonder that the people continue to exist...The coloured people, in particular, are in the throes of starvation and are beginning to die of want' (p. 113).⁴³

Similarly, Van Wyk et al. (2009) claim, 'after almost a hundred years of diamond mining on the West Coast communities have little to show in terms of community development, infrastructural development or an existence much above that of a subsistence level' (p. 53). Despite progressive governmental and corporate responsibility policies, van Wyk et al. (2009), found 'the implementation and monitoring of these policies also seem to be problematic. As a result, serious environmental and social problems exist throughout the region...In a regulatory sense, it seems that the industry on the West Coast is embedded, like the mining in the rest of South Africa in an unfolding legislative environment in which the primacy of the mining industry is often in conflict with environmental and community concerns' (p.53, emphasis in the original).

According to Ferguson (2005), the characteristics of colonial-era corporate paternalism, which saw the construction of vast company towns and far reaching social investment have been identified by the advocates of privatization and neoliberal reform as 'inefficiencies' inhibiting profitability. Whilst offshore mineral extraction (precious gems, oil and gas) employ very few local people, 'relying for its skilled labour on crews of foreign workers brought in on short-term contracts' (Ferguson, 2005, p. 378-379). These workers live in gated compounds, which are in many places protected by private armies and security forces.

⁴³ J. Carstens, 1962, writes 'when the Cape Copper Company shut down and its labourers were thrown out of work, with other chances of livelihood 'taken away from people by the Government', illicit diamond hunting had thus become the only hope for local people. 'The result is that these men gather together, make raids on the sea shore, gather sand and flee to the dunes or to the mountains to wash it'. With the police in pursuit, these diamond diggers would flee to the next place, 'ever more enlarg[ing] the area which must be guarded' by the legalised diamond magnates' (p 113).

Ferguson's observation (2002 and 2005) is pertinent to the current situation on South Africa's North West 'diamond coast', where onshore mines are closing or 'down-scaling' through subcontracting. Thousands of mine workers have been retrenched; meanwhile core diamond mining is now taking place offshore, substantially bypassing Namaqualand's income-poor communities.

Meanwhile, a number of companies are reportedly busy drilling for gas off the coast of Namaqualand, including the Government's Petrol SA, in partnership with a private company, as well as the multinationals Shell and BHP Billiton. (E. Julius, NCPG, pers. comm., December 2010); and another company, Urafields South Africa, is currently prospecting for uranium near the town of Garies.⁴⁴ Whilst new mining initiatives have been promoted as positive signs of investment in Namaqualand's economic development, this claim needs to be assessed against the legacy nearly a century of diamond mining has left for Namaqualand's communities and their natural environment.

⁴⁴ The company claim that 'Urafields has consolidated 14 exploration licenses obtained by predecessor companies run by its founders, in widely recognised uranium-rich areas of Namibia and South Africa. They cover more than 800,000 hectares, equivalent to 3 times the size of Luxembourg or 1.5 times the size of the State of Delaware in the USA. The exploration targets for the land covered by these licenses contains several billion lbs of U₃O₈.' (<http://www.urafields.com/1en.aspx> accessed: 20/07/2011).

Chapter 5: The Legacy of Diamonds

De Beers, claimed in 2007 and 2010, that the company is 100% certified to the internationally recognised environmental management system standard of ISO 14001⁴⁵. As required by the MPRDA 2002, all of the company's operations are according to the 2010 *Report to Society*, covered by environmental impact assessments (De Beers, 2010, p. 83). In addition, according to their 2007 Report to Society, De Beers claims to have an impeccable Corporate Social Responsibility 'character'. This includes an A+ application of the Global Reporting Initiative (GRI) G3 Sustainability Reporting Guidelines as well as their Communication on Progress to the United Nations (UN) Global Compact⁴⁶.

The company claim to be committed to making a 'lasting contribution to the communities in which they live and work', and according to their Chairman, Nicky Oppenheimer, 'the company will play its economic role in such a way that it will contribute to an 'ever more prosperous Africa'; and specific mention is also being made of De Beers' aim to facilitate sustainable, long-term economic growth as a platform for socio-economic development' (van Wyk et al., 2009, p. 26).

Yet, as the following discussion explores, in the case of Namaqualand, global shifts in the diamond economy has meant, mass-retrenchments, closure of mines and mining towns, transfer of core mining efforts to offshore deposits, and an attempt on behalf of both De Beers and Alexkor to dispense with costly environmental rehabilitation responsibilities.

5.1 Forecasting Mine Closure in the 1990s

Despite the fact that, according to the company's own reports, Namaqualand Mines were proving to be De Beers' richest diamond mines in South Africa, the company announced in 1994 that they intended to cease production and close the mines in 10-12 years (Roberts, 2007, p.295).

⁴⁵ The ISO 14001, as with other ISO 14000 standards, is voluntary, with its main aim to assist companies in continually improving their environmental performance, whilst complying with any applicable legislation. Organizations are responsible for setting their own targets and performance measures, with the standard serving to assist them in meeting objectives and goals and the subsequent monitoring and measurement of these (http://en.wikipedia.org/wiki/ISO_14001).

⁴⁶ The United Nations Global Compact, launched in 2000, is a principle-based framework to encourage businesses worldwide to adopt sustainable and socially responsible policies, and to report on their implementation. The Compact states ten principles in the areas of human rights, labour, the environment and anti-corruption. The Global Compact is the world's largest corporate citizenship initiative and as voluntary initiative has two objectives: "Mainstream the ten principles in business activities around the world" and "Catalyse actions in support of broader UN goals, such as the Millennium Development Goals (MDGs). (http://en.wikipedia.org/wiki/UN_Global_Compact).

In 1992 De Beers had commissioned a group of students from the University of Cape Town to assess the likely social and economic impacts of mine closure in Namaqualand. These assessments indicated potential impacts of variety of closure scenarios, such as gradual phased closure vis-à-vis rapid total closure of mining operations and withdrawal of the mining company (Beaumont, 1992; Gosling, 1992; Lochner, 1992). The assessment anticipated that the impacts of closure would be 'extreme and far-reaching', 'compounded by little diversification in terms of industry in the region to provide jobs for a great number of people' (Bregman, 2009, p.92). In some towns, where up to 90% of households depend on mine employment for their income, potential adverse outcomes of retrenchment were identified as: depression, drop in social status, break down of family units, impoverishment, and overexploitation of natural resources, e.g. increased recourse to farming of livestock in already overstocked rangeland (Beaumont, 1992, p.xvi; Bregman, 2009, p.92).

The impact assessments further differentiated between likely impacts on three tiers of employees, corresponding to the company's apartheid labour force structure. White employees for whom management positions were reserved, faced potential retrenchment, transfer to an alternative mine, loss of school and medical cover provided by the company, and enjoyment of recreational facilities, housing, free electricity and water provided by the company. Coloured workers from local communities and blacks from the Transkei had enjoyed fewer of these benefits, but would likely be severely adversely affected by job losses (Beaumont, 1992); withdrawal of company transportation and subsidised groceries; and with fewer resources to draw on or alternative opportunities available to them, retrenched workers could face poverty, rising crime and alcoholism (Gosling 1992; Lochner, 1992).

The impact assessments suggested crises such as: deterioration of infrastructure and services, drop in standards of education, loss of community cohesion, and loss of quality of life, could be averted or at least mitigated through a proactive mining company approach which would slow rates of production to extend the life of the mines; pursue gradual, phased closure; and support the development of alternative job opportunities and industries for the region (Gosling 1992; Lochner, 1992).

Yet, despite the recommendation to slow the process of mine closure, Roberts (2009) reports that De Beers instead decided to increase production dramatically, from 600,000 to 1 million carats a year (p.295). De Beers Namaqualand Mines reported an annual profit of 440%, or \$220 per carat (Roberts, 2009, p. 295-6). The company was predicted to recover 12 million carats of diamonds over the remained 12 years, generating R12 billion.

Instead of reinvesting increased profits into mine and local communities, and supporting a positive post-mining transition, the company pursued a 'privatization' strategy, cutting costs of operation through subcontracting. Roberts (2009) mentions that De Beers already paid its miners lower wages than any other mining company in Namaqualand (p.296). The use of subcontracted workers, as opposed to employees directly employed by the mine, at another of De Beers' South African mines, had meant use of non-unionized workers receiving a third of the pay of unionized workers (p.296).

Meanwhile, as shall be discussed in detail in sections 3 and 4, De Beers began to take an interest in the environmental impact of long-term mining activities. The company hired an ecological consultant in 1996/7 to collect information on the natural ecology, to begin to assess the adverse impacts of mining and to look into potential methods of achieving recovery of vegetation cover (Carrick, pers. Comm., October 2010).

5.2 Mine Closure and Unemployment

Clark et al. reported in 1999 that the number of employees in South Africa's onshore diamond mining industry as a whole has declined from over 19,500 in 1992 to less than 15,000 in 1997 (a rate of approximately 2.5-3% per annum) (Clark et al., 1999, section 6.3.1). In this period, between Alexkor and De Beers, a minimum of 1800 jobs had been lost. Clark et al (1999) wrote that 'the majority of employees in onshore diamond mines are from Namaqualand, about 80% of which are low-skilled workers. The researchers anticipated that further mine retrenchments would therefore exacerbate the already dire unemployment situation in Namaqualand unless alternative employment sources could be found. The unemployment rate in rural areas of Namaqualand was estimated at 60%; a problem that had been compounded by the decline of the fishing industry, particularly the rock lobster industry' (Clark et al., 1999 and see chapter 7).

Evidence suggests that De Beers had been contemplating closure of its Namaqualand Mines for some time. According to Roberts (2007), in 1993 De Beers laid off 1,000 workers from its Namaqualand Mines due to an oversupply of Russian and Angolan diamonds. Although production at Kleinsee dropped from one million to 600,000 carats a year, these were being mined at a higher grade than at De Beers' other South African mines, meaning Kleinsee was still the company's richest mine in the country (p. 294). Yet, to the surprise of employees, De Beers announced in 1994 that it intended to close its Kleinsee-Koignas operations within 10-11 years (De Beers *Namaqualand Mines Chronicle*, September 1994, quoted in Roberts, 2007, p. 295).

Although a De Beers commissioned Socio-economic Impact Assessment of mine closure (Lochner, 1992, Gosling, 1992) emphasised that slowing production to prolong the life of the mine and a phased closure plan, combined with good post-retrenchment support, such as investment in the diversification of the regional economy, could help to alleviate negative impacts of mine closure⁴⁷; instead the company reportedly sped up production from 600,000 to one million carats a year, and announced it intended to 'privatize' all town and mine services by setting up a system of subcontractors to cut costs (Roberts, 2007, p. 295). According to Conservation South Africa (CSA), in its 'hey day' De Beers directly employed up to 3,000 people; whereas now it maintains around one hundred staff (CSA, September 2008, p.2).

Meanwhile, 'downscaling' of operations at Alexkor has meant the retrenchment of the majority of the company's employees, from 669 directly employed in 2000 to just 105 in 2010/11 (Alexkor's Briefing, 31 August 2010, *PMG online*, accessed 18/07/2011). In order to drastically cut costs of mining activities and turn an annual loss into a profit, the company decided to operate through subcontracting mining rights.

Both Alexkor and De Beers have shifted their core diamond mining operations on the west coast offshore. According to Alexkor's 2010 Annual Report, the marine mining operations were contracted to 27 companies, with 67 'production units', which produced over 70% of Alexkor's total annual diamond output; whilst land operations continue with two contracted companies which yielded the remaining 30% (pg. 10).

As Clark et al. (1999) have highlighted, 'marine mining is a highly specialised activity, requiring high capital inputs in the form of purchasing, maintaining and equipping mining vessels with technical processing equipment. Relative to onshore mining, marine diamond mining requires lower inputs of low-skilled labour - up to 10% (in contrast to the 80% in onshore mines). With the present lack of alternative job sources in Namaqualand, the majority of workers retrenched from onshore mines in the next decade have little chance of finding work in the offshore industry (Clark et al., 1999).

Whilst subcontracting has been portrayed as a black and local economic empowerment opportunity, through which companies can abide by government BBSEE criteria, according to Roberts (2007), where De Beers had introduced this system into other South African mines in the 1990s, sub-contracted miners were now on a third of the union-negotiated minimum pay, unable to join a mine-workers' union and had no healthcare provision or other protections (p. 295). Whilst the company

⁴⁷ De Beers commissioned a group of UCT students to research the likely socio-economic and environmental impacts of a number of mine closure scenarios. See e.g. Lochner, 1992, EIA Report; or Gosling, 1992.

anticipated 12 billion Rand from mining 12 million carats over 12 years, many mine workers were receiving as little as 1000 Rand a month, or 700 Rand after deductions (Roberts, 2007).

In Namaqualand, one of the consequences of this discrepancy of earnings, coupled with halted mining operations, has been a proliferation of illegal mining attempts by members of local communities. According to a local government official (DENC official, pers. comm., August 2011), a number of local people have illegally entered into mining areas at night to search for diamonds, which they sell on to diamond dealers on the black market. The official mentioned that reduced security in diamond mining areas and severe economic hardship among local communities was to blame for the illegal mining activities, which are concentrated on unrehabilitated mining areas, which pose a serious risk of injury to illicit miners.

Indeed the government official mentioned that two individuals had recently been killed when excavations the illegal miners had made collapsed on top of them. According to a news report, a retrenched De Beers employee and his nephew were crushed to death on the 21st July 2011. The two were 'among hundreds of unemployed men from Komaggas and other small towns who illegally dig for diamonds after closure of the mines' (Nicholson, 1/08/2011, *Cape Times online*, accessed 5/08/2011).

Whilst De Beers' representatives responded that 'the company had taken many steps over the years to eradicate illegal mining' and 'dozens of people had been arrested and prosecuted for illegal mining in the past two years' (Nicholson, 1/08/2011, *Cape Times online*); arguably this approach is attempting to deal with the symptom rather than the cause of a wider problem. According to a local government official, whilst few sustainable livelihoods projects have succeeded in the region, the temptation among those who were once employed in the mines to meet their need for an income through illegal mining is compelling, despite the risks involved (DENC official, pers.comm., August 2011). Indeed, the sister of the deceased illegal miner mentioned, 'the deaths did not scare any of the men in the town who were seen going back to the mines the night after the accident' (Nicholson, 1/08/2011, *Cape Times online*).

5.3 Mine Sale at Namaqualand Mines

In late 2010, De Beers announced its intention to sell rather than close Namaqualand Mines. The company claim that an 'open and rigorous selection process that evaluated prospective bidders on a number of criteria determined by De Beers [is] critical to ensuring the long term sustainability of the Namaqualand Mine community' (CSA, Press Release, 2011, p. 1) Yet according to Conservation

South Africa (CSA), 'De Beers has ignored CSA's suggestions for general good practice and has pursued a process that has gone against the intent of South Africa's Mineral and Petroleum Resource Development Act of 2002 and the provisions of the country's Promotion of Administrative Justice Act (Act 3 of 2000)⁴⁸' (CSA, Press Release, 2011, p.1).

CSA argue that De Beers denied requests for CSA and local community representatives to be involved in the process of assessing bidders on their socio-economic practices, and ignored international mining guidelines as credible review criteria (CSA, Press Release, 2011, p. 1-2). The suggestion to involve an external and independent review panel on assessing social commitments and environmental restoration track records of potential buyers was ignored, despite being common mining company practice (CSA, Press Release, 2011, p.1).

Indeed, the chosen buyer, Transhex, has, according to ecological consultant, P. Carrick, "to date...made no real attempt at any environmental rehabilitation at any of its Namaqualand operations, even those that they have been trying to close for many years. For example, another mine in the region, Hondeklip Bay has large areas with unstable slopes and standing open water, presenting a safety hazard to the neighbouring community" (Carrick, quoted in CSA, Press Release, 2011, p.2).

CSA suspects that the financial quantum attached to the environmental liability at Namaqualand Mines and the process of calculation of that quantum (as required by the 2005 DME Guidelines) is insufficient to the task of environmental rehabilitation after over 80 years of mining by De Beers. CSA highlight that liability costs have been calculated entirely by De Beers and have not been verified by any sufficiently independent external consultants or other third party auditors (CSA, Press Release, 2011, p.2).

Given that the financial quantum for rehabilitation by the departing mining company determines the extent the new mining company or any other party can meet legally required and internationally established standards for best practice for social and environmental responsibility; if these provisions are inadequate, CSA highlight, these responsibilities will become liabilities of the state (CSA & Bench Marks, 2011, p.2).

⁴⁸ According to the preamble of the Promotion of Administrative Justice Act (Act 3 of 2000), the objects of the law are to 'promote an efficient administration and good governance' and to 'create a culture of accountability, openness and transparency in the public administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to just administrative action'.

5.4 The Environmental Legacy of Mining

Namaqualand is famous for its unique biological diversity and high levels of endemism. Lowland Namaqualand forms part of the Succulent Karoo Biome, recognised as a 'biodiversity hot spot', deserving special conservation attention. With 6300 plant species, of which 1630 are endemic and 905 are near endemic (Botha et al., 2008, p. 885). According to Botha et al. (2008), 'although there are relatively few land-use pressures on lowland Namaqualand ecosystems, the greatest threat to biodiversity is from surface mining, which has transformed discontinuous areas along much of the 400km adjacent to the coast... Surface mining results in the complete destruction of above ground vegetation and the associated soil processes' (p. 885).

Where mining activities have been concentrated in coastal Namaqualand, the landscape has been utterly transformed, deep pits have been dug down to bedrock, using manual labour and heavy machinery, to a depth of 40m in places (De Beers, undated, 'Sustainability Initiatives in Namaqualand', online, accessed 18/07/2011). In addition to deep mining pits and high 'overburden' dumps, the diamond coast is pockmarked by intermittent prospecting trenches and track marks from heavy machinery. According to Van Wyk et al. (2009), mined out areas 'look like moonscapes and will probably take hundreds of years to recover' (p. 30).



Plate 2: Aerial view of a De Beers Consolidated Mines overburden dump at Koignas (Google Earth, 30°12'31.26" S 17°16'22.19" E).

Whilst onshore surface mining has been practiced for a century, ecological restoration in the wake of mining has only been piloted in the last 10-15 years on the Namaqualand coastline and 'is localized in extent' (Botha et al., 2008, p. 886). According to Carrick and Kruger (2007), the neglect of environmental rehabilitation and ecological restoration up on the part of mining companies up to the 1990s has been enabled through poor governmental regulation of mining environmental impacts, prior to 1991; and weak implementation of the Minerals Act (50 of 1991), which required for the first time that holders of mining and prospecting permits restore the land surface to its 'natural state' (Carrick and Kruger, 2007, p.768-9).

Whilst Botha et al. (2008) mention that scientific understanding of the ecology of lowland Namaqualand has recently improved, and experience of restoration after mining elsewhere have contributed to a the development of methods that could work along the coast, they highlight that 'few properly controlled restoration trials have been conducted, and many gaps exist in our understanding of what factors impede ecological restoration, and what methods are successful at overcoming these' (p. 886).

Given the lack of comprehensive restoration efforts on the part of the mining companies, Botha et al. (2008) draw on the 'traditional' and experiential knowledge of mine operators, who had experimented with restoration methods as well as local farmers, most of whom had grown up in the area, observing the lowland ecology, and had experience of restoring ploughed croplands and areas invaded by alien vegetation (p. 887).

Recommended restoration methods included: site-specific assessments and interventions (adapted to either the coast or inland areas, dependent on slope and soil types); reducing the slope of dumps and introducing contours on dumps to reduce erosion, catch and sink water and to create microhabitats for plants; stripping, storing and re-applying topsoil within few years of mining; creating surface micro-topography, to trap wind blown seed, organic matter and water; transplanting of indigenous succulent vegetation; harvesting and sowing seed; treating salt-affected soil; and the use of netting to prevent wind erosion (Botha et al., 2008, p. 889-891).

Barriers to effective restoration that were highlighted by interviewees included: lack of continuity in restoration efforts, lack of sufficient restoration equipment, inexperienced staff, shortage of manpower and insufficient funds (Botha et al., 2008, 882). Undertaking restoration as part of the mining process itself was cited as the most effective means to improve and reduce the costs of the restoration process (Botha et al., 2008). It is thus interesting to note that mine operators and local land users did not suggest there was inadequate knowledge or skill to conduct effective restoration

efforts; instead they indicated the main obstacles were ones related to designated funds, management personnel and good planning.

Whilst it has been demonstrated that good rehabilitation after mining depends on *a priori* planning and 'double stripping', in order to safeguard topsoil⁴⁹, which must be reapplied soon after an area has been mined, mining has been going on in Namaqualand since the 1920's, when little was known or required in terms of environmental management. In the words of restoration ecologist, P. Carrick, "Much of what you see now is legacy issues...the topsoil is long gone, lost" (pers. comm., October 2010).

Decades of mining, when 'there was little appreciation of the biodiversity of the land' and no expectation or standards for rehabilitation, have left 'large, often barren areas without any topsoil that require restoration' (Botha et al. 2008, p.887). Clark et al. (1999) wrote 'although some areas are back-filled, topsoils are generally not stored and the loss of topsoil means that recovery of plant communities to their former state depends on the formation of new soils - in the order of decades to centuries. Loss and recovery of animal fauna presumably follows the same route' (section 6.5.1).

Clark et al. (1999) mention that roads and heavy vehicle movement have tended to 'compact the soil, thus rendering the area unsuitable for re-colonization by new plants', whilst 'areas denuded of vegetation, such as trenches, mining blocks and tailings are inherently unstable, with the result that sand plumes frequently develop due to the strong winds and flat topography characteristic of the mining area. These sand plumes can be quite extensive, smothering vegetation and causing a significant secondary impact. It is believed that sediment plumes may have been a triggering force in the collapse of the saltmarsh ecosystems of the Orange River wetlands' (Clark et al., 1999, section 6.5.1).

⁴⁹ Botha et al. (2008) explain that topsoil 'the uppermost soil layer that contains the highest concentration of organic matter, microorganisms, seed and nutrients, and usually facilitates rapid ecological recovery' (p. 887).

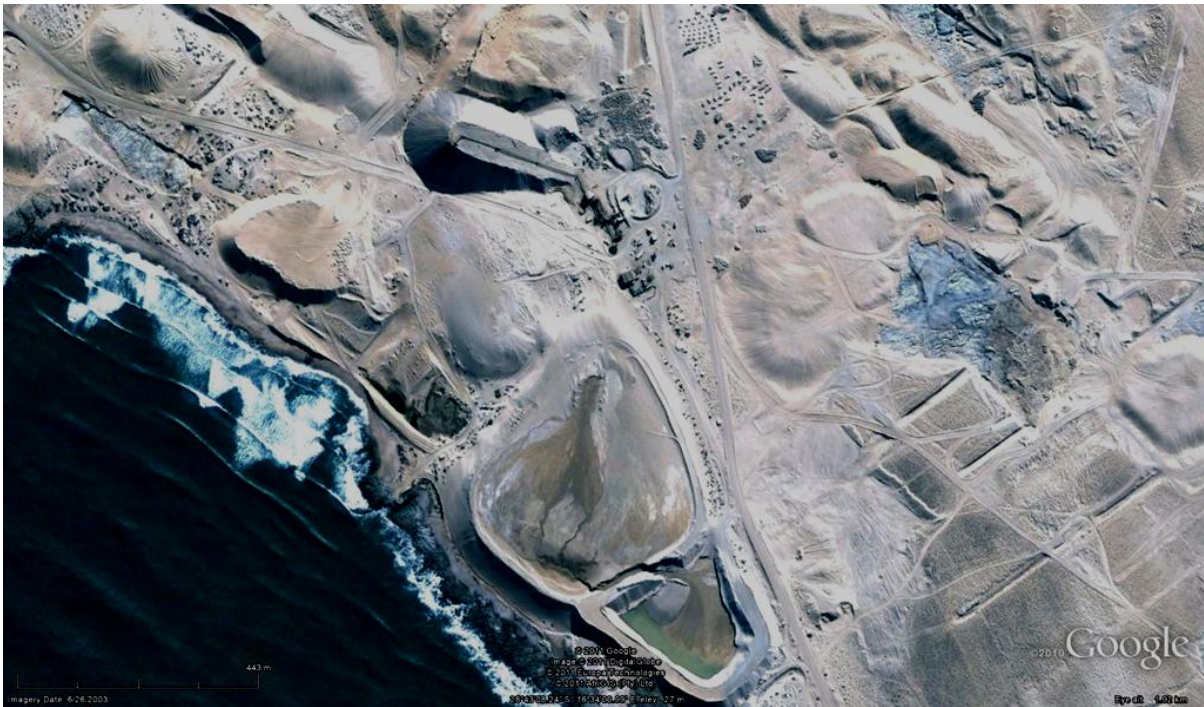


Plate 3: Aerial view of Alexkor's operations between Alexander Bay and Port Nolloth (Google Earth, 28°43'08.24" S 16°34'00.99" E).

P. Carrick, restoration ecologist, confirmed this assessment, "Alexkor, the state company...have got a massive problem there of secondary degradation, particularly the slimes dams...They've cleared massive areas and used them as dumps. Particularly where they concentrate salts and these blow. There's a very strong southerly wind, and north of those...there's a straight plume that's killed everything in its path" (Carrick, pers. comm., October 2010). In Carrick's opinion, "the main problem is there's been no environmental responsibility. So they have a lot more slimes dams than, for instance, De Beers, and they've been left for 20 years with nothing done about them. If DeBeers does that, the same will happen" (Carrick, pers. comm., October 2010).

5.5 De Beers' Approach to Environmental Management at Namaqualand Mines

DeBeers claims to have halted terrestrial mining operations in Namaqualand, concentrating their remaining efforts on rehabilitation and restoration of the degraded landscape, as is required by law and international environmental responsibility standards⁵⁰. The company claim in their publication,

⁵⁰In compliance with the 2002 South African Mineral and Petroleum Resources Development Act; and according to the DeBeers' publication 'Sustainability Initiatives in Namaqualand', the company is pursuing

'Sustainability Initiatives in Namaqualand', that their Namaqualand Mines are 'constantly work[ing] towards creating a sustainable environment'.

According to a DeBeers' publication, the work of ecological rehabilitation is well under way with 'Two teams of local people trained by the NRI [Namaqualand Restoration Initiative] conduct[ing] the restoration activities... excellent progress was made during the year' (DeBeers, undated, online, accessed 18/07/2011). According to their 2010 Report to Society, 'extensive rehabilitation has been undertaken in the Namaqualand region of South Africa over the past few years with guidance from an independent ecological expert' (De Beers, 2010, p. 90).

The company thus claim that they are fully committed to achieving best practice in environmental rehabilitation, aiming to leave a positive legacy for Namaqualand. In order to assess the extent to which the company is living up to its reputation, their claims must be checked against what the company are actually achieving in practice.

P. Carrick, restoration ecologist⁵¹, explained in an interview (October 2010) that he had been employed by DeBeers as ecological consultant to conduct research and advise on the best course of action to achieve current best practice in environmental rehabilitation. He mentioned he had been working with a team of ecologists since 1996 or 1997 on a project called the *'Namaqualand Restoration Initiative'*. The researchers began by 'collecting tiny bits of knowledge from farmers and mine managers', followed by pilot erosion control projects, such as establishing wind netting, to prevent loose sands from blowing in the wind, and thus enabling vegetation recovery.

international best practice in environmental responsibility. See the Company website: www.debeersgroup.com.

⁵¹ P. Carrick, a professor of Botany at the University of Cape Town, has also set up his own consultancy, Nurture, Restore and Innovate, which has focused on post-mining rehabilitation and restoration. (Interviewed in Cape Town, October, 2010).



Plate 4: The green netting established on mined sites of DeBeers' territory, intended to prevent further environmental degradation, and to encourage the re-growth of vegetation.

Carrick mentioned that he had hoped Namaqualanders might be able to benefit from employment opportunities afforded by restoration; and thus a locally owned business, Namaqualand Mines Restoration, was established with two managers and 15 workers. Around 100 people also received training in rehabilitation techniques, with the idea that the pilot project could be 'rolled out' over many years and expanded to involve numerous teams of workers contracted by the mining companies.

Carrick explained that he had envisioned three components to restoration "to make the system work; you need somebody who's paying, usually (the one) who's degraded the landscape, that's usually a mining company. And then you have a restoration contractor", who is supported and advised by a team of ecologists, who act as consultants to the company. Carrick thus set up his own consultancy, 'Nurture, Restore, Innovate' (NRI)⁵², which was intended to fulfil this role (pers. comm., October 2010).

The role of the ecological consultant, according to Carrick involves advising on earth moving and profiling, as well as setting specifications for best practice in restoration. His consultancy developed a 'product' called the 'restoration pack', which Carrick explained, "is a kind of concept – a package. Each one is designed differently depending on the area" (pers. comm., October 2010). The

⁵² Which uses same acronym of the Namaqualand Restoration Initiative.

cardboard boxes containing a selection of seeds for indigenous plants was intended to appeal to the mining companies, who, Carrick explained, had historically been hostile to ‘greenies’ and were accustomed to mining in a way that is ecologically illiterate. “If you speak to a mine manager about different species, when seeds ripen, whatever, their eyes just glaze over, they don’t want to know. They want to know that when they pay for this thing called a restoration pack, then that makes plants come” (Carrick, pers. comm., October 2010).

Carrick had thus hoped that, by designing a management ‘system’ and restoration ‘products’, his consultancy might be able to speak the language of the mining companies. Through marketing a product they could buy and offering assurance of the effectiveness of these products, it might be possible that the mining companies could engage in restoration “without having to understand too much about this weird ecology thing”. Restoration of the natural environment could then be achieved to the satisfaction of legal requirements, expert standards of best practice, and to the benefit of local Namaqualanders who would find employment.

Yet, it seems this ideal ‘synergy’ is far from being realised. Whilst the relevant knowledge and labour force is available, the necessary corporate and governmental will-power to make use of them has apparently been lacking. Carrick mentioned that despite progressive environmental legislation, “we’re a long way, a *long*, long way from the department [in charge of mining] ever taking that and using that”⁵³. Carrick believed the real problem to lie in the fact that “the department doesn’t embrace their environmental role. They’re more concerned about hopefully developing the economy and trying to facilitate mining in some cases” (pers. comm., October 2010).

Meanwhile, De Beers have recently reduced their estimated environmental liability costs from 240 million to 150 million Rand, though the Department of Minerals and Energy reportedly assessed De Beers’ liabilities at 504 Million Rand in 2004 (S. Frazee, CSA, pers. comm., March 2011). Using the DME Financial Quantum Guidelines (2005), and the De Beers’ own stated commitments in their Amended Environmental Management Programme Report (De Beers NM Amended EMPR, 2011), CSA’s conservative estimate of Namaqualand Mines minimum liability for restoration is R 738,094,742 (CSA and Bench Marks, 2011, section 4.9; see synthesis in annex 5). Whilst the company claim to have made a ‘large investment’ of 1 million Rand over two and a half years (Salgado, 5 April 2011, *Cape Times online*, accessed 18/07/2011), undoubtedly this sum would pale

⁵³ Carrick added, “the best case scenario of what happens at the moment is somebody with no particular background in ecology or skills in natural history at all might go to a mine and drive a bakkie to a site, look at it and say, ‘yes that looks alright’. And that would be the best case scenario” (interviewed October 2010).

in comparison to the investment needed to restore the degraded landscape to something approximating its pre-mining state.⁵⁴

Certainly, De Beers have attempted to avoid rehabilitation liability for historical mining through claiming that liability for rehabilitation is limited to those operations that took place after the coming into effect of the amendment to the Regulations to the Mines and Works Act on 21 March 1980. However CSA and Bench Marks (2011) argue that, in addition to any environmental obligations that may have existed under governing legislation and regulation prior to 1980, section 28 of NEMA (1998) obliges De Beers, or any subsequent right holder, to take measures to remediate environmental degradation even if it was caused prior to the legislation coming into effect⁵⁵ (CSA & Bench Marks, 2011, section 4.7).

According to their review of the Amended EMPR, Conservation South Africa and the Bench Marks Foundation (2011) highlight, 'an objective and systematic mine closure plan does not appear to have been used by Namaqualand Mines in the calculating the total financial liability of the mining areas. There is a lack of rigor in the calculations for cost deductions in a number of components, and some of the cost deduction items are not based on generally accepted engineering or scientific principles (e.g. FRDs and re-vegetation). Additionally, opportunities for soliciting stakeholder support and IAP [Interested and Affected Party] benefits have been ignored' (CSA and Bench Marks, 2011, section 6).

Whilst De Beers claims to have sought the expertise of external specialists to develop their EMP, Rehabilitation Strategy and Mine Closure models (Amended EMPR, 2011, p.92 and Appendix F, p.2); the company's actual commitments mentioned in their EMPR and Closure Liability Report, indicate a very weak commitment to meeting the recommended requirements for social and environmental responsibility (see annex 5).

Instead of re-vegetating all of the disturbed (mined) areas, the company commits itself to half of this (CSA and Bench Marks, 2011, section 4.5) and to desalinisation of only 10% of compacted mine roads (section 4.1). Meanwhile, the total area disturbed is quoted as 10,000 hectares out of

⁵⁴ H. Smith, of the Legal Resources Centre, mentioned that the estimated costs of rehabilitation for the DeBeers owned farms was "not 300 million, as some of their documents say, not 700 million, it's into billions" of English pounds, or "trillions" of South African Rands. (H. Smith, LRC, pers. comm., October 2010).

⁵⁵ NEMA (Act 107 of 1998) creates a retrospective duty of care and remediation for environmental damage. Section 28(1) provides that "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 ... to minimise and rectify such pollution or degradation to the environment." S.28 (1A) provides that this obligation also applies to significant pollution or degradation that occurred before the commencement of NEMA or that arises or is likely to arise at a different time from the actual activity that caused the contamination.

270,000 owned by the company. However, when the disturbed areas of each of the mining concessions quoted in the individual EMPRs are added together, the total area mined is closer to 17,000, not 10, 000 hectares (section 4.9).

In addition, whilst earth-moving is mentioned as the company's strategy to 'stabilize slopes and prevent erosion by shaping and contouring to emulate the natural stable land forms which will provide suitable conditions for sustaining vegetation' (Appendix F: Section 8.3, p.17); the CSA and Bench Marks' review (2011) highlights that the mentioned slope profile of 1:3 is far too steep to form a stable land form on the west coast and 'mine overburden slopes and dumps of this angle on the west coast show deep erosion scars and extremely little re-vegetation' (CSA & Bench Marks, 2011, section 4.8).

Whereas mined coarse residue deposits (CRDs) generally do not lead to significant secondary degradation; fine residue deposits (FRDs) 'become self-perpetuating and expanding forms of degradation, unless deliberate and serious intervention is made' (CSA & Bench Marks, 2011, section 4.3). According to De Beers' Amended Environmental Management Plan Report (2011), the company state that, fine residue deposits (FRDs) on the Namaqualand Mines 'are stable, but provision is made for the netting of areas which may be affected by dust plumes in extreme cases' (Appendix F: Section 7.10, p.13)

CSA highlight that this is misleading as dust plumes are clearly already evident, and have been netted, at a number of FRDs at Namaqualand Mines (CSA & Bench Marks, 2011, section 4.3). Moreover, CSA and Bench Marks (2011) emphasise that the real problem of FRDs will only be realised once they dry out and the fine material becomes carried by the wind. In this situation, 'netting will be wholly inadequate to stem the problem at its source' (section 4.3). Whilst the company's earlier EMP (2004) outlined the areas where fine tailings (slimes) had been discharged into mined-out areas and natural pans, rather than dedicated tailings facilities; this information is omitted from the 2011 Amended EMPR (CSA & Bench Marks, 2011, section 4.3).

In addition to causing air pollution, and smothering of coastal flora and fauna, evidence suggests mining operations have had a negative impact on surface and ground water, affecting local communities. Van Wyk et al. (2009) mention that when researchers tested water from the Swartlinter River below a major De Beers tailings dam near Koignaa, results indicated that the water was extremely salinated and could cause severe health effects if consumed (p. 28-29).⁵⁶

⁵⁶Referring to a study undertaken by a team of scientists from North West University at Potchefstroom (no date provided).

Meanwhile, marine diamond operations make use of land-resourced water, which is contributing to the serious water shortages currently experienced by local communities.⁵⁷

CSA and Bench Mark's review of De Beers' Amended EMPR (2011) (see synthesis in annex 5) indicated a serious lack of stakeholder engagement in the EMPR review or mine sale process and "sufficient and accessible information" has not been provided to the IAPs (section 5). At a public meeting called at short notice, participants were reportedly informed it was not a consultation but an 'opportunity for De Beers to share information on their sale plan' (CSA and Bench Marks, 2011, section 5). Moreover, post-mining land uses proposed by De Beers have not been developed in consultation with local IAPs who will be left with the legacy of the company's plan (section 4.4). Meanwhile, poor efforts to achieve environmental restoration and stability, 'could leave easily degraded lands that can trigger secondary disturbance and leave massive environmental and livelihood impacts to adjacent communities who will seek to graze livestock on this land in the future' (section 4.4).

CSA and Bench Marks (2011) conclude that the critically inadequate provision the De Beers company have made to meet social and environmental responsibility requirements, both loses the opportunity to create significant jobs through restoration activities, and 'increases the risk to environment and communities in Namaqualand as the region is made up of complex and fragile ecosystems and is a place where few economic alternatives exist and specialist input is likely to be essential to ensure the goals of the MPRDA post mining are achieved' (section 3.3).

5.6 Marine impacts from Mining

According to Clark et al. (1999), 'the seaward pumping of fine tailings on sandy shores can have a profound effect on communities associated with these habitats. Fine fractions of tailings are suspended in the sea and advected offshore, whereas coarser fractions settle rapidly onto the beach. If large volumes of tailings are pumped seaward, this can lead to severe alterations of the physical state of the affected beach' (section 6.5.1). Clark et al. (1999) add, 'following mine closure, recovery of the affected beaches to a pristine state will depend on the speed at which the beach returns to pre-mining physical conditions. This could take decades or even centuries' (section 6.5.1).

⁵⁷ De Beers' 2010 *Report to Society* mentions that onboard marine mining vessels 'domestic fresh water requirements are obtained from desalination plants. This does not always meet the demand, so additional water is transported from shore. Although this requirement is relatively low, the fresh water is drawn from the closest coastal town, Port Nolloth, which is in a water scarce region of South Africa (p. 84).

Smith et al.'s (2006) study of the Namibian shoreline, where mining sediment is discharged into the sea from mining operations, reported adverse effects include smothering of marine plant and animal life, through the reduction in light, nutrients and oxygen, and the clogging of feeding apparatus; accretion and steepening of beaches, which leads to a steeper and more turbulent surf zone, reducing the surf habitat and making it unsuitable for some surfzone organisms. The reduction of benthic invertebrates, for example, may negatively affect fish, waders and coastal birds which feed on them (p. 14)⁵⁸.

In order to mine within 100 meters of the shore line, the mining operation requires protection from wave action by means of massive sea walls, 8 meters high and 20 meters wide⁵⁹. As the sand is eroded by wave action, it is mechanically replenished by means of bulldozers and dredgers (Smith et al., 2006, p. xi). The construction of such sea walls, which have been erected across 100km of coastline, are likely to have a 'severe and sudden impact on beach fauna and flora' (Smith et al., 2006, p. 14).

Smith et al. (2006) highlight that this mining activity could well have an adverse impact on west coast rock lobster populations, which it acknowledges, would impact heavily on fisher communities in Port Nolloth and Hondeklip Bay, who depend on lobster fishing as a key source of income (p. 30). And, given that much of this fishing is confined to shallow water (less than 30 meters from the shore, most within 15 meters), using hoopnets and small dinghies, most of the fishermen would have little option to fish elsewhere or through more intensive methods.

Smith et al. (2006) also highlighted the potential adverse impacts from the practice of releasing sediment into slimes dams of onshore diamond mining in South Africa. If these slimes dams dry out, loose sediment blown by the wind out to sea can lead to scouring of reefs, abrasion and irritation of reef flora and fauna; as well as smothering of fauna and flora from deposition of discharged sediments on the reef or sea bed (p.21).

⁵⁸ Smith et al. conducted a study for the CSIR (Centre for Scientific and Industrial Research) in 2006 on the cumulative effects of sediment discharge from onshore and near-shore diamond mining activities on the Benguela Current Large Marine Ecosystem for the CSIR. The study's terms of reference was only the shallower water, less than 40 meters in depth, where sediment is discharged from onshore mining operations, and data was mostly relevant to Namibia, for which there was existing information from monitoring programmes, which they were able to expand on using computer simulation.

⁵⁹ Seawalls are constructed to push the shoreline between 200 and 500m into the sea, permitting access to diamond deposits of the subtidal. The seawalls require constant maintenance as rough seas typical of this coast continually erode the walls. (Clark et al. 1999, section 6.5.2).

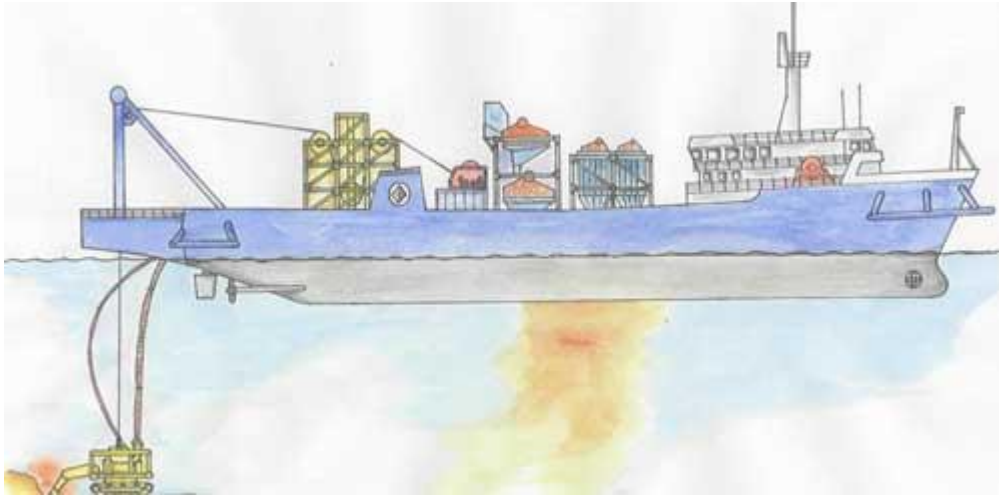


Plate 5: Diagram depicting the horizontal deep-sea mining method.

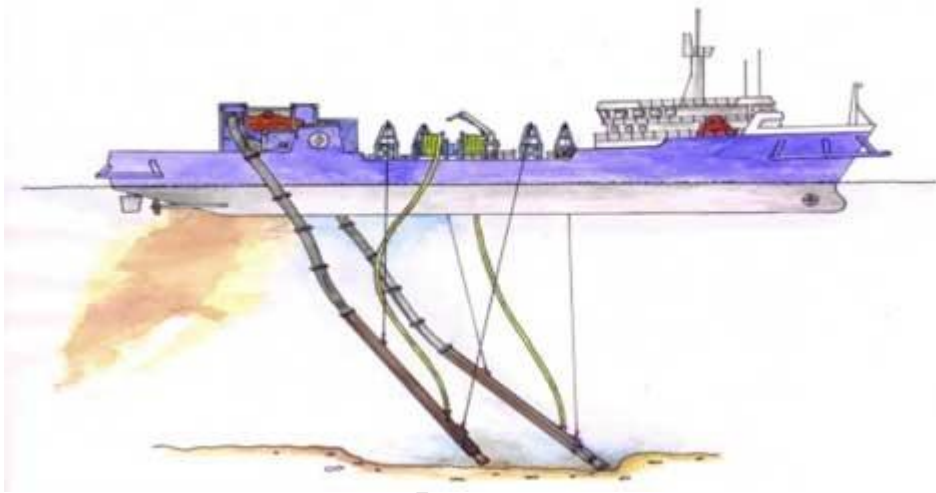


Plate 6: Diagram depicting a vertical deep-sea diamond mining method, with pipes sucking gravels from the ocean floor, and the dumping of wastes back into the sea.

According to horizontal deep-sea mining methods, a remotely operated vehicle crawls across the seabed, equipped with sensors, suction tubes and equipment to sort and select stones of the right size. Once on board, workers sort through the slurry of gravel and sand, separating the diamonds from the gravel and dirt. The refuse goes back over the side (see Plates 5 and 6).

Offshore ship-based mining involves material processed on board the offshore ships and tailings being discharged overboard. This is of particular concern because its environmental impacts remain largely unseen, and thus, without dedicated monitoring and ecological impact assessment, it is very difficult to detect the effects on the marine environment.

Clark et al.'s study (1999) mention numerous adverse impacts of mid- and deep-sea mining, including, 'the destruction of benthic fauna, and modification of the benthic habitat in the mining path and in adjacent areas where disturbed sediments are re-deposited. This causes direct mortality of organisms through the dredging and discharging process, potential smothering of organisms affected by the fallout, and possible aggravation of oligoxic conditions causing migration or even death...The recovery rate of a perturbed area has been estimated to take as long as eight years, but habitat modifications may be permanent resulting in a persistent environmental impact and change in the associated communities. This may potentially affect the food chain and have important implications for the distribution and abundance of other marine organisms such as rock lobsters and fish' (Clark et al., 1999, section 6.5.4)

Much more extensive research would have to be done in order to begin to piece together an idea of the cumulative impacts of all the different forms of coastal and marine mining over time across the whole Benguela Current Large Marine Ecosystem. This would involve a long-term assessment of on-shore open-cast mining and prospecting, near-shore sea-wall mining and dredging, small-vessel diamond diving, and offshore ship-based mining. Gathering such longitudinal ecosystem data should be prerequisite to determination of the environmental 'costs' of mining and, thus, the responsibilities of mining companies during and subsequent to mining.

Although Clark et al. (1999) suggest possible mitigatory action that could be taken to limit adverse ecological impacts of marine mining⁶⁰; De Beers has mentioned that a lack of scientific research into ecological impacts of marine mining is a constraint on effective environmental management and mitigation. In De Beers' 2010 Report to Society, the company claim that, 'in the marine environment active rehabilitation is not possible, so activities need to focus on monitoring the direct (sediment removal) and indirect (plume) impacts of mining and the associated recovery of sediments and marine life' (De Beers, 2010, p. 90). The company admitted the need for further research and monitoring to determine the 'continued indirect influence from mining' in targeted and adjacent areas (De Beers, 2010, p.90).

⁶⁰ These included 1) Using material for seawall construction that is equivalent to that which is stripped from the shore allows for a more rapid recovery of affected communities; 2) In-water mining needs to be limited to boat based operations only; 3) Tailings must be dumped away from rocky reef areas and boulder movements need to be kept to a minimum. Restrictions are to be placed on the width of lanes cut, clear-cutting and/or repeated cutting; and 4) Leaving lanes of undisturbed sediments between mining areas. (Clark et al. 1999, Table 4: 'Summary of Socio-economic and biophysical impacts of marine diamond mining operations in the BCLME').

5.7 Discussion

Though, as discussed in chapter 2, governmental legislation such as the South African Bill of Rights (1996), the National Environmental Management Act (107 of 1998), the Air Quality Act (39 of 2004), the Water Act (36 of 1998), and the Minerals and Petroleum Development Act (28 of 2002) have the potential to significantly raise the legal standards for environmental custodianship and social responsibility among by mining companies; this requires that the definition of ‘unacceptable’ pollution, ecological degradation and environmental harm is based on extensive research on ecological and health impacts, and social assessments of how people are adversely affected by mining activities and their long term repercussions. In the absence of ‘insistence on tangible standards and targets, combined with joint industry, civil society and government monitoring arrangements’ (Hamann and Acutt, 2003, p. 261), the legislation will be little more than paper law.

The performance of the two mining companies discussed in this thesis, indicate weak commitment to fulfilling environmental rehabilitation responsibilities. Whilst De Beers seeks to sell off its potential rehabilitation liabilities to another company through sale of Namaqualand Mines; Alexkor reports that it is currently unable to meet anything further than very minimal rehabilitation efforts, without substantial funding from the National Government.

According to their Annual Report for 2010, Alexkor ‘is exploring opportunities to cap [its environmental] liability and exploring alternative ways to discharge this liability as cost effectively as possible over the remaining life of the mine’ (p. 4). Whilst in 2010 their estimated cost for legally required levels of acceptable rehabilitation was R256.6 million, the company report to having received only R32.8 million thus far in government funding; and of their intention to meet the requirements of their EMP by ‘restoring the visual impact’ after mining (Alexkor, 2010, p. 23)⁶¹, the company report that ‘budget constraints’ are the reason why, instead, all that had be achieved was *some* backfilling of the southeast side of their Boegoeberg mine site and *some* wind-netting on the southeast side (p. 6).

With the State’s own mining company performing so poorly in post-mining environmental rehabilitation, the allowance is *de facto* given to private companies to avoid meeting even the legally required minimum, which is itself apparently being interpreted very superficially – as a matter of changing the aesthetic appearance of mined sites to reduce ‘visual impacts’. This extraordinarily

⁶¹ Alexkor (2010) reported intended rehabilitation work ‘in the vicinity of Boegoeberg and stabilisation of the Muisvlak dust plumes’ (p. 23).

narrow conception of environmental integrity totally diminishes the intention of NEMA, which contains a much more comprehensive definition of 'the environment'.⁶²

⁶² NEMA defines the environment as 'the surroundings within which humans exist and that are made up of: i) the land, water and atmosphere of the earth; ii) the microorganisms, plants and animal life; iii) any part or combination of i) and ii) and the interrelationships among and between them; and iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being', (Mohamed, 2006, p. 15, quoting from the National Environmental Management Act 1998).

Chapter 6: Community Land Claims

Land reform through land redistribution or restitution has been identified as potential recourses that will enable communities to regain land their predecessors were historically deprived of through racist colonial and Apartheid systems of land tenure. In Namaqualand, a number of communities are making land claims in order to gain a formal stake in what remains of the mining industry; and to gain the right to pursue alternative socio-economic opportunities through access to land, natural resources, and compensatory capital.

The chapter thus explores the claims and progress of two communities seeking rights and recompense and through the land reform process. A brief historical overview of land reform in Namaqualand sets the context for these case studies; as dissatisfaction with mainstream land reform, coupled with dwindling job prospects and socio-economic opportunities, has motivated communities to pursue ambitious multiple claims on mining companies as key land owners and asset holders. The response claimants have received from mining companies and the government largely determines the success of the claims and the prospects that will be afforded to local communities. Thus the way in which claims are negotiated and settled must be analysed for evidence commitments to social equity, democratic accountability, and long-term social, economic and environmental sustainability.

6.1 Background to Land Reform in Namaqualand

As Wisborg and Rohde (2004) discuss, in Namaqualand, whilst white settlers were able to receive legal recognition of their right to private ownership of land on which they had settled, San and Khoi peoples were deemed of inadequate civilisation to merit recognition of their rights to the land and its resources. The colonial administration issued 'Tickets of Occupation'⁶³ to mission stations and their resident populations, granting permission to occupy 'communal areas', which would later become 'rural reserves' for those the apartheid government classified as 'coloured'. These also became convenient labour reserves when, first the copper and, then diamond mining industries became established in Namaqualand.

⁶³ 'Coloured' rural areas were officially recognized by the government of the (British) Cape Colony shortly after the territory north of the Buffels River was annexed in 1847. The form of this recognition comprised 'tickets of occupation' issued by the Cape government which afforded the inhabitants "a sort of guarantee of their land" (Carstens, 1966, p. 17). 'This was, however, in itself an act of dispossession, since the state refused to recognize the inhabitants' claim of ownership, instead awarding them only occupational status' (May and Lahiff, 2007, p. 784-5).

Through the Mission Stations and Communal Reserves Act 2 of 1909, the State took administrative control of the areas and successive apartheid governments attempted to reform the areas, including the attempt to force individualisation of community lands in the 'economic units programme'⁶⁴ (Wisborg and Rohde, 2004, p. 4). According to Wisborg and Rohde (2004), 'these top-down tenure policies created lasting suspicions of tenure reform as neglecting the real problems of resource distribution and forcing inappropriate institutions...People in the Namaqualand Act 9 Areas⁶⁵ feel strongly about the loss of ancestral lands to the state, white farmers and mining companies within a legal system which that did not recognise their land rights as semi-nomadic pastoralists' (Wisborg and Rohde, 2004, p.4).

The 1998 Transformation of Certain Rural Areas Act 94 (TRANCRAA) aimed to transfer state land in 23 former 'coloured rural areas' to locally elected municipalities or other locally accountable institutions, such as Communal Property Associations (CPAs). After an extensive consultative process involving workshops and conferences with civil society organisations, local people, municipalities and the Department of Land Affairs, in 2001-2 the Act was introduced in six of the 'coloured reserve' areas in Namaqualand, in the Northern Cape Province (Bregman, 2010). TRANCRAA legislated the transfer of land tenure to local Municipalities or Communal Property Associations on behalf of the communities of Komaggas, Pella, Steinkopf, Concordia, Leliefontein and Richtersveld (see Figure 4).

According to Wisborg and Rohde (2004), 'The TRANCRAA process represents a small but significant investment by government, but the time, funding and institutional support required to carry out effective tenure reform was seriously underestimated'. They highlight 'strengthened tenure rights appear vulnerable if isolated from training, finance and integrated development initiatives. A neoliberal assumption that 'property rights' and 'markets' by themselves will transform rural areas in deep crisis due to unemployment, HIV/AIDs, corruption and food insecurity appears ill-founded and dangerous' (Wisborg and Rohde, 2004, p. v).

⁶⁴ According to Rohde et al., 2001, 'Governments toyed with this idea throughout the 20th century. It was embodied in a series of policies, enacted in legislation and finally enforced in the 1980s...In 1984, it was decided to subdivide the Leliefontein reserve into 47 economic units, the rationale being that privatisation of land would encourage entrepreneurship and the development of the region, since lessees would run farms profitably (Archer *et al* 1989)' (p. 9). However, Rohde et al. add, 'Most of the communities in the Namaqualand reserves never accepted the .economic units initiative because it further marginalised the majority of communal farmers' (ibid).

⁶⁵ The Rural Areas Act (9 of 1987) replaced the 1963 Rural Coloured Areas Act (Act 24 of 1963), which established rural reserve areas designated for 'coloured' South Africans. A number of these reserves had developed around church mission stations and had been issued 'Tickets of Occupation' by the colonial administration. These areas are still sometimes referred to as 'Act 9 Areas'.

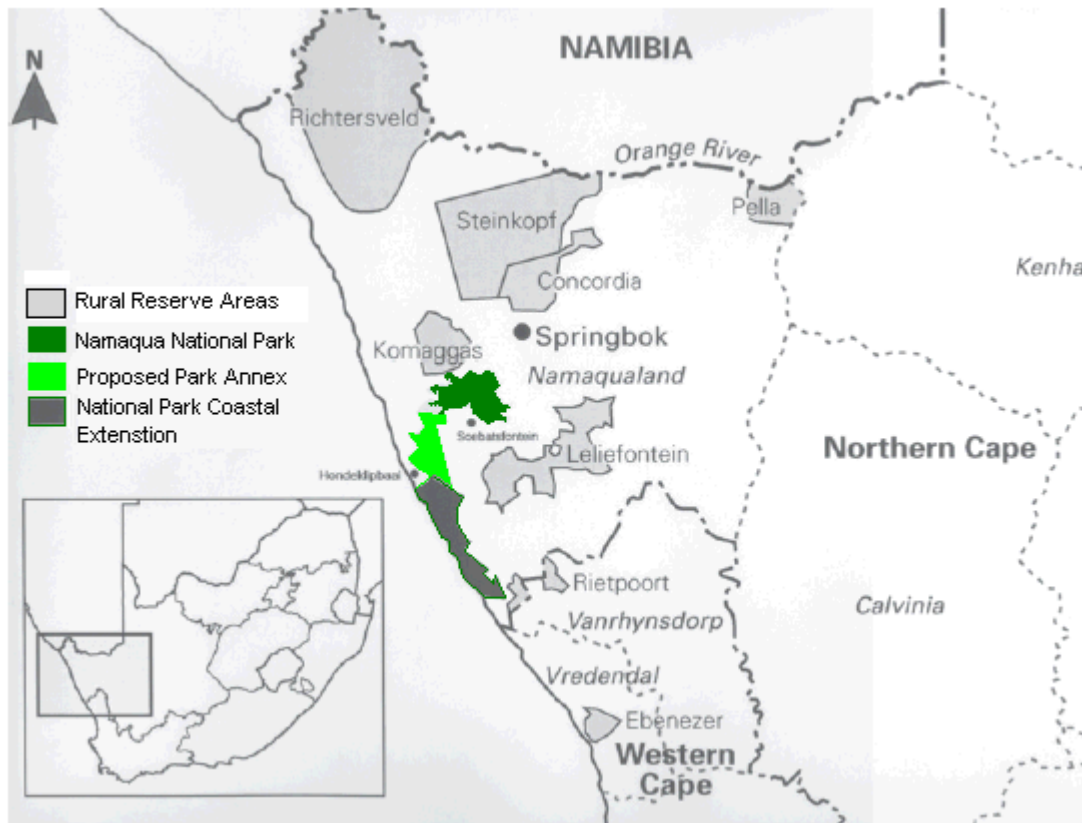


Figure 4: Map showing the extent of the Namaqualand rural reserve areas prior to land redistribution.

In Namaqualand, post-apartheid land redistribution through municipal commonage has resulted in the acquisition of 312,777 ha between 1997 and 2003. This has involved the negotiated transfer and registration of 48 farms from private owners to four local authorities in the region (Wisborg and Rohde, 2004). Land redistribution has thus increased the area of land available to the ‘communal areas’ by 21%, increasing the share from 25% to 30% of the total area of Namaqualand.

Yet in rural Namaqualand, approximately 600 white commercial farmers still own over 50% of the land⁶⁶, while approximately 30,000 residents of coloured communal areas have entitlement to only 30%. And according to a 2001 estimate, approximately one third of these families depend on livestock farming for their livelihood. (DA, 2001, in Wisborg and Rhode, 2004).

⁶⁶ Approximately 670 farm properties, held under individual title by people of European descent, cover over 25000km² or 52% of Namaqualand, averaging 3700 ha each. The number of farmers is actually much lower as many of these farmers own multiple farm properties. ‘Despite land redistribution, privately-held farms are on average 6 times the size of endowments of a livestock-owning family in one of the Act 9 areas.’ (Bregman, 2010, p.5.)

In this context of dissatisfaction with the government land redistribution programme, and the very slow process of land reform, due to the state's 'willing buyer, willing seller' approach, and with many of the relevant communities currently suffering high levels of unemployment due to large-scale retrenchments from the mines, the exclusive ownership of extensive coastal land and mineral rights by a few mining companies, and the restrictions they impose on access to other coastal resources, is being challenged, through pursuit of land restitution premised on ancestral/aboriginal entitlement.

6.2 Case 1: Alexkor v. The Richtersveld Community

In 1998 the Richtersveld Community applied to the Land Claims Court under the Restitution of Land Rights Act 1994 for restitution of their indigenous land and mineral rights, which had been taken from them by Alexkor. The case involved restitution of land and mineral rights, redistribution of additional land, tenure reform, township establishment, provisions for environmental rehabilitation and proposals for joint equity sharing arrangements in mining (May and Lahiff, 2007, p. 792).

May and Lahiff (2007), highlight that through settling the claim, the state had the opportunity to 'restructure economic relations in a manner which may have a lasting and positive effect on the economy of the region as a whole' (p. 792). Whereas most of the land restitution cases in the region had hitherto restored subsistence farming rights to impoverished families and communities, the Richtersveld case 'provides an opportunity for communities to participate in the mainstream economy and share in benefit that goes beyond mere survival. The successful resolution of the Richtersveld claim, in favour of the claimants, will significantly change patterns of landholding and distribution of wealth in Namaqualand, and will serve as an important precedent for restitution in other parts of the country, and potentially, internationally' (May and Lahiff, 2007, p.792).

According to Barry (2004) , the Richtersveld Community arose from Khoi Khoi and San who survived colonisation and remained in 'Little Namaqualand' south of the Gariiep (Orange) River, combined with others, such as the 'basters' (people of mixed descent) , missionaries and trekboere (p. 363). Until 1957, the Richtersveld people were self-governing, with a 'number of family clans, each headed by a chief' together forming 'a tribe, lead by a headman and a raad (council), comprising the chiefs of each clan' (Barry, 2004, p. 364). Barry (2004) adds, 'The Richtersveld people had extensive rules regarding land, access to grazing land, the number of livestock community members could graze, and liability to contribute to repair work' (p. 364).

Yet, on annexation the colonial government considered the whole of 'Little Namaqualand' to be 'terra nullius' (no-one's land), and, unlike elsewhere in Namaqualand, no 'Ticket of Occupation' was

ever issued to the Richtersveld people (Barry, 2004). After the discovery of diamonds near Port Nolloth, the government successfully claimed mining rights at the mouth of the Orange River, extending its claim through the 1920s. The Richtersveld Community were designated a reserve area in 1930, which comprised approximately 44% of the land that had been occupied by the community, according to an 1890 survey (Barry, 2004, p. 365).

According to a 1999 District Planning Report, most communities could make a land claim based on prior occupation, but, with the official cut-off date set at 1913, according to the Restitutions Act 22 of 1994, many communities would not qualify for land restitution through the courts (SPP, 1999 for DLA). Nevertheless, in 1998 the Richtersveld Community applied to the Land Claims Court under the Restitution of Land Rights Act 1994 for restitution of their indigenous land and mineral rights, which had been taken from them by Alexkor.

In 2001 the Land Claims Court dismissed the case, citing that it could not ‘consider the broader issue of the effect of colonial acquisition of territorial sovereignty on pre-existing customary land tenure system, or rights in land’ (Bregman, 2010, p. 111). However, the Supreme Court of Appeal upheld the claim of the Community in 2003, determining that the Community had a customary right to the lands and minerals, akin to common law ownership, which were ignored but not extinguished by the colonial government, prior to 1913 (May and Lahiff, 2007, p. 792)

According to the verdict the annexation of the Richtersveld by the British Crown in 1847 did not extinguish the original inhabitants’ customary rights to the land, which is ‘akin to common law ownership’. Thus, the court found that this customary ownership continued until after the 1913 cut off date established by the 1994 Land Right Act; their entitlement was only officially ended with the consolidation of the mining industry, which saw the expropriation of indigenous lands without due compensation.

An appeal made against the decision by Alexkor Ltd. and the State, resulted in the case being heard in the Constitutional Court, which eventually confirmed the judgement, entitling the Community to restitution of the right to ownership of the subject land, including precious stones, and to the “exclusive beneficial use and occupation thereof” (ATNS, online, accessed 20/07/2011).⁶⁷

⁶⁷ The case was referred back to the LCC to determine a fair settlement, but an agreement was reached out of court, signed between community representatives and the Minister of Public Enterprises, and approved by the South African Cabinet in April 2007. (www.atns.net.au/agreement.asp?EntityID=3895 accessed 20/07/2011).

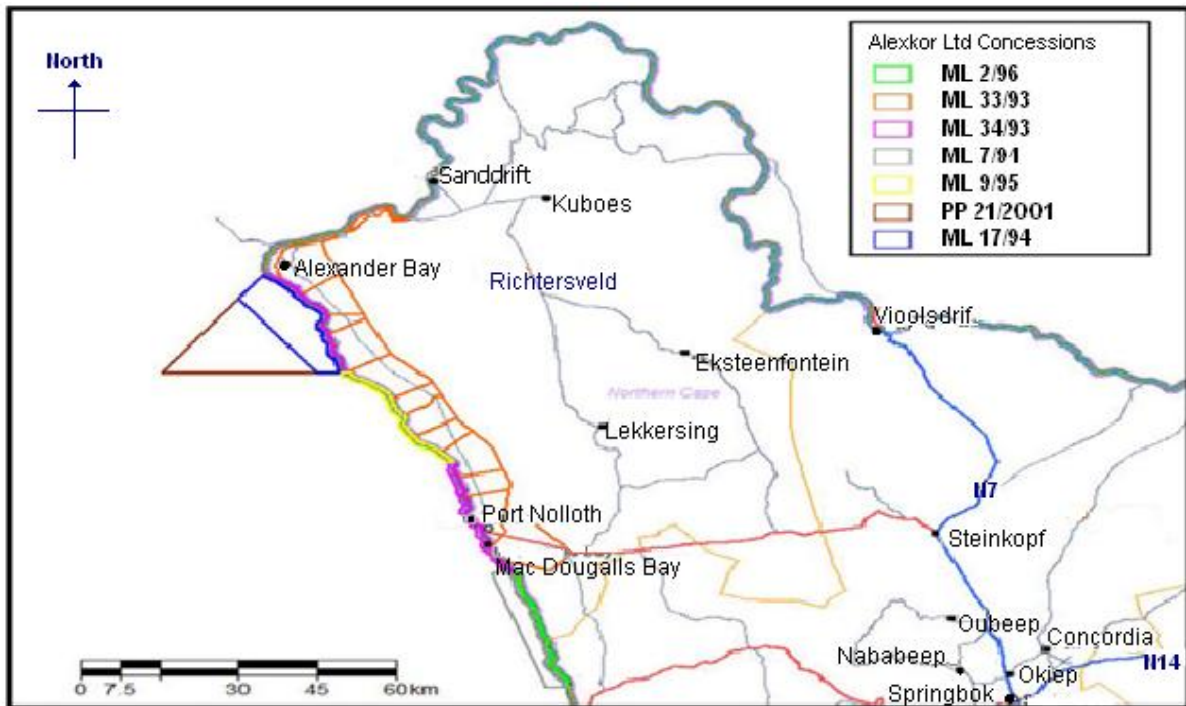


Figure 5: Map Depicting Alexkor’s diamond mining concessions between Alexander Bay and Port Nolloth and including marine mining licenses. (The Richtersveld Community is composed of people from the towns of Sanddrift, Kuboes, Eksteenfontein and Lekkering).

6.3 The Settlement

The eventual settlement (See Annex 2), including a part-share in the mining company, compensation of R 190 million, and ownership of Alexkor’s ‘non-core’ assets, seemed an unprecedented victory for the historically disadvantaged inhabitants of the Richtersveld. The settlement gave promise of access to, not only the land, but also to some of the wealth that has historically been generated thereof, and access to current and future economic potential of mining company property.

However, since the agreement was reached, it seems that few expected benefits of the deal are being realised. According to an August 2010 media report, ‘by the middle of 2010 only two settlement processes were legally complete: the agricultural farms plus the R50 million to recapitalise them had been handed over, and all three instalments of the R190 million reparation payment had been made. The money appears not to have been spent but is being kept in trust. Neither the title deeds to Alexander Bay nor the community’s mining rights...has been transferred to the community’ (G. Ntsaluba, 27 August 2010, *iol online*, accessed 18/07/2011).

In a 2010 Annual Report, Alexkor Ltd., however, claims to have made ‘significant strides with respect to the Deed of Settlement requirements’ (p. 4). According to the report, the transfer of

mining rights to the community was approved by the Department of Mineral Resources, though the cession of mineral rights was yet to be completed. 'Significant progress' with achieving municipal standards for the Alexander Bay township were reported, with a projected hand over to the CPA anticipated on completion. The farms that 'could be transferred' in 2010, i.e. Beauvalon, the ostrich farm, 'were...the rest will be in 2011, when the town establishment is complete' (Alexkor, 2010, p.4).

Whilst Alexkor successfully converted old order land and marine mining rights in 2010, intensifying their marine mining effort through contracting out deep sea, middle sea and shallow water mining to smaller companies, land mining operations were curtailed; the company claim this was in order to 'preserve the asset being transferred to the community' (Alexkor, 2010, p. 6).

Although the national government has provided substantial funds to cover Alexkor's legal costs (R 9.6 million), environmental rehabilitation obligations (R32.8 million plus a further 223.8 million from the Department of Public Enterprises) , R313 million for township establishment, compensation for lost assets (R41.2 million for Beauvalon farm and mining rights, R164.8 million for buildings that will be transferred to the CPA), Alexkor nevertheless claim that the company will continue to operate at a loss until the Pooling and Shared Joint Venture with the Richtersveld Community acquires the necessary 'recapitalisation' to make up for the company's substantial 'liabilities' (Alexkor, 2010, p. 4 and 35).

On the other hand, the company claims to now be 'reaping the benefits' of a 2009 'restructuring programme', which saw the transition to a 'contractor model', which had the intended effect of 'lowering overall costs', due to mass lay-offs of workers and lower wages paid to contracted workers. It is difficult to see how this 'privatisation' of company operations and services has 'empowered members of the local community and past employees' as the company claims (Alexkor, 2010, p. 5).

Whilst the company reported increased revenues from diamonds in 2010, due to increased yields from the marine concessions, which provided over 70% of their total production, in just 13 days at sea (Alexkor, 2010, p. 10), Alexkor's 2010 Annual Report explicitly states that the company are finding ways to 'cap' their 'liabilities' of environmental rehabilitation and obligations of post-retirement and medical care for employees (p. 4). In the same year, Alexkor came under criticism

for not paying any taxes for a number of years and for 'ring-fencing' state funds intended to be spent on meeting their legal obligations according to the Deed of Settlement.⁶⁸

Meanwhile, media reports have focussed attention on conflicts emerging among Richtersveld community members. One report claimed, 'there are simmering tensions between various factions in the broader community over how best to manage the large mining and agricultural holdings of the local community association' and 'factionalism is apparently rife in the community with Namas competing with Basters, Khoi and amaXhosa' (anon, August 17 2010, *iol online*, accessed 18/07/2011). Another mentioned 'the community is now fraught with infighting, fuelled by outside interests that have sought to insert themselves as business partners' (G. Ntsaluba, 27 August 2010, *iol online*, accessed 18/07/2011).

The Richtersveld Communal Property Association, known as the Sida !hub (Our Land) , which is the legal custodian of the assets won by the community, was reportedly being opposed by another group, the Nama Council. According to a 2010 report, the Nama Council had already taken the CPA to court four times since September 2009, on the grounds that the CPA does not represent them and is mismanaging community assets (anon, August 17 2010, *iol online*, accessed 18/07/2011).

A local government official mentioned in August 2011 (DENC official, pers. com. 5/08/2011), that the CPA had finally managed to put aside their differences and elect a new Committee. The DENC official was optimistic that this would enable progress to be made on key environmental management issues, such as rehabilitation of the Orange River Mouth estuary, which had been severely degraded through mining activities and poor environmental management (pers. com. 5/08/2011 and interview September 2010)⁶⁹.

Yet, according to H. Smith, of the Legal Resources Centre, the settlement agreed to between Alexkor and the CPA "can't work – it's unimplementable" (H. Smith, LRC, pers. comm., October 2010). H. Smith, who had been providing legal advice and support to the Community when they asserted their claim, argues that, contrary to his advice, the claimants were "bulldozed" into the agreement. He explained, "the main problem is this: that Alexkor keep the upper hand. The state company, a

⁶⁸ 'Acting chief financial officer for Alexkor Berno Lategan...noted that the state provided R29m for the township establishment and R100m in the 2010 financial year. This funding was "ring-fenced" and only R5.8m had been spent'. 'DA spokesman on mineral resources Hendrik Schmidt said it was "extraordinary" that the company had built up ring-fenced reserves - the product of injections from the state - of nearly R300 million.' Pressly, D., August 12 2010, *highbeam online*, accessed 1/08/2011).

⁶⁹ The Department of the Environment and Nature Conservation (DENC) has been attempting to ensure the Orange River Mouth retains its Ramasar status and is recognised as a World Heritage Site and Protected Area. Whilst a Orange River Mouth Advisory Committee had been established to pursue these objectives, a DENC official mentioned that the dysfunction Richtersveld CPA had hindered consultative and decision-making processes (DENC official, pers. comm., August 2011).

completely inefficient mining company, is the majority shareholder. It cannot and will not invest in it...it needs a huge capital injection to mine properly, which it will not and cannot do. And they're supposed to get a third party contractor, but no one is interested in mining for Alexkor...and the Community as contractor" (H. Smith, LRC, pers. comm., October 2010).⁷⁰

Alexkor initially demonstrated considerable reluctance to respect the Richtersvelders' entitlement to the coastal land and resources, which may also be contributing to the weakness of the 'partnership' arrangement. The relationship between Alexkor's management and community representatives was, throughout the court case, reportedly "very, very bad" (H. Smith, LRC, pers. comm., October 2010). The company evidently did not want to enter into partnership with the Richtersveld Community, seeing their demand for restitution, compensation and benefit-sharing instead as significant obstacles to achieving profitability in a time when leading international corporations of the mining sector, including South Africa's dominant diamond mining company, De Beers, are 'streamlining' operations to cut costs and to reduce their social and environmental 'liabilities'.

For the meantime, Alexkor Ltd. remains in de facto control of the coastal territories it has historically held title to, including mineral wealth, the majority of which it now accesses by means of contracted companies who mine land deposits, and near-shore waters and through operating its own larger deeper water diamond pumping vessels.



Plate 7: Near-Shore marine diamond mining, Alexkor contracted operators, south of Alexander Bay

⁷⁰ H. Smith said that the LRC's proposal was different, but due to pressure exerted by the politicians involved, the Community were persuaded to accept the agreement and to refuse the assistance of the LRC for at least five years. Though, he claimed, "they ask us every day to come and save them", there is nothing the LRC will be able to do on the basis of the agreement made between the Community representatives, the Company and the Government (H. Smith, LRC, pers. comm., October 2010).

6.4 Case 2: Komaggas Community Claims

Represented by the Karusab Land Claims and Development Committee, members of the Komaggas⁷¹ community are, with assistance of the Legal Resources Centre, currently pursuing an ambitious land claim on numerous farms currently owned by DeBeers, the state and private individuals. Their claim of ancestral title includes all the farms along the coast between Hondeklipbaai and Oubeep, and between the coast and the Komaggas reserve⁷² (See Figure 6 and annex 3). De Beers is the formal owner of most of these farms, most of which have not been mined, but are currently used for limited livestock farming or conservation.⁷³

Members of the Karusab Committee explained (Karusab Committee members, pers.comm., December 2010) that they hope to secure land title and permission to commence a variety of income-generating activities, such as mariculture, windfarming, and tourist facilities. As landowners, they envisage they will be able to start some of these projects themselves, or to potentially attract outside investors to partner with them. Their priority is thus to initiate businesses and generate ongoing employment, in such a way that members of their community stand to benefit, as well as to remain in a position of authority over the course of development on their claimed property.

According to a letter sent to DeBeers from H. Smith of the Legal Resources Centre, on behalf of the Komaggas Community, in the 1990s, the then Minister of Land Affairs, Mr. Hanekom, 'entered into negotiations with De Beers and proposed the transfer of De Beers land to communities'. A meeting in September 1994, 'and subsequent deliberations between the Minister and the company resulted in De Beers undertaking that any of its land not needed for its core functions would first be offered to the state for land reform purposes before being put on the open market' (H. Smith, LRC to DBCM, 26 August 2010, p. 3).

However, it seems that since then DeBeers have been reluctant to make land available to the DLA for land redistribution purposes, though a number of their farms have been sold to WWF or leased to SAN-Parks for conservation purposes. This is despite the fact that the Komaggas community registered a claim to De Beers farms in 1994 (H. Smith, LRC to DBCM, 26 August 2010).⁷⁴

⁷¹ Komaggas is a rural reserve of approximately 70,000 hectares in size, located in the Nama Khoi Municipality. The Komaggas reserve historically developed around a mission station in the late 1820s, and received was established as a reserve by order of a governmental Ticket of Occupation' in 1843.

⁷² Copy of Letter sent from H. Smith of the LRC to DBCM on 26 August 2010, pg. 1.

⁷³ This includes a number of farms transferred to management of San Parks as part of the expanded Namaqua National Park.

⁷⁴ See further discussion of this in chapter 7.

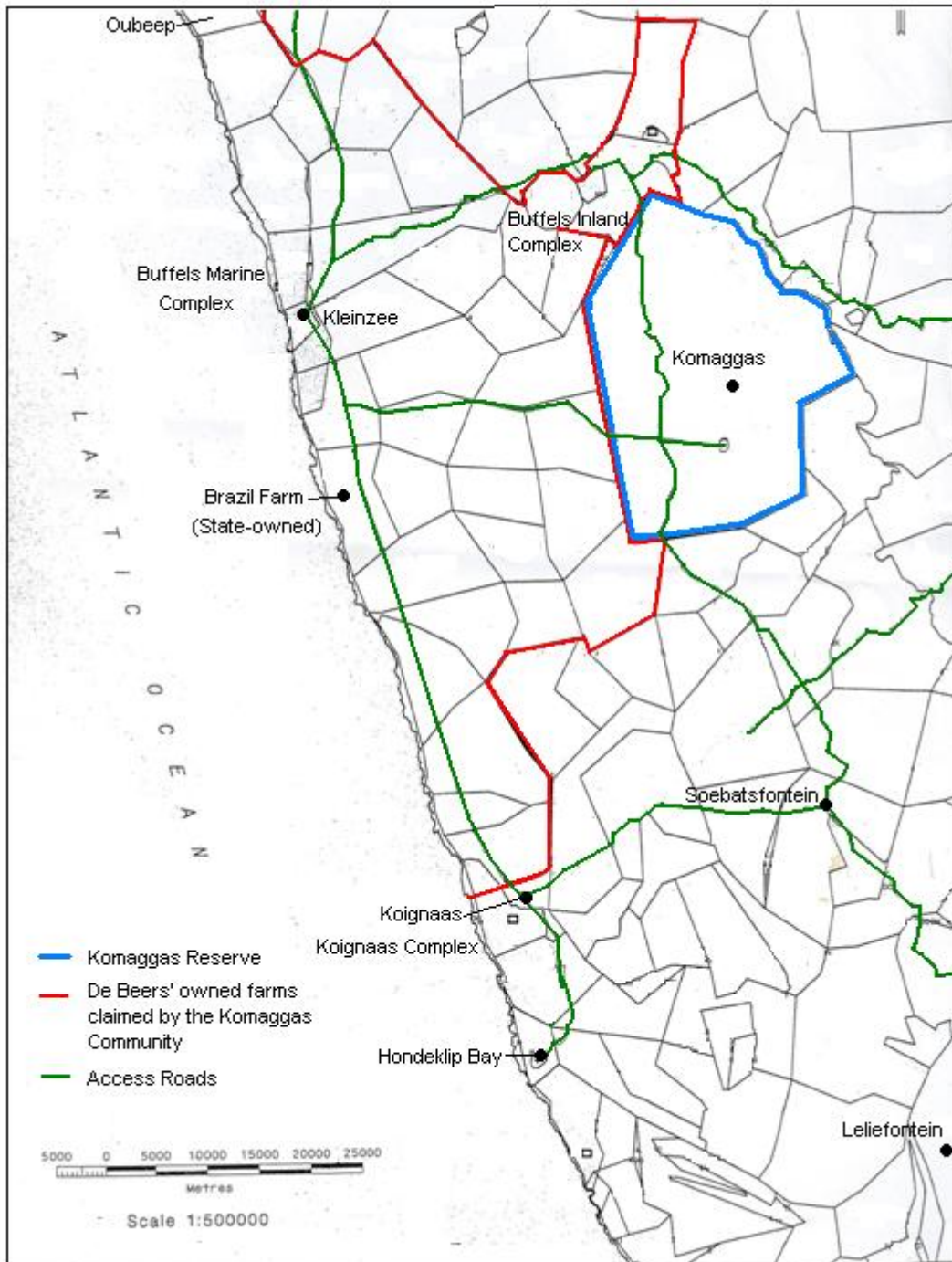


Figure 6: Map depicting the Komaggas Reserve in relation to farms owned by De Beers Namaqualand Mines and the state farm, Brazil, subject to land claim.

The claim for land restitution comes after years of futile attempts on behalf of the committee and the community to enter into discussions with De Beers about their mine closure plan and environmental rehabilitation process. Despite the fact that a post mining impact assessment

commissioned by De Beers in 1993, which involved extensive community consultation, anticipated that mine closure would have significant negative impacts on neighbouring communities, employees and the local economy⁷⁵, advising that the company consult and cooperate with workers unions and affected communities to develop a socially responsible mine closure plan; the Karusab committee complain that they remained excluded from discussions (H. Smith, LRC to DBCM, 26 August 2010, p. 3) The committee's hope to be involved in plans for environmental rehabilitation of mined sites, and the employment of community members in rehabilitation efforts was also apparently ignored by the company (H. Smith, LRC to DBCM, 26 August 2010, p. 3-4).

Thus, perceiving themselves excluded from the political platform on which decisions about the post-mining transition are being made, the Karusab committee are attempting to compel De Beers, San Parks, WWF, private farm owners and the relevant government authorities to recognise them as rights holders that must be consulted on the future of the land; and with whom benefits deriving from land and resource use must be shared.

Through H. Smith, of the LRC, Karusab have sent letters of notification to the relevant land owners to initiate a negotiation process, they hope will allow them to reach a settlement out of court. If this does not prove possible, the community hope that, with the assistance of the LRC, they will be able to gain recognition of their ancestral entitlement as equivalent to ownership rights in customary law. For this to stand in court as a restitution case, they would have to demonstrate these rights were not extinguished by the granting of farm land to registered whites, privatisation of crown land and the granting of land to mining companies (Bregman, 2010).

Bregman (2010) writes, 'the Komaggas community, represented by Karusab (Land Claims and Development Committee), maintains that the original inhabitants of Komaggas and their ancestors were the rightful owners of a much larger portion of land...The claim for ancestral land is bordered by the Buffels River in the north, the Swartlentjies River in the south, the Kamiesberg in the east and the Atlantic Ocean in the west' (p. 14).

Sharp (1994) argues that historical evidence supports a community claim for land restitution, given that predecessors of current community members continued to access and make use of much of the 'waterless coastal plains between the rivers, and between Komaggas and the sea', which had been declared Crown Land. Sharp (1994) adds, 'there was, of course, no fence around Komaggas until well into the twentieth century, and the inhabitants of the reserve had unrestricted access to land all the way down to the coast. Komaggas was completely encircled by colonists' farms only in 1915, but

⁷⁵ De Beers commissioned a group of UCT students to research the likely socio-economic and environmental impacts of a number of mine closure scenarios. See e.g. Lochner, 1992, EIA Report; or Gosling, 1992.

even so the people appear to have had access to coastal grazing for many years after that date, partly because many of these farms were not permanently occupied' (Sharp, 1994, p. 404).

Members of the community claimed they had been issued land title by the British colonial government.⁷⁶ However, 'for at least the last 70 years the inhabitants of Komaggas have faced an impenetrable wall of indifference to their land claim'; as Sharp (1994) highlights, 'De Beers held the title deeds to the land and had no reason at all to listen to the people's case. During the apartheid era, moreover, the area between Komaggas and the coast was absolutely beyond their reach, it was regarded as an area for exclusive white ownership' (p. 405).

A historical study commissioned by ESKOM in the 1990s⁷⁷ discovered no support for Komaggas community claims, 'in the form in which they made them' (Sharp, 1994), i.e. premised on grant of title by the colonial British government. Members of the community have since sought an alternative legislative premise for their claim, which might be more effective in achieving the recognition of their rights over the areas held by the state and De Beers. They have thus formulated their claim as one of Aboriginal entitlement, following legal precedent in other former colonies, and a growing international support for indigenous peoples in their claims for restitution of land and rights vis-à-vis colonising governments and corporations⁷⁸.

However, according to the 1997 White Paper on Land Policy in South Africa, to open the possibility of land restitution according to Aboriginal Title in South Africa 'would create a number of problems and legal-political complexities that would be impossible to unravel...The entertainment of such claims would serve to awaken and/or prolong destructive ethnic and racial politics' (Bregman, 2010, 107-8). Given the situation where 'large parts of South Africa could be subject to overlapping and

⁷⁶ Whilst apartheid discriminatory legislation regarding access to land ownership remained in place, claims of traditional use held little political or legislative weight. Members of Komaggas argued that the British colonial government had recognised their land rights and they requested researchers find documentary evidence of the grant Queen Victoria gave their forebears, or the authentic 1831 map demarcated by a land surveyor, Wentzel, which they believed 'set aside a portion [of land] within the larger grant...to accommodate the mission station' (Sharp 1994, p.405-6).

⁷⁷ In the early 1990s, ESKOM, the state electricity supplier, planned to buy two coastal properties on the coast between the Swartlentsjies and Buffels Rivers, one of which was owned by De Beers and the other, Brazil, was registered as state land. ESKOM was interested in finding a suitable site for the future construction of additional nuclear power stations. The company, however, faced vigorous opposition from members of the Komaggas community, who did not want a nuclear facility near their settlement, and who claimed prior rights to the land. Yet, the historical inquiry into these claims commissioned by ESKOM found the colonial record to provide no backing for the people's claims in the form in which they made them. (Sharp 1994).

⁷⁸ In the USA the legal concept of aboriginal title became institutionalised in the 1820s onwards as courts upheld the rights of Native Americans to certain lands (Bregman, 2010, p. 107). And, more recently, a landmark case, *Mabo vs Queensland (no. 2)* in 1992 became the foundational case for aboriginal title in Australia. In this case, the British colonial declaration in 1788 that much of Australia was *terra nullius* (land belonging to no-one), was incorrect and unjust (ibid).

competing claims where pieces of land have been occupied in succession by, for example, San, Khoi, Xhosa, Mfengu, Trekkers and British', recognising aboriginal entitlement might mean up to 80% of the population could make claims to land rights, perpetuating racial political conflict (Bregman, 2010, 107-8, quoting from Ulgem, 2002, 134).

Sharp (1994) mentions that many members of the Komaggas community 'realise that such a claim would be problematic in the national context...They know that if they did take an aboriginal rights action to court, they might never live down the opprobrium which resulted from setting a precedent that proved difficult to control' (p. 412). Yet a claim based on continued de facto use of Crown Land until the 1930s may prove to carry little legal weight, particularly as the community could not claim to be the sole occupants or users of this land, which has also been accessed by white migrant farmers into the twentieth century (Sharp, 1994, p. 413). The perceived 'weakness' of a claim based on de facto historical access, might thus be strengthened if the community could successfully claim unique rights of aboriginality.

In their attempts to gain a greater stake in the economic opportunities and political recognition associated with land tenure along the Namaqualand coast, the Komaggas community have been inspired by the perceived success of the neighbouring Richtersveld community. The Karusab Committee are aware however that achieving their ambitious claim could take many years; they have thus already prompted the government to recognise their claim to the state farm Brazil.

6.5 Occupation of Brazil Farm

Karusab Committee members say that they had received confirmation from the Department of Public Works that they can occupy the state farm Brazil⁷⁹ on behalf of the Komaggas community. At the time of fieldwork (December 2010 and January 2011) Karusab had erected a gate and stationed two people to charge entry to holiday makers who visit Brazil for recreational purposes. This reportedly enangered some local white holidaymakers, who felt entitled to access Brazil's coast without paying, as they have customarily done for many years (Karusab Committee members, pers. comm., December 2010; and DENC official, pers. comm., December 2010). A diamond diver who operates a concession off the coast at Brazil was also reportedly hostile to the new access control regime, and has, according to Committee members, threatened to have the men stationed at the gate removed by the police (Karusab Committee members, pers. comm., December 2010).

⁷⁹ The farm lies on the coast between Komaggas and the ocean. It has been a choice destination for white campers and anglers, as well as the launch site for a small-scale marine diamond mining operation, contracted to Transhex. The Department of Public Works is the holds the title deeds.

When members of the Provincial Environment and Nature Conservation Department (DENC) visited the farm in December 2010, it was also argued that this system of access control would be considered illegal according to the Integrated Coastal Management Act (2008), which has declared the coastal strip of the state farm as 'coastal public property'. The Act stipulates such property may not be subject to restricted access without consent of the Minister of Environmental Affairs⁸⁰.

Karusab Committee members argued in their defence (pers. comm., December 2010) that many visitors, particularly those from outside the region, are supportive of the community. Recognising the charge for entry is voluntary and intended to fund local economic development projects, they are more than willing to pay the minimal 20 Rand. From their perspective, they are trying to 'open up' the coast for the benefit of their community, by harnessing the natural resources and tourism potential to create livelihoods and much needed income.

Committee members felt (pers. comm., December 2010) that termination of their occupation of the farm on grounds that it infringed stipulations laid down in ICMA would be unjust, given that the individual operating a diamond diving concession at Brazil has been able to fence off a section of the coast at Brazil, erecting no entry signs to protect his building and boat, effectively privatizing a section of state land in the coastal public property zone. It seems, however, that for the meantime his mining lease exempts him from the legal prohibition.

6.6 Discussion

It thus seems ironic that, for members of the Komaggas community, their efforts to 'open up' part of the Namaqualand coast, long experienced as off-limits to them, should be hindered by legislation intended to ensure South Africa's coastline is maintained and enjoyed as public property⁸¹. This is particularly pertinent when the Karusab occupation of the Brazil farm is seen in the wider context of large-scale extensive environmental degradation and social exclusion incurred by mining along the Namaqualand coastline.

⁸⁰ ICMA No.24, 2008, 13.3 states 'No fee may be charged for access to coastal public property without the approval of the Minister'.

⁸¹ According to the preamble of ICMA, 'whereas much of the rich natural heritage of our coastal zone is being squandered by overuse, degradation and inappropriate management'; and 'whereas the economic, social and environmental benefits of the coastal zone have been distributed unfairly in the past'; ICMA states the Government's intention to retain the coast 'as a national asset', with public rights to access and benefit from the many opportunities provided by coastal resources (ICMA, 2008, preamble).

Whilst the Karusab Committee's entitlement to occupy Brazil is as yet formally ambiguous, the Committee has attempted to develop a detailed management plan for the farm, with the incorporation of possible business prospects such as wind energy generation, small-scale diamond mining, mariculture, and eco-tourism. However the committee have yet to gain governmental permission or attract investment in these enterprises; which would require feasibility studies and sustainability planning, as well as development of local skills and management capacity to run these operations.

Without security of tenure to the farm, it is unlikely outside investors and developers will negotiate with the Committee, but instead, with the land owner, the Department of Public Works. Moreover, as the Richtersveld Community case demonstrates, gaining formal recognition of land rights does not automatically mean significant benefits will be channelled to Namaqualand rural communities.

A number of factors will determine what can be achieved through agreements reached between government departments, private businesses and community organisations and whether these will promote democratic accountability, social equity and environmental sustainability. Significant factors include the balance of power between collaborating agents; the resource(s) chosen to be developed (e.g. renewable/non-renewable); the kind of business and the way in which the enterprise is embedded within social, political and economic systems, locally, nationally and internationally; the way in which resources, business assets and potential income is owned and apportioned; and whether financial benefits derived from enterprises are re-invested into local community infrastructure, education, and services etc, or used to pay the income of outside consultants and add to the profit margins of non-local companies.

These issues will be further discussed in the final chapter. The following chapter, chapter 7, explores some of the alternative economic enterprises that have been promoted for the Namaqualand coastal region, post-diamond mining. The discussion further contextualises the community claims detailed in this chapter, indicating the potential and also some of the pitfalls of pursuing conservation, tourism, mariculture, fishing and wind farm energy generation in the post-mining context.

Chapter 7: Exploring Alternatives to Mining on the Namaqualand Coast

The current situation of mine sale and closure in Namaqualand, after almost a century of diamond mining, presents opportunities as well as challenges to realise the key post-1994 governmental objective for pursuing integrated and sustainable coastal development that will address problems of coastal poverty and unemployment.

A 2000 White Paper (DEAT, 2000, section 7.1) committed the government to pursuing an integrated approach to 'Sustainable Coastal Development' that would include the following objectives:

- To promote the diversity, vitality and long-term viability of coastal economies and activities, giving preference to those that are distinctly coastal or dependent on a coastal location (C1).
- To ensure that the public has the right of physical access to the sea, and to and along the sea shore, on a managed basis; and to ensure that the public has the right of equitable access to the opportunities and benefits of the coast, on a managed basis (B2).
- To alleviate coastal poverty through proactive coastal development initiatives that generate sustainable livelihood options (C3).
- To use non-renewable coastal resources in a manner that optimises the public interest and retains options for alternative and future uses (D4); and
- To rehabilitate damaged or degraded coastal ecosystems and habitats (D5).

The 1998 Green Paper, 'Towards Sustainable Coastal Development'⁸² identified the following key challenges to be addressed along the Namaqualand coastline: limited public access to the coast due to exclusive control of mining companies; the prevention of the development of alternative use of the environment and ecosystem services for activities such as harvesting marine organisms or tourism and recreational activities; and inappropriate coastal development and pollution of coastal and marine ecosystems, which might be contributing to declines of marine species (DEAT, 1998, chapter 6).

The 2004 Namakwa District Integrated Development Plan⁸³ mentions the 'huge challenge to reduce unemployment and poverty' among local communities might be addressed through exploiting the

⁸² In the finalised White Paper for Sustainable Coastal Development in South Africa 2000, this section is omitted.

⁸³ Integrated Development Plans (IDPs) are planning documents produced by South Africa's government municipalities as part of an integrated system of planning and service delivery. The IDP process is meant to 'arrive at decisions on key issues such as municipal budgets, land management, promotion of local economic development and institutional transformation in a consultative, systematic and strategic manner. It therefore

‘unique environment the district offers for biodiversity conservation linked with economic development and job creation’; and exploitation of the ‘huge potential’ of processing of natural resources, particularly those to be found along the coast (section 4.2).

The 2002 Richtersveld District Municipality IDP also mentioned, that with growing unemployment, decommissioned mining areas could be made available for tourism, conservation and mariculture development (p. iii), which might help alleviate socio-economic depression of local communities. However, realisation of potential land use ‘synergies’ post-mining would require the cooperation of mining companies in improving access to the coast and supporting the creation of post-mining livelihoods (p.iii).

With mass retrenchments from the mines, the Northern Cape Provincial Government envisaged that the promotion of mariculture and fishing in the province could replace the mining sector as key industry and regional employer. The 2003 Fishing and Mariculture Sector Development Strategy for the Northern Cape Province mentions as key objectives: ‘small, medium and micro enterprise (SMME) development and black economic empowerment as well as those of global competitiveness and profitability’ (DEAT, FMSDS, 2003). Though many of South Africa’s fisheries elsewhere are operating at or above maximum sustainable capacity, in Namaqualand, the possibilities for fishing, harvesting and mariculture farming of marine species are, according to the 2003 FMSD, ‘significantly under-developed’⁸⁴.

Whilst De Beers claim that their plans for mine sale and post-mining land uses form part of their commitment to a “lasting contribution to the communities in which they live and work” (CSA Press Release, 2011, p.1); evidence suggests that, despite the recommendations of a socio-economic impact study commissioned by the company themselves in the early 1990s⁸⁵, De Beers is attempting to avoid fulfilling post-mining social responsibilities. The company have instead pursued their own plans for conservation, tourism, mariculture and wind energy generation projects without substantial consultation with local Interested and Affected Parties (IAPs). Though initially the company showed interest in promoting inclusive sustainable socio-economic development and the

not only informs municipal management on key issues, but also guides the activities of other spheres of government, corporate service providers, NGO’s and the private sector’

(<http://www.thedplg.gov.za/subwebsites/idp/documents/IDP%20brochure.pdf> accessed 10/08/2011).

⁸⁴ The FMSD Strategy mentioned that ‘findings of the fisheries Information System over the period 1995-7 indicated there are at least 10 commercial species with the potential for exploitation off the Northern Cape Coast. These include deep and shallow-water hake, monkfish, snoek, horse mackerel, kingklip, squid and west coast sole.’ In addition there are limpets, mussels and seaweed that can be harvested, and historically the large fur seal colony at Kleinzee has seen seal culling for commercial use. Though now the seal colony is serving as a tourist attraction for De Beers’ tourism operations.

⁸⁵ De Beers commissioned a group of UCT students to research the likely socio-economic and environmental impacts of a number of mine closure scenarios. See e.g. Lochner, 1992, EIA Report; or Gosling, 1992.

creation of significant jobs in environmental rehabilitation and other 'green' developments; the company's current approach is instead unlikely to bring substantial benefits for local communities, or leave for them a thriving natural environment on which to base sustainable livelihoods.

7.1 The 'Living Edge of Africa Project'

The 2010 De Beers *Report to Society* mentions that 'alternative land uses are being considered in place of full rehabilitation. These include tourism and mariculture projects, wind power generation and the expansion of oyster and abalone farming' (De Beers, 2010, p. 80).

In a presentation delivered to MCEN participants in January 2011 (Marine and Coastal Educators Network Conference, Namaqualand, January 2011), S. Frazee, director of CSA⁸⁶, was invited to speak about the alternative industries and livelihoods De Beers had sought to support in order to offset the socio-economic disaster of mass retrenchments, unemployment and decline of dependent secondary businesses in the region, due to mine closure. S. Frazee spoke of the Living Edge of Africa Project (LEAP) initiative CSA had developed as consultants to De Beers over the past four years. CSA had agreed to assist De Beers in ensuring a 'positive legacy' would be left in the wake of mining. They envisaged the development of a 'green' economic hub on the mined land, with such innovative projects as mariculture, sea-water greenhouses, ecotourism, land art, a wind farm, as well as ecological rehabilitation where feasible.

LEAP was thus conceived as a means of creating jobs from conservation. Frazee explained that only 7% of the North West coastline remained 'untouched and undisturbed' by mining activities, and thus CSA saw it as crucial that these pristine sections should remain protected from further degradation. However they recognise that conventional conservation approaches – specifically conservation parks – provide limited benefits or opportunities for local communities. Whilst a few might access employment or revenues from tourism, the thousands impoverished by mine lay-offs, would likely see no direct benefit.

CSA thus framed LEAP as a means of integrating conservation and sustainable development goals, hoping to achieve agreement between 'local people', 'experts' and mining authorities on 'a common

⁸⁶ Conservation International is nature conservation organisation with headquarters in the USA. The South African branch, Conservation South Africa (CSA) seeks to protect the unique flora and fauna of the Succulent Karoo biodiversity hotspot, the majority of which falls within the Namaqua District. This mission has motivated their work in the Kamiesberg mountain region, where they run a number of projects working with local communities and Municipal government to achieve more ecologically sustainable farming practices, and promote alternative livelihoods and small enterprises, particularly in ecotourism (S. Frazee, MCEN presentation, January 2011).

vision'. This envisioning exercise was followed by a Business Case intended to attract potential investors, a pre-feasibility study and feasibility study, completed in September 2010 (CSA, 2008, for De Beers). CSA had also provided funding to facilitate the expansion of Namaqua National Park and research and development of best practice for rehabilitation and restoration, which De Beers had piloted on a number of experimental sites.

However, Frazee announced, "there's been a change of management and a change of vision. De Beers are now looking at selling the mine. So they decided they are not going to move forward with the (LEAP)" (S. Frazee, MCEN presentation, January 2011). In 2011, De Beers admitted in a public press release that they no longer intend to pursue LEAP (I. Salgado, 5 April 2011, *Cape Times*, accessed 18/07/2011), but that they intend instead to sell Namaqualand Mines on to another mining company⁸⁷.

What mine sale might mean in practice is that De Beers will attempt to dispense with the social and environmental responsibilities they had initially agreed to take on, selling on instead to a smaller company without pretensions to, or capacity to achieve high corporate responsibility standards (see previous chapter and annex 5). Whilst S. Frazee complained that it was proving exceptionally difficult to access information about what exactly is in the terms of sale that De Beers is negotiating with prospective buyers of the mine, she believed however that the company were making no provision for rehabilitation or social responsibility requirements – other than meeting certain legally required BEE criteria (S. Frazee, pers. comm., March 2011).

S. Frazee reported that relationship between her organisation and the mining company was now "very strained", complaining that De Beers' decision to sell the mine lacked any transparency or public accountability (S. Frazee, CSA, pers. com, March 2011). When the company did eventually make available a copy of their Amended Environmental Management Programme Report (EMPR) in 2011, they placed only one copy in a library in Springbok, beyond the reach or awareness of many affected local community members (CSA & Bench Marks, 2011, 5). It seemed to Frazee that the company were attempting to circumvent any delay on achieving a quick sale; and as Frazee aptly puts it, their short-sighted approach seems indicative of a mindset "we've got to get out yesterday" (pers. comm., march, 2011).

⁸⁷ A De Beers' presentation from 2010, entitled '*Project Oasis*', describes its Mine sale plans, claiming 'Namaqualand Mines offers a significant business opportunity to an operator with the ability to successfully and profitably operate the alluvial diamond mining asset. This opportunity should accelerate the consequent benefits to the local industry, community and business partners through job creation, renewed business activity in Namaqualand and other indirect benefits'. (De Beers, '2010 NM, *Project Oasis*', p.13).

Whilst the company have decided not to pursue the LEAP, evidence suggests that they are nevertheless capitalising on their current ownership of much of their coastal territory, with the intention of attracting investment for a number of private developments. A key question is thus to what extent these initiatives include local communities as partners and co-managers, and will redress historical environmental degradation and social exclusion.

7.2 Town transfer and Coastal Development

In an interview, De Beers' town manager at Kleinsee mentioned that the mining towns of Koignaa and Kleinsee would be transferred to municipal management, and a property estate agent would be marketing individual houses to buyers who would find the exclusivity appealing. When asked whether the high-security fencing and controlled access points would be removed for proclamation as municipal towns, the town manager explained, "the residents (remaining De Beers employees and their families) want to keep that. But, by law these towns...you can't actually prevent anyone showing an ID book and getting through. But really that's what makes these towns so attractive and will be a selling point when we do actually start selling properties here" (Town Manager, DBCM, pers. comm., September 2010).

S.Fraze mentioned that CSA had developed plans to make the old mining towns into model 'green' towns, retrofitted with renewable energy infrastructure. However, since De Beers decided not to pursue plans developed with CSA, Fraze doubted the company would take up the recommendations, and instead, the company had made an agreement with a private estate agent, Pam Golding, to sell the properties, with first priority to be given to current or previous employees (S. Fraze, pers. comm., March 2011).

De Beers' town manager outlined other post-mining plans of De Beers; the company intended to lease land to private developers to establish a wind farm and mariculture enterprises. Although these enterprises offer the possibility of generating employment, business opportunities and benefits such as low-cost energy and sea food for local communities; realising these possibilities requires the company making the necessary links and ensuring local community benefits and involvement is a key objective in planning and implementation processes. Without consciously integrating community needs and benefit into post-mining plans, it is likely that developments such

as wind farms and mariculture farms will be oriented to national and international investors and markets instead.⁸⁸

Whilst local 'coloured' communities are struggling to attain land or recompense for their landlessness through the South African land reform process, with the Department of Land Affairs excusing disappointingly slow redistribution, on the grounds that the government agency is unable to afford properties subject to land claims; De Beers' town manager put the situation in perspective, indicating DeBeers was in a good position to market land to private investors: "there's lots of land; land is cheap", he said (Town Manager, DBCM, pers. comm., September 2010).

The town manager further highlighted that the De Beers territory would be ideal for abalone farming; "this being so remote and this farming taking place behind barbed wire, that's been put there to protect the diamonds can also be used to protect their product, which is like gold. You know, abalone is very, very pricey. People pay a fortune for it" (Town Manager, DBCM, pers. comm., September 2010). The company could offer security to mariculture operations to ensure their protection from poaching, which he highlighted was a major problem in the highly populated Western Cape.

Another strategy to capitalise on the secured access infrastructure, and consequently 'remote' and unpopulated diamond territory mentioned by the town manager was to attract a private investor to establish a prison. He quickly elaborated, "Prison is the wrong word...it's a *correctional services training centre*. The idea is to get young offenders, between the 18 and 25...to bring them to a facility where they can learn a trade". However, he mentioned it was proving difficult to get governmental approval for the plan for reasons that were "political" (Town Manager, DBCM, pers. comm., September 2010).

CSA and Bench Marks (2011), in their response to De Beers' Namaqualand Mines Amended Environmental Management Programme Report (2011), highlight that the company have prematurely removed alternative land use areas from their liability costing. Although the company have mentioned a proposed correctional facility, marine aquaculture, wind energy (electricity generating turbines) and a hazardous waste disposal site; there is no public information available for the correctional facility or hazardous waste disposal site, nor evidence that these have yet been approved by the authorities and implemented (section 4.6).

⁸⁸ The town manager indicated that the wind farm was "not really (designed) for the towns", but would be funded by "private money...On the strength of our national utility company Eskom, who have said they are willing to buy the electricity fed into the national grid." (Town Manager, DBCM, pers. comm., September 2010).

CSA and Bench Marks (2011) further highlight that in the company's EMPR, 'no information is presented in the Amended EMPR as to the size of alternative land use areas but indications are that the area is significant'; 'the length of time for the development of these new enterprises is not indicated and information on how this relates to the anticipated life of the mine by 2023 and the associated transition plan has not been provided to Interested and Affected Parties'; and 'no technical reports have been included in the draft EMPR provided to CSA' (section 4.6). Furthermore, the review highlights that in their EMPR the company is unclear whether revenues from sale or lease of land will be used as a contribution to the wider liability of post-mining restoration or social development (section 4.6).

Instead of continuing with community consultation processes undertaken for the LEAP initiative, the company seems intent on sustaining high levels of exclusivity, maintaining private ownership and secure access control over coastal territory; whilst compiling a portfolio of businesses and industries that ensure the coast remains 'economically productive' for selected investors.

7.3 Diamond Route Tourism

According to the company's brochure, 'Diamond aren't the only treasures found in this area, this stretch of coastline has many unique offerings –and is unspoiled and evocative... Soft sand dunes and nostalgic shipwrecks, as well as a 30,000 hectare game farm' comprise the DeBeers Namaqualand experience, which is marketed as a choice destination on the 'Diamond Route' (De Beers, *Diamond Route Tourism Brochure*, undated).⁸⁹

The largely unpopulated and 'undeveloped' De Beers' owned stretch of Namaqualand's coast is, for the purposes of a certain tourist market, conjured as 'pristine wilderness', which can be explored 'in the luxury of your own 4x4 vehicle' as part of two guided tours, run exclusively by the company's own operators. The exclusivity of the diamond fields is intended to be attractive to wealthy urban-based tourists, who seek a wilderness getaway experience, somewhere where 'calm reigns and stillness pervades' (De Beers, *Brochure*, undated).⁹⁰

⁸⁹ A tourism route linking nine nature reserves owned by DeBeers and the Oppenheimer family across the north of South Africa; from the 'Venetia Limpopo' Nature Reserve in the east, to Namaqualand in the West, including 'Tswalu Kalahari' Reserve, which is 'the biggest privately owned reserve in South Africa at about 100,000 hectares', and the Brenthurst Oppenheimer family estate, 'filled with indigenous plants completely organically sustained' (De Beers, *The Diamond Route Tourism Brochure*, undated).

⁹⁰ A number of the destinations on the Diamond Route are relatively close to major cities; for example for Dronfield Nature Reserve, the brochure reads: 'Dronfield offers a wonderful alternative accommodation to

De Beers thus hopes to attract a select clientele of high-paying visitors who can afford the luxury 'package' tour they provide, and who will find the exclusivity appealing. Though, some members of local communities might receive employment in maintaining tourist facilities, it is questionable whether the kinds of adventure and 'ecotourism' being promoted is likely to be of significant benefit to local communities, suffering high levels of unemployment and income-loss due to mine closure. The all-inclusive 'package' tours offered by De Beers actually enable visitors to the area to largely bypass local-communities and the local economy, whilst paying to gain exclusive access to the company's mining territory.

Although the tourism brochure is decorated with the words 'conservation, environmental awareness, tourism and social upliftment' (front cover of De Beers, Brochure, undated), with the abandonment of LEAP, and reluctance to negotiate for land redistribution and restitution purposes, it does not seem that DeBeers is interested in 'opening' the coast to local socio-economic development or community-based natural resource management.

The Diamond Route is primarily marketed as a form of 'eco-tourism'; the private nature reserves and their conservation research projects are presented as a means of preserving 'a piece of old Africa' and an opportunity for visitors to 'glimpse into the past' of South Africa's rich heritage of biological diversity, impressive wilderness landscapes and archaeological remains (De Beers, Brochure, undated). The Brochure mentions, 'combined, the habitats of the Diamond Route are home to more than half of South Africa's bird species –over 500 in total –including 40 endemics and 69 species on the Red Data List...Adding to the lengthy bird list are over 50 mammal species, including white and black rhino, sable and roan antelope.' (De Beers, Brochure, undated).

Through maintaining extensive private nature reserves across South Africa, the mining magnates De Beers and Anglo American, controlled by their founding family, the Oppenheimers, claim to demonstrate their 'green' credentials and passion for South African indigenous wildlife. However, this portrayal requires critical interrogation. There are various reasons to be cautious of appraising the Diamond Route Tourism initiative as a positive development for the new South Africa, and particularly for local communities in Namaqualand.

families and friends overnighting in the Kimberley area or an ideal weekend getaway from the hustle and bustle of city life' (De Beers, Brochure, undated).

7.4 De Beers and Conservation

In a presentation delivered to the Marine and Coastal educators Network in Kleinsee in December of 2010, the DBCM Environmental Manager, claimed that the larger portion of De Beers-owned land has not been intensively mined, and is thus in “pristine condition” (MCEN presentation, January 2011). The company’s environmental manager indicated on a map that of the 270,000 hectares owned by De Beers, 261,000 were in “pristine condition”. Indeed he claimed this land was far better preserved than areas outside of DeBeers’ control, which have been farmed by livestock. By claiming that under De Beers’ management, Namaqualand’s coastline has actually been well preserved, the company both seek to mitigate or off-set the 9,000 hectares or so of significant environmental degradation their mining activities have incurred; and to imply that De Beers has been a responsible environmental custodian during its period of ownership.

However, there are a number of problems with De Beers’ professed commitment to the cause of conservation that deserve critical scrutiny. Firstly, the claim that only 9,000 hectares has been disturbed by mining does not stand up to scrutiny, even of the company’s own estimates provided elsewhere (e.g. Environmental Manager, DBCM, MCEN Presentation, January 2011). CSA and Bench Marks (2011) calculation of areas disturbed reported in individual mine concession area EMPRs gives an estimate of 17,000 hectares (section 4.9).

Furthermore, it is important to recognise that pre-mining, these areas were not ‘pristine’ in the sense that they have never been used by people to derive a livelihood. Historical analysis of previous land uses and environmental changes can help to give an idea of how present landscape forms and patterns have come about, and how alternative socio-cultural groups have sustained themselves within, and had an influence upon the natural environment. As Hoffman and Rohde (2007) have highlighted, Namaqualand has historically undergone a number of ecological revolutions, through a series of changes in predominant forms of human inhabitation and interaction with the environment.

Many of the farms acquired by De Beers in the early twentieth century were previously inhabited by mobile hunter-gatherer San people, then used as grazing land for livestock, first by pre-colonial Khoi people, and secondly, by white farmers, from whom the mining companies purchased the land.

Whilst many of the early white settlers in Namaqualand undertook a form of mobile pastoralism comparable to that of the Khoi people they displaced, British colonial rule had little respect for this mode of livelihood, just as they disregarded traditional San peoples’ modes of hunting and gathering, seeing these as backward and uncivilised (Bregman, 2010). Instead, settled forms of

residency and agriculture were encouraged, and farms were divided up and allocated to private white owners, whilst most of the non-white inhabitants of these lands, who survived colonisation and did not migrate north across the Gariep (Orange) River, were gradually settled into rural reserves, often surrounding church mission stations, where they were encouraged to undertake agricultural work and wage labour (Wisborg and Rohde, 2004; Sharp, 1994; Bregman, 2010).

It is likely that early smaller scale prospecting and diamond mining has also gone on in these areas historically, either by opportunistic small-time diggers prior to monopolisation by the De Beers, or by the company itself. The Park Manager at Namaqua National Park explained that when San Parks took over management of the coastal extension from DeBeers, they had to undertake rehabilitation on a number of small-scale mining scars he believed were decades old (Park Manager, NNP, pers. comm., September 2010).

Yet, even if De Beers were to argue that since they acquired these farms, the land has been 'left to itself' and has thus 'recovered' from the prior uses, in fact De Beers have continued to manage much of the non-mined land as farmland which is contracted to farmers, or as a private game reserve, onto which they have introduced game, which is accessed by tourists and recreational hunters (Town Manager, DBCM, interviewed September 2010). 'Surplus' animals are also sold to other private land owners keen to stock their farms with game. According to the DBCM Town Manager at Kleinsee, this is a strategy De Beers and Anglo American, the other mining company controlled by the Oppenheimer family, have repeated on their other properties in southern Africa (Town Manager, DBCM, pers. comm., September 2010).

Indeed, Roberts (2007) argues conservation also provides a convenient way for the company to 'lock-up' mineral deposits it does not want to be mined. Allegedly rich diamond deposits have been 'locked-up' in the Richtersveld National Park on the Orange River, where, according to a union official to the Alexkor mine, "all the top mining houses [are] involved in its management structure" (Roberts, 2007, p. 306). The conservation areas set aside by De Beers and Anglo American solely for the appreciation of nature, thus may also be a strategy by which the company can legitimately retain title to diamondiferous territory (Roberts, 2007).

In Namaqualand De Beers has agreed to lease a number of their farm properties to San Parks to manage as part of an expanded Namaqua National Park.⁹¹ Whilst San Parks' mandate commits the

⁹¹ The Namaqua National Park (NNP), which was established in 1998 and proclaimed in 2001 and is managed by South African National Parks (SANParks), was expanded through contract with DeBeers in 2008 to include the coastal section between the Groen and Spoeg River mouths, a 50km stretch of relatively unspoilt coastal

conservation authority to undertake conservation on behalf of, and for the benefit and enjoyment of *all South Africans*, meaning the parks it manages ought to be accessible and affordable for all, and of benefit to local communities (SAN Parks website, accessed 18/07/2011; SAN Parks NNP, 2010), the expansion of Namaqualand National Park has provoked antagonism among local communities, who feel their land claims have been trumped by conservation interests, and who perceive a hostile alliance between De Beers and SAN Parks to keep them from occupying and deriving benefits from the coastal land⁹².

When asked why the company had only agreed to lease the farms and not to sell them to the conservation authority, a De Beers representative said, “if SAN Parks ever decide they don’t want to continue with this park, they’ve got to give it back to De Beers...All De Beers - the Oppenheims- are saying is, we’ll give this to you, but providing you don’t take this land and sell it, or convert it into a commercial property...You can have it for these 99 years and then there’s the option to renew it. But that’s providing you keep it as a conservation area. Because if you don’t want to use it as a conservation area, then we’ll take it back” (Town Manager, DBCM, pers. comm., September 2010).

It is in any case very misleading to present the image of ‘nature’ ‘left to itself’, or reserved as a zone of non-utilitarian or non-commercial custodianship for De Beers’ coastal farms. From the perspective of local farmers, De Beers is a private landowner, maintaining livestock on their properties. Whether or not the company uses the term ‘conservation’ to describe this activity, it is nevertheless farming stock on land that local farmers would likely see as prime grazing land for *their* livestock (NNP Manager, pers. comm., September 2010).⁹³ The company meanwhile do lease some of their farms to commercial white farmers. ‘Conservation farming’ and tourism have thus provided subsidiary income to the company, in addition to their profits from diamond mining. All of these sources of revenue depend on the company’s exclusive ownership rights to coastal land.

dunes. The newly expanded park has a size of 140,035 hectares, including 35,183 hectares of contractual land owned by either DeBeers or WWF-SA

⁹² Communities seeking land redistribution through the Land Claims Court were under the impression that DeBeers had agreed to make land first available to the DLA for land redistribution to disadvantaged communities, before advertising on the open market.(H. Smith, LRC to DBCM, 26 August 2010). Yet a number of farms subject to land claims have since been transferred to San Parks.

⁹³ According to the Manager of Namaqua National Park, many local farmers have little interest in, or respect for the aims of conservation. He said, “I think they know what our agenda is, they just don’t agree with it. They see this land as being very good grazing land for sheep and putting it under conservation is a waste of time”. (NNP Manager, pers. comm., September 2010).

7.5 Expansion of Namaqua National Park

The Namaqua National Park (NNP) , which was established in 1998 and proclaimed in 2001⁹⁴ and is managed by South African National Parks (SAN Parks) , was expanded through contract with DeBeers in 2008 to include the coastal section between the Groen and Spoeg River mouths, a 50km stretch of relatively unspoilt coastal dunes. The newly expanded park has a size of 140,035 hectares, including 35,183 hectares of contractual land owned by either DeBeers or WWF-SA⁹⁵.

The long-term aim of SAN Parks would be to see an expansion of NNP to connect the inland and coastal sections (see Figure 7), and potentially the southern side of the Groen River estuary, further developing tourism amenities, and providing up to 300 job opportunities throughout the park. They also hope to enable educational visits by local schools (SAN Parks NNP, 2010; Park Manager, NNP, pers. comm., September and December 2010). The Namaqualand National Park has been promoted as of substantial benefit to local communities due to the tourism market the Park can draw from across the country and internationally.

Plans for expansion also include the establishment of a Marine Protected Area (MPA) adjacent to the terrestrial conservation area. The proposed MPA will be the first MPA for the Province and conservation authorities were keen to establish a deepwater MPA, 200 nautical miles seawards from the shore. Yet the Park Manager explained that at present such a MPA would be beyond SAN Parks' ability to manage.

Whilst SAN Parks is attempting to sell the idea of expansion of the park through promise of benefits to local communities, representatives from the local fisheries had not even heard of the proposed MPA, despite the fact it would likely impact on their livelihoods (Local Fisher Association Representatives from Hondeklip Bay and Port Nolloth, pers. comm., December 2010).

⁹⁴ In accordance to the National Parks Act, No.57 of 1976, for the purpose of conserving the rich diversity of succulent plants.

⁹⁵ The coastal section can be accessed via a dirt road that leads to the Groen River estuary and at present there is no charge for entry.

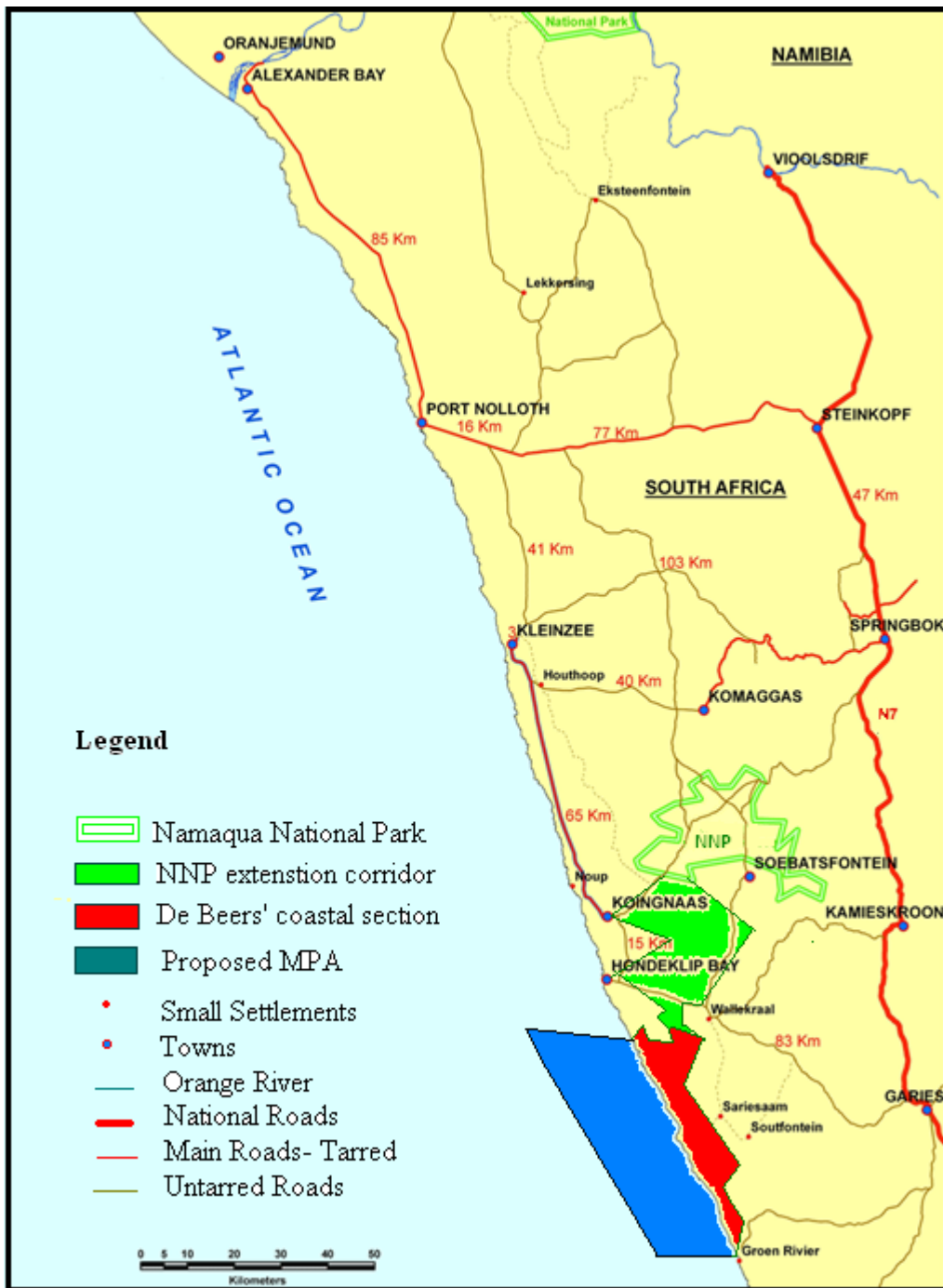


Figure 7: Map depicting Extent of Namaqua National Park and recent and proposed extensions.

This is despite SAN Parks' vision is to conserve biodiversity and cultural heritage 'with the support and active participation of all stakeholders, enhancing livelihoods of the region', 'to manage NNP with stakeholder collaboration' (SAN Parks NNP, 2010). Through the convening of a Park's Board

and engaging in public participation workshops, the Park seeks to overcome resistance from local communities, by ensuring that they derive some benefit and feel their concerns are heard.⁹⁶

Whilst hired labour is necessary to rehabilitate and fence the chosen 'wilderness' site, the real 'economic opportunities' for local communities supposedly on offer are the 'spin-offs' that will come from establishing guest houses and tour operations for visitors. The Park Manager suggested that it is envisaged the Park will provide a 'resource' for those who make for themselves a business opportunity from the anticipated 'flow' of tourists. He cited the exemplary case of Kruger, which has seen the proliferation of secondary businesses surrounding the Park, catering to the tourist market (NNP Manager, pers. comm., September 2010).⁹⁷

However, the Park Manager admitted the current tourist market to Namaqua National Park is highly seasonal and the destination is nowhere near as popular as a Park like Kruger. Moreover, when it comes to hosting tourists or operating tours, clearly those who already are privileged with land, property and vehicles, residing near the conservation area, are at substantial advantage over most landless, income-poor persons, the majority of which in Namaqualand are members of 'coloured' communities. Hence San Park's conservation strategy will likely do very little to alter these structures of inequality, and patterns of enrichment and impoverishment in the region.

Furthermore, with substantial financial resources to draw upon⁹⁸, San Parks is seen as having trumped local land claims made by 'coloureds' to achieve restitution or redistribution under the Land Act, proving a willing buyer of land double the market price (NNP Manager, pers. comm., September and December 2010).

It thus remains to be seen whether SAN Parks efforts to ensure significant local and regional socio-economic benefits from conservation initiatives will be successful, or whether the 'opening up' of the coast for tourism access will do little to enhance the coast's accessibility or the acceptability of conservation as a post-mining land-use among local communities seeking real long-term livelihood opportunities.

⁹⁶ San Parks received funding from Conservation International-SA to operate a dog breeding project in order to prevent farmers from killing escaped game, which they say predated on their livestock. NNP Manager, explained that the dog-breeding project had been necessary to placate farmers who perceive all predatory game on their farms come from the Park, though he argued this is a "wrong perception", as some of the nearby farms are also inhabited by jackal and caracal. (NNP Manager, pers. comm., September 2010).

⁹⁷ NNP Manager, "Look at the Kruger model, the economy outside is 10 times that inside". He mentioned that guesthouses had already started opening near the park, and "although we're not directly responsible for managing these, if it weren't for the Park, they wouldn't have been there" (pers. comm., September 2010).

⁹⁸ San Parks received funding from WWF, CI and the Leslie Hill Trust to establish NNP and to take on the coastal extension section.

7.6 Fisheries and Mariculture

Though many of South Africa's fisheries elsewhere are operating at or above maximum sustainable capacity, in Namaqualand, the possibilities for fishing, harvesting and mariculture farming of marine species are, according to the 2003 FMSD, 'significantly under-developed' (DEAT, 2003)⁹⁹.

On the other hand, Namaqualand's commercial fish stocks, including rock lobster, the major catch landed locally, have been declining for a number of years (G. Branch, pers. comm., February 2011). In fact large-scale commercial fishing companies have moved elsewhere, closing their operations at the fish processing and packaging factories in the towns of Hondeklip Bay and Port Nolloth, and further exacerbating problems of unemployment and income-poverty.

In addition, as the 1998 Coastal Policy Green Paper mentioned 'there are no significant bays on this straight coast. Sandy shores comprise 30% of the coastline, while rocky shores comprise the remaining 70%' (DEAT, 1998, chapter 6). This, combined with 'the distance from major urban centres, limited access to markets, scarcity of fresh water, lack of a deep-water harbour and the restricted access to the diamond concession areas', were indicated as serious challenges to the successful development of economically viable commercial fishery and mariculture industries (DEAT, 1998, chapter 6).

7.7 Namaqualand's Fisheries

According to the chairman of Hondeklip Bay Fishers Association (pers. comm., December 2010), when many from the coastal town lost their jobs in the mines, they hoped to shift to making a living from the sea, as 'it was their only solution'. But he pointed out that many did not have boats and did not have the finances to start up their own company. Thus many in the community applied for 'Interim Relief Permits' to catch crayfish.¹⁰⁰

⁹⁹ The FMSD Strategy (DEAT, 2003) mentioned that 'findings of the fisheries Information System over the period 1995-7 indicated there are at least 10 commercial species with the potential for exploitation off the Northern Cape Coast. These include deep and shallow-water hake, monkfish, snoek, horse mackerel, kingklip, squid and west coast sole.' In addition there are limpets, mussels and seaweed that can be harvested, and historically the large fur seal colony at Kleinsee has seen seal culling for commercial use. Though now the seal colony is serving as a tourist attraction for De Beers' tourism operations.

¹⁰⁰ This category of permit was introduced in 2007 in response to an outcry that the National Fisheries policy did not make provision for fishers who derived their livelihood from fishing but did not operate as a commercial company. The Interim Relief Permits were introduced as a short-term measure until a small-scale fishery policy was finalised. Yet, at the time of writing, this policy has still not been finalised.

According to the Chairman, many unemployed members of the community raised the 300 Rand, some borrowing the money, to apply to MCM¹⁰¹ for the permit, yet only 5 permits were allocated to individuals from Hondeklip Bay, and this excluded all of those who were receiving a pension or disability grant, who, from his perspective, were those most in need of the extra income.

The Chairman also expressed his frustration at trying to get his voice heard among government officials, who, he said, did not seem interested unless it might be to their electoral advantage to assist the community (pers. comm., December 2010). He had drawn up plans to rehabilitate Hondeklip Bay's small harbour and broken-down fishery infrastructure, and to develop the coastal facilities. As of yet, though, he had been unable to find anyone from local government willing to take an interest in his designs¹⁰². And, though he had attended meetings with MCM officials, when they hear him and others speak on behalf of the local fishers, he said, 'they'll listen (but with) no reaction. They just do whatever they want anyway. Once they leave and go back home, the local issues just go out of their mind' (Chairman of Hondeklip Bay Fishers Association, pers. comm., December 2010).



Plate 8: Representatives from the Hondeklip Bay Fishers' Association.

At Port Nolloth, R. Malan had been one among 110 mostly female employees of the John Ovenstone rock lobster processing and packaging factory, which had been run by the large company, Premier Fishing. Since the factory closed in 2001, however, most of those who had been employed there have been without jobs or an income. They are, said Malan, very "hungry for work" (pers. comm., December 2010).

¹⁰¹ Marine and Coastal Management, sub-section of the Department of Environmental Affairs. Fishery Management has since become the preserve of the Department of Agriculture, Forestry and Fisheries (DAFF).

¹⁰² The Chairman said that he had sent faxes and emails to the District Municipality, but on enquiry, they claimed never to have received them, even though he had delivery reports as evidence.

Although the factory is now in a state of disrepair, and would not pass the health and safety standards required by the South African Bureau of Standards, for fish processing and packaging, the facility is currently being used as a holding facility for crayfish caught by around 40 fishers from Hondeklip Bay and Port Nolloth, some operating commercial permits, and others, Interim Relief Permits. Their catch is currently counted, recorded and then pooled for sale en masse to one or two larger companies who sell on to markets in the West Coast, from Saldhana Bay down to Hout Bay in Cape Town.

According to Malan (pers. comm., December 2010), all of the 54 applicants who applied for Interim Permits at Port Nolloth received them, except the women who hoped to get fishers to catch on their behalf. This compares favourably to the Hondeklip Bay fishers, where only 5 received permits were issued. Though, many fishers at Port Nolloth also do not have their own boats, and must rely on boat owners to allow them space on board.¹⁰³

R. Malan explained that the fish processing industry had been “the life” of the town, and since its decline, things were looking bleak for the community. She had hoped that the local government might find a way of reviving the industry or at least creating alternative livelihood opportunities for people, yet with the Mayor and other government officials “looking after their own pockets”, not the town or its people, Malan said, “now the buildings are empty in town, everything is closed” (pers. comm., December 2010).

Whilst the National Government thus ultimately determines the policies that decide what the local fishers are allowed to do, local fishery representatives indicated government officials are out of touch with the local issues and problems at Hondeklip Bay and Port Nolloth, where they very rarely visit, or engage with local fishers. Even the local Mayor, who is supposed to be directly accountable to the fishers, apparently avoids attending meetings that have been arranged with the fishers.¹⁰⁴

¹⁰³ R. Malan described how an individual with a diamond mining concession tows a number of small fishing boats out, and how those fishers who have already caught their quotas are expected to make space for those yet to catch (pers. comm., December 2010).

¹⁰⁴ The Chairman of the Hondeklip Bay Fisher Association claimed the Mayor had turned his car around and gone home more than once, on hearing a crowd of constituents await him to complain about the deteriorating conditions at Hondeklip Bay (pers. comm., December 2010).



Plate 9: R. Malan at the Hondeklip Bay fish processing factory, now being used to quality check and store crayfish.

Local fishers at Hondeklip Bay and Port Nolloth are thus struggling to sustain their fisheries. With the withdrawal of the commercial companies who operated factories in the two coastal towns, and competition to access 'Interim Relief' Permits, local fishers and workers in the fishing industry are struggling to survive, finding very little support or a sympathetic hearing from government.

7.8 Mariculture Development

Namaqualand's mariculture sector, on the other hand, is being promoted as a key 'growth sector', attracting substantial state and private investment. Yet, it is large-scale, capital intensive, export-oriented mariculture projects, controlled by larger companies, and with political buy-in, that are being promoted and facilitated, not small-scale operators able to sustain economically viable yields with minimal capital investment.

According to the Fishing and Mariculture Sector Development Strategy for the Northern Cape (DEAT, 2003), mariculture is a key industry of the future for Namaqualand. The farming of valuable species such as oyster and abalone, could be the new high value enterprise that could replace revenues from the mining sector. Hundreds of jobs have been anticipated to come from the development of a

mariculture sector in Namaqualand (DEAT, 2003). Moreover, the sea conditions and mined-out coastal pits have been identified as ideal for the establishment of mariculture farms¹⁰⁵.

Whilst an oyster farm at Kleinzee could be described as a fairly technologically simple form of enterprise, and a model SMME, requiring dedicated and well-informed management¹⁰⁶; it is capital-intensive, large-scale, expert-led models of mariculture development that are attracting Governmental support, with two high profile mariculture projects envisaged for Namaqualand.

In Hondeklip Bay the Department of Science and Technology have invested in developing an Abalone grow-out facility with FAMDA¹⁰⁷, a private company, HIK-Abalone, and Stellenbosch University (DST, undated, p. 25). An initial pilot study, which involved the establishment of 16 grow out cages, housing 20,000 animals, was conducted in onshore tanks contained in the disused Oceana lobster processing plant. Since 2007 the aim has been to expand from 16 tanks to 92 and generate 15 permanent jobs and 80 part time jobs; as well as offer a training programme to selected beneficiaries. The long-term vision is to develop a fully-fledged 120 tonne capacity abalone farm, through a combination of private and local government investment (DST, undated).

Though this has been promoted as a development with the potential to reverse the decline of the fishing town, it remains to be seen what benefit will reach many of the local community, who are reportedly suffering up to 80% unemployment (DST, undated, p. 25).¹⁰⁸ Whilst a few jobs may be created for local people, development of an abalone industry has the potential to reinstate the structures of hierarchy, exclusivity and elite enrichment of the diamond mining industry. Certainly the controversy surrounding a proposed Mariculture Park at Port Nolloth, which supposedly had the backing of the Northern Cape Provincial Government, DEAT and FAMDA (DENC official, pers. comm., September 2010), indicates that the pursuit of capital-intensive, elite controlled economic

¹⁰⁵ For instance, in 1993 Alexkor established an oyster Farm in a old sea water holding dam, initially created for a diamond processing plant. They have reported production of more than 50,000 oysters per annum. (DEAT, 2003, p. 12) According to the Deed of Settlement with the Richtersveld Community, the oyster farm is to be transferred to the Community Property Association as one of their reclaimed assets.

¹⁰⁶ A privately owned oyster farm at Kleinzee makes use of an old dam constructed to supply DeBeers diamond recovery plant with sea water According to the farm manager, the seawater conditions at Kleinzee were ideal for achieving a good yield with simple technology. (Manager of Kleinzee oyster farm, pers. comm., December 2010).

¹⁰⁷ According to their website, 'FAMDA (The Northern Cape Fishing and Mariculture Development Company) was established in 1998 as an initiative of the Northern Cape's Department of Economic Affairs and Tourism. FAMDA is a section 21 company intended to act as 'a representative interest group promoting the development of Namaqualand communities through the sustainable utilisation of living marine resources' (www.famda.org.za accessed, February 2011, though inaccessible thereafter. See discussion below).

¹⁰⁸ The same report stresses the increasing importance of abalone farming to South Africa, stating that it is the most valuable single aquaculture sector in the country. But it also warns that the sector is becoming increasingly consolidated into fewer larger companies who are producing most of the country's output. (DST, undated, pg.24).

development schemes will bring little in the way of long-term benefits or sustainable livelihoods for most local people.



Plate 10: Abalone Farming at Hondeklip Bay.

According to an official of the Northern Cape Province Department for the Environment and Nature Conservation (DENC official, pers. comm., September 2010), FAMDA was granted 40 million Rand by DEAT to establish a Mariculture Park at Port Nolloth. However, it seems that FAMDA has since dissolved amidst allegations of mismanagement and corruption¹⁰⁹. Whilst the fate of the project is subject to much speculation, with rumours circulating about the disappearing funds; all that has thus far been established is a high section of wall, which blocks public access to the beach for some way; and a sign on the gate announcing the yet-to-be-built Mariculture Park.

Meanwhile, the oyster farm manager at Kleinzee reported that the most complicated and stressful part of maintaining his small-scale business was attempting to meet an ever-proliferating set of bureaucratic requirements introduced by national government to monitor and control mariculture activities. Meeting such increasingly complex, multi-layered and repetitive legal requirements in order to acquire official permission to operate, and navigating a complicated control system levelled at the competencies of large-scale commercial businesses, was he argued, becoming impossible for

¹⁰⁹ The official reported that whenever she raised the issue of the Park or the government grant at Provincial Coastal Committee meetings, she is “silenced” and told not to speak of the matter. She mentioned that some politicians had been involved, and, when somebody she knew had requested an audit on the company, the individual was “transferred” from their job. As of yet, the 40 million Rand remains unaccounted for (DENC official, pers. comm., September 2010).

a small-scale producer, with a small number of semi/unskilled employees. (Manager of Kleinzee oyster farm, pers. comm., December 2010).

7.9 Discussion

A 2008 Environmental Evaluation Unit (EEU) study on small-scale fishery management in South Africa highlighted, meeting ecological, social and economic sustainability objectives in contemporary coastal governance, will require a 'holistic and integrated approach', whereby 'socio-economic problems like poverty, food security and diversification of livelihoods' are addressed by fishery authorities in order to achieve sustainable resource management (Executive Summary, point 5).

The EEU study highlights the 'need to adopt a long-term and proactive approach to developing and implementing alternative and/or supplemented sustainable livelihoods for fishers. A sustainable livelihood approach seeks to understand the broader ecological, social and economic context of fishers as well as the policy and institutional dimensions that enable or constrain sustainable livelihoods. The focus must be on recognising and building on existing assets and encouraging diversification of livelihood activities' (Executive Summary, point 5).

Whilst governance of fisheries in South Africa has historically been characterised by a 'science-based and centralised decision-making approach' that has neglected to 'reflect the needs, knowledge or socio-economic context' of small-scale fishers (EEU, 2008, Executive Summary, point 4); The EEU (2008) thus recommend that a livelihoods-based approach is adopted whereby the 'cultural context of fishing needs to be understood and respected'. Moreover, livelihood opportunities promoted 'need to reflect the local context in order to ensure that activities are appropriate and generate sufficient income to meet the needs of the fishers' (EEU, 2008, Executive Summary, points 1 and 2). Key to this sustainable livelihoods approach to fishery management is that fishers must be actively involved in resource management and decision-making that affects their livelihoods (EEU 2008, Executive Summary point 4).

Yet, at present it seems this governance approach has not yet been achieved in the Namaqualand coastal region. Instead it seems that, as the 2008 EEU study found in other Provinces of South Africa, appropriate institutional arrangements for a sustainable livelihoods-based approach with local fishers involved in key decision-making processes are not yet adequately established. Instead, local fishers are being largely overlooked in regional economic planning projects, and their customary catches increasingly restricted by national legislation, whilst little has been done to develop supplementary livelihood options.

Meanwhile, Namaqualand's mariculture sector seems to be modelling itself on the diamond mining industry in more than one respect. Not only does it seem that national governmental strategies are promoting monopolisation of opportunities by larger companies and/or political elites; small-scale operators are confronting various obstacles, with little support from governmental departments. This seems to perpetuate the double standards of the pre-1994 era, which was characterised by top-down, elite-driven forms of economic development and governance, with very few opportunities for public participation in processes of planning and management, public access to information or opportunities to make a sustainable living from or to otherwise enjoy marine and coastal resources.

Moreover, it remains to be stated that the viability of these capital-intensive mariculture projects has hinged on the expected sustained high value returns from a commodity resource that currently fetches very high prices on the international market, with the key consumers located among the upper classes in Asia. As with other such markets, there is no guarantee the demand will last, or that other competitor producers will not lower prices and out-compete South African producers¹¹⁰.

Reliance on an export-oriented, high value commodity resource, where markets are controlled by large foreign-based corporations and fashions in consumption of luxury goods, is a very risky form of development to pursue, particularly for local communities, to whom private companies are minimally accountable. When the pursuit of national and corporate 'economic growth' is pursued to the neglect of more 'socially thick' and locally accountable forms of development, the majority of Namaqualanders will likely be 'treated to a crash course in the most vicious aspects of free-market capitalism while being largely denied any of the benefits' (Smith, 1997, in Ferguson, 2002, p.141).

Arguably, it is the idea that salvation from socio-economic crisis left in the wake of mining can be averted through attracting investment for developing a comparable, export-oriented, corporatised, and potentially highly lucrative industry that needs to be questioned. The promise of farming high value species such as abalone is to generate large profits for investors in a short period of time.

However, as the Town Manager of DBCM highlighted (pers. comm., September 2010), potential investors are expected to be attracted by high levels of exclusivity and security, such as those established by mining operations, in order to protect their investment against poaching. Mariculture farms could thus turn into another kind of capitalist enclave mentioned by Ferguson (2002) as characteristic of the neoliberal extractive industry; thus leading to a situation where new wealth

¹¹⁰ Professor G. Branch, marine biologist at UCT, mentioned that the export market for South African kelp had collapsed due to the entry of cheaper Chilean kelp onto the international market. This is presumably the reason why few of the kelp harvesting concessions for Namaqualand are currently being utilised. Some kelp is collected as feed for abalone being farmed at Hondeklip Bay. (G. Branch, pers. comm., January 2011).

derived from the Namaqualand shores largely by-passes local communities, whose only chance to be involved is competing for low-paid semi/un-skilled work. It is thus critical to compare the rhetoric through which mariculture is being promoted with the actual practice of the kinds of projects that are being developed on the Namaqualand coast.

In the final chapter, these issues are further discussed in relation to other findings and some of the key themes in key legislation, policy and theoretical literature introduced in chapters 1, 2 and 3.

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Chapter 8: Discussion and Conclusion

The South African Constitution and subsequent legislation committed the post-Apartheid government to redressing racial injustice and achieving democratic governance, as well as 'secur[ing] ecologically sustainable development and use of natural resources, while promoting justifiable economic and social development' (RSA, 1996, Bill of Rights, section 24).

Governmental frameworks such as the National Framework for Sustainable Development recognise that 'in South Africa, as in the rest of the world, the situation of continuing inequality, accompanied by a deteriorating resource base, makes it imperative for us to go beyond thinking in terms of trade-offs and the simplicity of the 'triple bottom line' (DEAT, 2008, p. 14), by which sustainability is conceived as a balancing act between three distinct spheres, social, economic and environmental.

The National Framework for Sustainable Development recognises that 'social, economic and ecosystem factors are embedded within each other, and are underpinned by our systems of governance', and argues that, as preconditions to meeting economic and social development objectives, 'we must acknowledge and emphasise that there are non-negotiable ecological thresholds; that we need to maintain our stock of natural capital over time; and that we must employ the precautionary principle in this approach' (DEAT, 2008, p.14).

NEMA (1998) advances environmental rights for South African citizens, emphasising that in the post-1994 South African context, 'environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons'; and 'equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination' (principles, 4 (c) and (d)).

Furthermore, according to NEMA (1998):

- 'The environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage'. (Principles 4 (o)).
- 'Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure'. (4 (r)).

- ‘The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment’ (4 (p)).

Meanwhile, the MPRDA (2002) requires mining companies to ‘as far as is reasonably practicable, rehabilitate the environment affected by prospecting or mining operations to its natural or predetermined state, or to a land use which conforms to the generally accepted principle of sustainable development’, (MPRDA, 2002, 38(d)).

Moreover, South Africa’s Integrated Coastal Management approach, laid out in the 2000 Government White Paper for Sustainable Coastal Development acknowledges that sustainability will only be achieved through a collaborative effort on the part of government agencies, coastal users and coastal communities, in pursuing *inter alia* the following objectives:

- To ensure that the public has the right of physical access to the sea, and to and along the sea shore, on a managed basis (B2);
- To ensure that the public has the right of equitable access to the opportunities and benefits of the coast, on a managed basis (B2);
- To promote the diversity, vitality and long-term viability of coastal economies and activities, giving preference to those that are distinctly coastal or dependent on a coastal location (C1);
- To alleviate coastal poverty through proactive coastal development initiatives that generate sustainable livelihood options (C2);
- To use non-renewable coastal resources in a manner that optimises the public interest and retains options for alternative and future uses (D4); and
- To rehabilitate damaged or degraded coastal ecosystems and habitats (D.5).

(DEAT, 2000, White Paper, section 7.2).

The study has highlighted opportunities for implementing such key post-1994 legislative and policy frameworks in the Namaqualand context, as the coastal diamond mining industry undergoes transformation. Diamond mining companies are currently shifting core operations offshore; downscaling, subcontracting and selling on onshore mines; and thus having to grapple with potentially ‘costly’ social and environmental ‘liabilities’ from historical mining. The findings of the research indicate, despite post-1994 policy objectives, implementation of key legislation has been weak and profoundly inadequate social and environmental provisions are being made by companies

in order to rehabilitate the post-mining landscape; thus leaving a dismal legacy for Namaqualand communities.

8.1 De Beers' Legacy for Namaqualand

Forecasting mine closure within 10-12 years in the early 1990s, De Beers Consolidated Mines commissioned socio-economic impact assessments, which indicated the significant detrimental impact that sudden mine closure would have on employees, their families, local communities and the region. These studies recommended mitigatory measures and a gradual phased process of closure, involving on-going consultation with employees, adequate retrenchment packages and support with post-retrenchment planning, skills training and re-employment (Beaumont, 1992; Gosling, 1992). In the late 1990s, De Beers hired the consultation of expert botanists and ecologists to assess their environmental impact and to develop a programme of rehabilitation.

Although the company initially implied they were committed to leaving a positive legacy from nearly a century of mining in Namaqualand, De Beers have since reneged on key social and environmental responsibilities, seeing these instead as burdensome liabilities to be minimised or avoided. The company has been reluctant to negotiate with local communities over resolving land claims and contributing positively to the development of post-mining socio-economic opportunities for communities adversely affected by mass retrenchments and contraction of mining operations.

Whilst the opportunity presented itself of generating employment from comprehensive rehabilitation work, thereby turning two problems into a positive solution, the mining company have determined this is not in their economic interest. The company decided not to pursue the Living Edge of Africa Project, which has intended to generate substantial employment opportunities through designing an ambitious model 'green' development project for the Namaqualand coast.

Instead De Beers have decided to sell Namaqualand Mines on to another mining company. The company's behaviour indicates that this decision may be an attempt to avoid meeting legal requirements for environmental rehabilitation as outlined in MPRDA relating to mine closure. The company have decided to shift their mining effort from coastal open-cast mining to exploitation of marine diamond deposits and diamond interests in countries such as Canada and Botswana, where mines are proving more profitable.

The CSA and Bench Marks (2011) review of the company's Amended Environmental Management Programme Report for Namaqualand Mines (De Beers, 2011) indicated that De Beers are

significantly underestimating their environmental liability (see annex 5). Through omitting all pre-1980 impacts, underreporting areas disturbed by mining and minimising re-vegetation and earth-moving commitments in their liability costing to a point that negates ecologically sound practice, the company may provoke further extensive environmental degradation and pollution, which will fall to future mine owners, land users and the state to attempt to remedy (CSA and Bench Marks, 2011).

Whilst De Beers claims that their sale commitment to their chosen company, Trans Hex was based on an 'open and rigorous selection process that evaluated prospective bidders on a number of criteria determined by De Beers as critical to ensuring the long term sustainability of the Namaqualand Mine community', the company's approach has actually been highly secretive and has excluded IAPs, including local community organisations, from access to key information and involvement in consultation about significant criteria for prospective buyers (CSA, 2011, Press Release). In fact the chosen buyer, Transhex, has demonstrated a poor social and environmental responsibility record in Namaqualand (CSA, 2011, Press Release; Mohamed 2006), and, without substantial financial provisions made by the selling company, it is unlikely Transhex will be able to clean-up De Beers' environmental degradation legacy.

Whilst De Beers is not the only company seeking to minimise and avoid 'costly' liabilities, the company deserves a particularly critical assessment, due to its prestigious reputation and massive international resource base, role-model status, and claims to high standards of corporate social and environmental responsibility. Where De Beers seeks to dispense with its liabilities by selling them off as quickly as possible, with an absolute minimum of public participation or consultation of IAPs in the process; it will prove extremely difficult to press other companies to perform better.

Arguably, De Beers' behaviour in Namaqualand establishes the precedent for the smaller mining companies, such as Alexkor and Transhex, to reduce their 'liability' costs and thereby externalise adverse social and environmental impacts of mining. This also sets a worrying precedent for inadequate environmental responsibility and democratic accountability in marine mining practice, the adverse impacts of which are, unlike the terrestrial open-cast mines, at present poorly realised or well understood.

Not only have De Beers made inadequate provision to rehabilitate and restore the coastal environment disturbed by mining, they have pursued their own post-mining development strategy, in a way that lacks democratic accountability or accommodation of the interests of local communities (see annex 5). The company's proposed 'correctional facility', mariculture and wind farm and hazardous waste disposal site have been used to reduce the company's rehabilitation costs

in their Amended EMPR (De Beers, 2011), though key feasibility studies, social and environmental impact assessments and IAP consultation processes have not been undertaken; and, indeed, very little information regarding the proposed prison and hazardous waste disposal site has been made public (CSA and Bench Marks, 2011). This is particularly disturbing as these proposals are potentially controversial and have risks involved for local communities.

Meanwhile, De Beers has avoided repeated requests to negotiate over farms included in community land claims; though the company seems more than willing to invite bids from private investors for mariculture, wind-energy generation, or prison facilities; to operate their own tourism business; and to lease land to selected conservation authorities; all of which capitalise on, and affirm their ownership and exclusive control of, coastal land and resources.

Although the expansion of the Namaqua National Park furthers national and regional protected area targets, enabling some environmental rehabilitation and conservation of Namaqualand's coastal ecosystems; it is critical to understand the historical and political-economic context through which this protected area expansion has occurred. Many of Namaqualand's 'coloured' communities were expecting redress for their historical disenfranchisement and discrimination through redistribution and restitution of land. The transfer of mining territory to exclusive conservation areas, in which they have relatively little stake in ownership or management, or potential to pursue land-based livelihoods, thus is seen to greatly limit opportunity for communities to achieve socio-economic upliftment based on their control of land and natural resources.

The fact that De Beers retains title to farms leased to San Parks, further confirms that we are seeing a continuation of historical patterns of inequality and elite governance, rather than a democratisation of environmental governance. The establishment of vast game reserves across southern Africa as part of the 'Diamond Route' constitutes the Oppenheimer strategy to demonstrate commitment to the protection of indigenous wildlife; and to thus offset environmental degradation incurred through mining activities undertaken by their multinational mining companies, Anglo-American and De Beers. Yet this study has sought to highlight the irony of the (re)invention of the Oppenheimer Family of Companies as key defenders of South African wildlife.

Firstly, after 80 years of mining the Namaqualand coastline, a distinctive lack of effort to mitigate or rehabilitate from mining impacts is reason to accuse DeBeers of environmental degradation on a grand scale, rather than praise them for their good environmental custodianship. If this environmental liability of approximately 17,000 hectares of degraded wasteland were seen in addition to other sites across southern African that have been mined by DeBeers, Anglo American,

and by another companies subcontracted to these, the paradox of a professed devotion to nature custodianship would become even clearer.

Secondly, the conservation park approach pursued by the company must be seen in light of its historical precedent. As Magome and Murombedzi (2003) have highlighted, 'game parks' and 'nature reserves' were historically imposed on colonial subjects by European colonisers, who had little respect for pre-existing modes of natural resource use, farming and hunting. Traditional forms of livelihood and ways of engaging with the land were often dismissed as primitive or prohibited as harmful. Meanwhile, nature reserves and game parks were established for the recreation and enjoyment of a governing elite. Arguably, De Beers' conservation approach perpetuates this historical colonial arrangement, giving new life to a European fantasy of 'wild Africa', without (local) people, who have historically been displaced and excluded from conservation areas.

De Beers' post-mining portfolio thus, far from the vision of LEAP, seems to be aiming to capitalise on the exclusivity, 'remoteness' and inaccessibility of the mining area. The company are seeking numerous ways to disown costly social and environmental responsibilities, whilst at the same time seeking to profit from the exclusive access regime they have established to guard their mining interests.

8.2 The Minerals Energy Complex and Neoliberalisation

South Africa's 2002 Mining Charter intended to change the status quo of the country's mining industry, where Historically Disadvantaged South Africans (HDSAs) are generally considered as a repository for cheap labour'; black workers are made to live in 'appalling conditions' which have 'led to a myriad of social ills'; and 'the proliferation of mining ghost towns, due to poor mining practices in the past, which were inconsistent with sustainable development principles' (DMR, 2009, MC IAR, p. 2 & 11). The Charter highlights that, historically, 'mining was used as a tool to perpetuate inequalities in favour of a select group in a manner that precluded Historically Disadvantaged South Africans HDSAs from participating in a meaningful way' in the economic wealth derived from the industry' (DMR, 2009, MC IAR, p. 9-10).

However, as of the 2009 review of the Charter, most of the targets agreed to in 2002 to transform the mining industry in line with key goals for Broad-Based Social and Economic Empowerment had not been met (DMR, MC IAR, 2009; See annex 1). The Mining Charter Review confirms two key points made in this thesis: firstly, in response to post-1994 South African governance agendas, mining companies have made small, superficial changes to their organisation and operations to

disguise their more fundamental 'intransigence and lack of commitment...to change' (DMR, 2009, MC IAR, p.6) to accord with democratic, social equity and environmental sustainability objectives; and secondly, government agencies intended to enforce social and environmental rights afforded to citizens through South Africa's post-1994 legislation are proving inadequate to the task. Whilst only a small minority of mining companies submitted the required progress reports to the DMR¹¹¹, the Mining Charter Review admits that the department 'lacks coordinated mechanisms to monitor on an annual basis'; and the penalty for non-compliance is 'preposterously inadequate'.

This apparent national governmental 'incapacity' needs to be understood through an appreciation of how international systems of neoliberal political-economic governance constrain and shape the role and capacities of national state government. Particularly significant is the rise in power of corporations, and the ability of multinational companies and elite groups to form informal, horizontally-organised and polycentric ensembles of power, characteristic of contemporary governance 'beyond the state' (Swyngedouw, 2005, p.1999). These ensembles of power and privilege thus wield significant power to determine government macro-economic policies in countries in which they operate, through their monopoly control over financial and industrial systems.

As Innes (1984) and Fine (2008) highlight, economic controls imposed in the 1980s on South African companies led to the conglomeration of companies within the country into a form of monopoly capitalism, centred around the Minerals and Energy Complex. Now that these controls are being lifted by economic 'liberalisation' policies, corporations such as Anglo American and De Beers are freer to disinvest from South Africa and to establish or consolidate their investments around the world (Fine, 2008), becoming significant multinational corporations. Anglo American and De Beers, both owned and controlled by the Oppenheimer Family, are thus at the forefront of this process of 'globalisation'.

As Ferguson (2005) highlights, it would be misleading to believe that the neoliberalisation of Africa has seen the abandonment of the continent by global capital, instead, it seems capital investment has become increasingly concentrated, and selectively territorialized (p. 378). The business of extractive industries, particularly mineral resource extraction, is booming. However, 'what is noteworthy is the extent to which this economic investment has been concentrated in secured enclaves, often with no or very little benefit to the wider society' (Ferguson, 2005, p.378).

¹¹¹ According to the DMR, 2009, MC IAR, only 37% of companies have audited reports, with only 11% submitted to DMR, many of which were not externally audited (see annex 1).

Schroeder (2000) emphasises, in the international neoliberal economy 'complex, vertically integrated production, processing, and distribution systems...connect remote localities to centres of economic power on regional and global scales' (Schroeder, 2000, p. 57) Commercial benefits from these export-oriented modes of production derive less from formal property rights 'over localized land resources, than in the control over market outlets, transportation networks, labour resources, and, most particularly, the license and permitting processes organized through the state' (Schroeder, 2000, p. 57).

Whilst the state remains a powerful agent of government, it has been modelled into a 'regulator for' rather than a 'regulator of' corporate enterprise. In order to create attractive investment prospects for international corporate business, neoliberalising states have enabled these points of profiteering in the international economy to be placed beyond the scope of democratic accountability (Newell, 2008).

In the South African context, minerals and energy conglomerates of companies have largely been able to determine the government's macro-economic policies (Fine, 2008); and these corporations have demonstrated little or only token commitment to economic and social restructuring post-Apartheid, particularly that in favour of local economic development. Instead, Fine (2008) argues, these conglomerates have furnished the requirements for continued and secure profitability to feed their own globalisation.

Neoliberalisation of the diamond mining industry of Namaqualand has thus meant de-linking of the project of corporate profitability from local socio-economic welfare and employment. Socially 'thick' forms of company investment in local infrastructure, facilities and services for mining communities, characteristic of a system of colonial-era paternalist mineral extraction, have been determined an unnecessary expense for increasingly multinationalised mining companies. Comparable to the Zambian case discussed by Ferguson (1999), during the decline of copper mining in Zambia in the 1970s-80s, the shift of core operations offshore, closure of mining company towns, and mass retrenchments in Namaqualand has led to serious socio-economic depression among local communities who have been abandoned by neoliberal capital.

According to (Fine, 2008) the South African economic policy approach has been geared to attracting short-term capital inflows by way of compensation for the outflows of conglomerates disinvesting from the country. Meanwhile, liberated by neoliberal national and international economic policies, multinational companies are free to choose areas of operation with the lowest possible operating costs or regulatory constraints on profitability. Hence government insistence on particularly 'high'

standards of social and environmental responsibility and popular accountability on the part of private companies could prove detrimental to attracting or sustaining the interest of private investors.

This situation also helps to explain the apparent 'institutional incapacity' problem, blamed for the failure of the new South African government to realise inspiring post-1994 commitments to achieving democratic accountability, economic redistribution and social welfare provision, whilst realising environmental rights and environmentally sustainable socio-economic development.

8.3 The Limits of CSR

Whilst Corporate Social Responsibility (CSR) has been promoted as the business-friendly alternative to regulatory control, providing 'a more responsible, strategic approach to environmental management, labour relations and community development [which] should lead to better relationships and improved reputation, and hence greater profits' (Hamann and Acutt, 2003, p.256). Far from a 'win-win' solution, Van Wyk et al.'s 2009 report on the grim social and environmental legacy left in the wake of diamond mining in Namaqualand mentions 'the implications are that CSR driven development is rendered ineffective unless the national and provincial governments take the necessary steps to overcome these limitations'. However, 'government incapacity, in so far as DME and DEAT is concerned implies that the mining corporations in the area have almost carte blanche as far as environmental rehabilitation and mine closure commitment are concerned' (van Wyk et al., 2009, p. 53).

The findings of this thesis affirm Hamann and Acutt's (2003) point that 'CSR needs to be underpinned by corporate accountability' (p. 268). Where governmental regulation is weak and there is a deficit of institutionalised democratic recourses for publics, particularly for communities negatively impacted by corporate behaviour, 'where corporations perceive 'trade-offs' between fulfilling social and environmental responsibilities and sustaining economic efficiency, the temptation will be to give the impression of being responsible, perhaps making small, feasible changes to how things work (including cosmetic changes), so that demands for more significant changes can be precluded' (Hamann and Acutt, 2003, 259).

As Hamann and Acutt (2003) highlight, 'if companies are trying to 'clean up their act' solely for the purpose of accommodating social pressures, but with the main objective of maintaining or increasing profits, then wherever serious trade-offs arise between CSR and the financial bottom-line, the likely strategy will be to emphasise the public relations component of CSR, i.e. to give the

impression that they are being responsible' (Hamann & Acutt, 2003, p. 258). Meanwhile, as is the case with De Beers in Namaqualand, the company will take any shortcuts they can to avoid taking on costly social and environmental liabilities, whilst shifting their core mining efforts to more profitable prospects, offshore and abroad.

Thus Corporate Social Responsibility, the neoliberal response to a contemporary democratic deficit, is essentially part of the mainstream sustainable development hegemony critiqued by Adams (2009). According to the mainstream approach, development policy and practice is to be 'greened' in order to ensure its own sustainability. Capitalist forms of resource acquisition and utilisation; corporate control over systems of industrial production, trade, marketing and transportation are to be carefully managed according to 'more technically sophisticated' forms of accounting; enhanced technological efficiency; and the development of managerial systems able to assess, mitigate and, where possible, reduce, negative environmental impacts (Adams, 2009).

The approach is essentially reformist, aiming to manage potential crises generated by modern systems of political-economic organisation and industry. The mainstream approach thus serves to maintain and perpetuate normative political-economic systemic structures in a way that serves the interests of the status quo, and to avert more fundamental transformation. 'The fact that much of CSR remains within the 'voluntary', non-regulatory realm may be seen as legitimising and entrenching the existing system.' (Hamann and Acutt, 2003, p. 260). Yet, it is this governing regime that is failing to guarantee the protection of key social and environmental rights, and must be changed.

As Sawyer (2004) emphasises, 'there is a 'fundamental inequality inherent in processes of transnational capital accumulation'. Whilst national development programmes, negotiated between state governments and international trade partners are proclaimed to 'modernise' industry and accelerate 'development', in order to bring developing countries 'on par with those other liberalizing-globalizing economies around the world...it [is] the bodies and lives of subaltern subjects that enable[s] transnational capitalists to expand their profit margin. Comparative advantage include[s] not simply enchanting foreign capital with attractive contracts. It similarly meant providing cheap natural resources, scant industrial regulations, cheap labour and a submissive population that [will] not protest' (p. 116).

The CSR agenda, devised and implemented by mining companies themselves, has at its foundation the economic interest of the companies, and not provision of social, cultural, economic and environmental rights and well-being of local communities and indigenous peoples. CSR could thus be

seen as a part of a hegemonic consensus about sustainable development that is enabling companies to get away with *seeming* to change their practice and approach rather than radically transforming their role, and (ab)use of local communities and natural systems where they operate.

Cullinan's (2010) proposal for 'earth jurisprudence' conceptualises a much stronger role for legal and democratic participation. Cullinan (2010) suggests that local communities should be supported in moving 'beyond simply reacting to each attack on their health and wellbeing' and instead empowered to use the law proactively to support the establishment of sustainable, local economies. The same should apply to structures of democratic governance more broadly, in order that governmental policies and developmental projects pursued in the Namaqualand region pro-actively empower previously disenfranchised communities, redress historical inequality and injustice, and meet key criteria for long-term environmental sustainability.

8.4 Towards Sustainable Coastal Development?

A 1998 Government Green Paper entitled, '*Towards Sustainable Coastal Development*' outlined an alternative vision for Namaqualand, which sought to achieve:

- Equitable access to coastal resources and resources being used on a sustainable basis for the benefit of present and future generations.
- Restitution of land to communities subjected to forced removals in the past.
- New economic opportunities that benefit local communities in the region.
- The unique natural and cultural characteristics of the Namaqualand coast being protected and properly managed.
- Areas damaged by mining activities being rehabilitated; and
- Community members assuming a greater responsibility for managing coastal resources (Coastal Policy Green Paper, 1998, chapter 6).

Key challenges to be addressed were identified as limited public access to the coast due to exclusive control of mining companies and the prevention of the development of alternative use of the environment and ecosystem services for activities such as harvesting marine organisms or tourism and recreational activities; inappropriate coastal development and pollution of coastal and marine ecosystems, which might be contributing to a declines of marine species (DEAT, 1998, chapter 6).

Whilst large-scale commercial fishing companies have since closed their Namaqualand factories, in pursuit of more profitable prospects elsewhere, unemployment in the coastal towns of Hondeklip Bay and Port Nolloth has worsened and local fishers are struggling to sustain their livelihoods. Due to stringent restrictions on fishing quotas issued by national government, coupled with a lack of interest or investment on the part of district and national government in maintaining or rehabilitating near-shore fishery infrastructure, the opportunity to develop sustainable sea-based livelihoods is being neglected.

Meanwhile, high profile mariculture projects have attracted substantial investment (DST, undated, online, accessed 18/07/2011; DENC official, pers. comm., September 2010). Whilst a few jobs have been created out of maintaining Abalone facilities at Hondeklip Bay, the ambitious Mariculture Park at Port Nolloth has not come to fruition, and instead, substantial investment has disappeared, leaving the majority of the surrounding communities with nothing but a large fenced empty enclosure beside the sea shore.

If mariculture and aquaculture are to be pursued as a key post-mining economic strategy, it is critical that projects are not designed to repeat and perpetuate the patterns established by the diamond mining industry of elite enrichment, hierarchical, top-down governance, local unaccountability and a disregard for environmental sustainability and community consultation. Instead, small-scale businesses with local ownership, making use of available infrastructure and land forms on areas already degraded by mining should be promoted. Careful planning, capacity-building and market research would first need to be done to ensure project sustainability.

As discussed in chapter six, a number of communities, such as the Komaggas community, are struggling to attain redress for historical discrimination, disenfranchisement and exclusion from systems of governance and control which have derived wealth from exploitation of Namaqualand's coastal resources.

Yet, as Sowman and Wynberg (2007) argue, if land reform is pursued in the absence of long-term planning, adequate and coordinated management and support systems or realistic assessments of available social and ecological resources, projects are unlikely to meet the aims of 'reducing poverty, achieving social and environmental justice, securing participation of civil society, and ensuring conservation and sustainable use of biodiversity' (p. 784 and p. 791). It is thus critical that redistribution or restitution of mining territory to communities includes substantial commitment on behalf of mining companies and government agencies to environmental rehabilitation, and long-

term social, ecological and economic sustainability planning, in collaboration and consultation with the relevant communities.

The Richtersveld Community's successful land claim has raised hopes that impoverished local communities will be able to gain access to mineral wealth and economic opportunities through official recognition of their land and mineral rights. However it is unclear as to what real substantial or long-term benefit the majority of claimants stand to gain from the Settlement reached with Alexkor, the state mining company. Firstly, the company was highly reluctant to recognise the community claim, seeking instead to 'privatise' the company, following the precedent set by De Beers, retrenching the majority of the workforce, shedding 'non-core' operations, including farm and town maintenance, shifting core mining activities offshore and using subcontracted service-providers to cut operating costs.

Secondly, substantial government funds (see annex 2) that could have been used to help diversify the regional economy away from reliance on non-renewable resource extraction and to develop sustainable settlements and livelihoods, have instead disappeared into efforts to turn mining company losses into an annual profit (Alexkor, 2010; Pressly, 2010, *HighBeam online*, accessed 18/07/2011). The neglect of long-term planning and capacity building processes in the Richtersveld settlement, incorporating key environmental sustainability considerations, has greatly undermined the opportunity to meet socio-economic development objectives, as well as those for environmental rehabilitation and conservation.

As Sowman and Wynberg (2007) highlight, the development of sustainable livelihoods is reliant on a natural resource base, which must be managed according to principles of environmental sustainability and social justice (p. 784). A key concern in the Namaqualand context, is that the natural environment has been significantly disturbed and degraded by mining activities, and thus the natural resource base has already in places been devastated, prior to redistribution or restitution of land to local communities. It is thus critical that communities gain support in challenging corporate irresponsibility, and pressing companies to fulfil substantial environmental rehabilitation requirement.

8.5 Concluding Remarks

Over the last 80 years, a huge amount of 'wealth' has been 'extracted' from the coastal landscape of Namaqualand; yet, as this study has sought to demonstrate, an assessment of the legacy of diamond

mining should not be limited to a calculation of the 'wealth' generated, but also to the 'costs' of mining born by local communities, and the degradation of the natural environment.

Historically, securing a monopoly on South Africa's diamond resources was achieved at the expense of the ability of the people of Namaqualand to pursue alternative livelihoods or to access the coast on any other premise than for the extraction of diamonds, at the behest and in the employ of the mining companies. Though the landscape had previously yielded many other 'resources' to human inhabitants, as well as sustaining many other plant and animal species, its 'productive capacity' has long been narrowed by the sovereignty of diamond mining, which has governed and controlled social-environmental relations in line with the logic of capital accumulation, and export-oriented industrial development.

Contrary to DeBeers' motto, diamonds are *not* 'forever', at least for the people of Namaqualand, where the diamond mining industry that has historically been the stronghold of the regional economy, is coming to an end. Van Wyk et al. (2009) claim, 'after almost a hundred years of diamond mining on the West Coast communities have little to show in terms of community development, infrastructural development or an existence much above that of a subsistence level' (p. 53).

Despite progressive governmental and corporate social and environmental responsibility policies, van Wyk et al. (2009), found the implementation and monitoring of these policies seem to be 'problematic...As a result, **serious environmental and social problems** exist throughout the region...In a regulatory sense, it seems that the industry on the West Coast is embedded, like the mining in the rest of South Africa in an unfolding legislative environment in which the primacy of the mining industry is often in conflict with environmental and community concerns' (van Wyk et al., 2009, p. 53, emphasis in the original).

Regional income derived from diamond mining is dwindling, corporate investment in regional infrastructure and services is being withdrawn and thousands of workers have been retrenched with many remaining unemployed. According van Wyk et al.'s 2009 report on the socio-economic impacts of mine closure, 'South Africa's West Coast, which is the hub of the country's diamond mining, is characterised by unemployment, substance abuse, high level of suicide rates and lack of infrastructure development... the communities also show high levels of domestic violence, mental disorders and alcoholism' (p. v).

This grim situation has prompted a number of retrenched mine workers to seek their fortune through illegal mining, despite significant risk of injury or prosecution. De Beers' response has been to intensify policing their secure access mining territory to 'eradicate illegal mining'. Arguably, this approach is attempting to deal with the symptom rather than the cause of a wider problem. This situation could have been pre-empted through adherence to social and environmental principles outlined in government legislative and policy frameworks, such as the Constitution, NEMA, ICMA and the MPRDA.

It is clear that the diamond mining industry has left little in the way of sustainable human settlement, vibrant local economy or secure long-term livelihoods for those who have been enrolled in and affected by its operations. It is thus vital that the post-mining development trajectory pursued in Namaqualand should change a minimalist and superficial demonstration of corporate responsibility to a rights-based framework that prioritises and finds fruitful connections between forms of local social and economic development, community empowerment, transition of towns and livelihoods to enhanced long-term sustainability, environmental restoration and conservation.

The orientation of 'development' in Namaqualand has hitherto been overwhelmingly linked to the creation of commodities by corporations that will reach a high price on an internationalised market. This has been envisaged as the best way in which local people and environment can be enrolled in projects of economic profitability. Yet the diamond mining industry in Namaqualand and the wider political-economic context from which it emerged, and which it has helped to sustain, has left a legacy of stark inequality, a highly exclusive coastal access regime, monopolisation of benefits from natural resources by large private companies, a heavily degraded landscape and a highly undemocratic system of governance.

New mining initiatives, including uranium mining and drilling for offshore natural gas¹¹², are now being promoted as positive signs of investment in Namaqualand's economic development, in the context of downscaling of diamond mining and the withdrawal of the large-scale commercial fishing industry. However, further promotion of mining interests needs to be critically re-assessed against the legacy nearly a century of diamond mining has left for Namaqualand's communities and their natural environment.

¹¹² A number of companies are reportedly busy drilling for gas off the coast of Namaqualand, including the Government's Petrol SA, in partnership with a private company, as well as the multinationals Shell and BHP Billiton. (E. Julius, NCPG, interviewed December 2010); and another company, Urafields South Africa, is currently prospecting for uranium near the town of Garies (see footnote 42).

In order to avoid the continuation of successive forms of re-colonisation of rural peripheries to the interests of neoliberal corporate profitability, such as has been seen on the Namaqualand coast, 'development' needs to be reconfigured and reconsidered, so that it is not something pursued at the expense of ecological integrity, democratic accountability and redistributive justice. Rather 'developing the local' should translate into facilitating social welfare and the enfranchisement of local communities, including recognition of their rights to land, livelihoods and natural resources, to good health and to a safe and sustaining environment.

Whilst land reform and legislation such as ICMA should facilitate the redistribution and restoration of rights to land and coastal resources to local communities, it is vital that post-mining land uses and developments do not perpetuate historical patterns of elite enrichment, export-oriented non-renewable resource extraction, and hierarchical forms of governance that prioritise short-term pursuit of profit over long-term goals of achieving social and environmental rights and genuinely sustainable forms of socio-economic organisation.

It is crucial that a coastal governance approach is developed which will prioritise the development of a diversity of sustainable livelihood opportunities for members of local communities, integrating concern for long-term ecological sustainability, and sensitivity to local socio-economic and cultural contexts. In this integrated governance approach, local communities struggling to survive abandonment by fishing and mining industries, and, must have the opportunity to realise their rights, and to participate in decision-making processes that will determine their future.

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Annexure

Annex 1: Synthesis of DMR, 2009, Mining Charter Impact Assessment Report.

Area	2002 BBSEE Targets for mining companies	2009 Review
1] Human Resources Development	Adult education and skills training for employees. 'Career pathing' for employees.	17.1% had literacy programmes. 17.1% reported 'career pathing'. But investigation found management generally not supportive of adult education and training. Most beneficiaries are non-South African employees. Focus has been on basic skills development, not beyond.
2] Employment Equity	Develop Employment Equity Plans. Demographically representative workforce.	Only 37% published Employment Equity Plans; none submitted to the DMR. 26% achieved 40% HDSA in management. Most HDSAs occupy middle-management positions.
3] Migrant Labour	Non discrimination against foreign migrant labour.	'Significantly complied with' Migrants involved in education and skills development programmes. But little evidence of promotion of non-discrimination as agreed with government.
4] Mine Community Development	Companies to cooperate in formulation of IDPs with local government. Provide proof of consultation, money expenditure and socio-economic development plan.	49% cooperated, though most reported CSR as their contribution to IDPs 37% developed Social Labour Plans. No direct links between proposed and implemented community development projects for affected communities. Inefficient consultation, lack of collaboration and alignment with mine communities. Narrow Empowerment approach using handpicked individuals, not broader community.
5] Housing and Living Conditions	Promote humane living conditions. Provide housing for employees. Improve housing standards Upgrade from hostels to family units. Facilitate own home ownership Improve employee nutrition.	26% provided housing. 29% improved existing standards. 34% facilitated employees access to home ownership. Hostel inspection showed unhygienic conditions. Dispensation of 'living out allowance' supporting informal settlement. Less than 1/3 make nutritional provision for employees, most is outsourced.

		Inadequate facilitates for own meal preparation.
6] Procurement	Preferential procurement to HDSA suppliers.	17% preferential procurement 80% companies showed no improvement over 3-5 years. 37% HDSA procurement reported, but many not HDSA-owned suppliers, and contracts for non-core services (e.g. consumables and cleaning).
7] Ownership and Joint Venture	15% HDSA ownership in 5 years. 26% in 10 years.	BEE ownership 'at best' 9%. Mostly a 'handful of black beneficiaries'. Lack of transfer of assets in pooling and joint ventures. Net value is negative due to high interest on purchase loans, moderate dividend flows and global financial crisis. Deals struck with lifespan up to 2014, not beyond. Use of 'fronting' of HDSAs, whilst HDSAs do not participate in key decisions.
8] Beneficiation	Increased local value addition, Turning comparative advantage to competitive advantage. Shift from resource- to knowledge-based economy. More jobs in mining and secondary industries.	Sector employs 6% of total SA labour force, but 25,000 job losses by June 2009 due to 'global financial climate'.
9] Reporting	Reporting on progress on an annual basis, submit reports to DMR.	37% have audited reports, only 11% submitted to DMR, many are not externally audited. DMR lacks coordinated mechanisms to monitor on an annual basis Penalty for non-compliance is 'preposterously inadequate'.

Annex 2: The final Deed of Settlement entered into between Community representatives, Alexkor Ltd. and the Government of the Republic of South Africa

Agreed on the 22 April in 2007, the Deed of Settlement included the following:

- Compensation of 190R million to compensate for diamonds removed by Alexkor.
- Transfer of mining rights to the Richtersveld Community [whilst Alexkor Ltd. retains marine mining rights].
- Restoration of 84,000 hectares of land to the Community.
- A 49% share in the Company for the Community and the establishment of a Pooling and Sharing Joint Venture [PSJV].
- Transfer of Agricultural and Maricultural Assets to the Community through the Richtersveld Agricultural Holding Company.
- A 50R million development grant.
- The ownership and management of Alexander Bay town, to be transferred over a period of ten years.
- 45 R million for Alexkor to continue to house its employees in Alexander Bay.
- Four Companies established to administer the assets on behalf of the Community: an agricultural company to develop the farms; an environmental company to rehabilitate the land after mining; a property holding company responsible for renting out the houses in Alexander Bay and a mining company to administer the 49% share in Alexkor.

(Reported by Gcina Ntsaluba, Aug 27 2010, <http://www.iol.co.za/>).

Annex 3: De Beers' Farms claimed by the Komaggas community, through the Karusab Committee and Legal Resources Centre.

Number	Name	Title
172	Kwakanna Kwakanab	T7076/1942
173	Oubeep	T7076/1942
176	Tweepad	T7076/1942
177	Kareedoorn Vley Karreedoorn Vlei	O- T7076/1942 1- T7076/1942
183	Kaa Vlakte	T7076/1942
184	Langhoogte	T7076/1942
189	Ronde Vley Roodevlei	T7076/1942
189/1	Ronde Vley Portions O,1 and 2	T7076/1942 T30675/1979 T30675/1979
188	Strydriever	T7076/1942
190/1 190/3	Predikant Vlei	Portion 1L T15314/1942 De Beers
190/2 190/5	Predikant Vlei	T 30675/1979
192	Dreyerspan	T7076/1942
193	Klein Zee	193/2 T1302/1923; 193/3 T12(O)/1923; 193/4 T245/1928; 193/5 T4964/1957
194	Kleyne Zee	T7076/1942
195	Dikgat	T7076/1942
196	Doornfontein-wes	T7076/1942
198	Staan Hoek	T7076/1942
199	Nuttabooi	T7076/1942
312	Kraaifontein	312/O T57010/1997; 312/1 T12/1937 WWF; 312/2 T14/1937 WWF
316	Koutootjie	T7076/1942
317	Pienaarsbult	317/O T92067/2007; 317/1 T9731/1930 DBCM; 317/2 T9732/1930 DBCM
318	Mara	T11266/1946 De Beers; T7076/1942 De Beers
319	Doornfontein Oos	319/O T7076/1942; 319/1 T3740/1959
320	Kleinskaap kop	T7076/1942
321	Manels Vley	T321/O T7076/1942; 321/1 T12870/1989; T1329/1947; T16966/1965; T17840/1947; T19071/2010; T26869/1989; T32326/1999; T68336/1989 ; T68337/1989; T68957/1991; T8312/1946; T88247/1996;

		T9910/1989; T69276/2000
322	Sandkop	T7076/1942 DBCM
323	Goraap	T7076/1942 DBCM
324	Kannabieduin	T7076/1942 DBCM
325	Hondevlei	T7076/1942 DBCM
326	Zonnekwa	326/O T41201/2009; 326/1 T56606/2002
327	Rooivlei	327/O T56606/ 2002 ; 327/1 T38975/1981 ; 327/2 T38975/1981 ; 327/3 T56606/2002
328	Zonnekwa	328/O ; 328/1 T41201/2009; 328/2 T56606/2002; 328/3 T56606/2002
330	Samson's Bak	T7076/1943 De Beers
332	Zwart Duinen	T7076/1942 De Beers
333	Elands Klip	T7076/1942 De Beers
337	Taaibosch Vlake	337/O T83030/1999 WWF South Africa; 337/1 T5960/1981; 337/2 T67135/2006
338	Kameelboom Vley	338/O T83030/1999 WWF South Africa; 338/1 T67135/2006; 338/2 T66562/1999; 338/3 T5960/1981
339	Oubees	T83030/1999 WWF South Africa
340	Wilde Paardehoek	T7549/2001 South African National Parks
466	Kookfontein	466/O T75491/2001; 466/1 T75491/2001 SANP; 466/3 T75491/2001 SANP ; 466/4 T75491/2001 SANP ; 466/5 T75491/1999 SANP
469	Sandvlei	469/O T18331/2000 & T32694/2002 Local Authority, Namakwa District Municipality.
470	Roodeklipheuvel	470/O T77675/2005 SANP; 470/1 T83030/1999 WWF South Africa; 470/2 T115475/2003 SANP; T40485/1980; 470/4; 470/5.
472	Schulpfontein	T7076/1942 De Beers
473	Noup	T7076/1942 De Beers
474	Somnaas	474/O, T7076/1942 De Beers 474/1 T38001/1989 DBCM
475	Koiignaas	T7076/1942 DBCM
484	Zwartlintjies rivier	T7076/1942 De Beers

(List Provided by the Legal Resources Centre, Cape Town, November 2010).

Annex 4: List of Interviews and Presentations

	Name or Position	Organisation	Location
Fieldwork Trip 6-12th September 2010	1. Town Manager, Klienzee.	De Beers Consolidated Mines (DBCM)	Kleinzee
	2. W. Oppel	Department of Environment and Nature Conservation (DENC)	Springbok
	3. Namaqua National Park (NNP) Manager	South African National Parks (SAN Parks)	Skilpad, NNP
	4. A. Niewoudt	Local Resident and evictee from the Groen River estuary site	At his home between Garies and the Groen River estuary
	5. Mr and Mrs Mac Donald	Residents permitted to retain occupancy of their home at the Groen River Estuary	Groen River
Field Work Trip 4-18th December 2011	6. Namaqua National Park Manager	SAN Parks	Skilpad, NNP
	7. Park Ranger, NNP coastal extension	SAN Parks	Groen River Office
	8. Chairman and Others	Hondeklip Bay Fisher Association	Hondeklip Bay
	9. R. Malan	Overseer of crayfish sorting operations	Crayfish Factory, Port Nolloth
	10 Karusab Committee representatives	Karusab Committee	Komaggas
	11. R. Newman	Programme Manager for Namaqualand, Conservation South Africa (CSA)	Springbok
	12. C.	Owner and Manager of Kleinzee Oyster Farm	Kleinzee
	13. E. Julius, Namakwa District Co-ordinator	Department of Economic Development and Tourism	Springbok
Field Work Trip 8-16th January 2011	14. Environmental Manager	De Beers Namaqualand Mines	Presenting to the Marine and Coastal Educator's Network Conference, 9-14 January 2011, Kleinzee
	15. S. Frazee	Director, Conservation South Africa (CSA)	Presenting to the Marine and Coastal Educator's Network Conference, 9-14 January 2011, Kleinzee

October, 2010	16. P. Carrick	Professor of Botany and Director of Nurture, Restore, Innovate (NRI)	University of Cape Town
	17. H. Smith	Legal Resources Centre (LRC)	Cape Town
February 2011	18. G. Branch	Professor of Marine Biology	University of Cape Town
March 2011	19. S. Frazee	Director, CSA	Telephone interview
August 2011	20. W. Opper	DENC	Telephone communication

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Annex 5: CSA & the Bench Mark Foundation (BMF) review of De Beers' Namaqualand Mine Amended Environmental Management Programme Report (EMPR), submitted to the DMR in 2011.

The MPRDA(28 of 2002)requires that: mining lease holders ‘must as far as is reasonably practicable, rehabilitate the environment affected by prospecting or mining operations to its natural or predetermined state, or to a land use which conforms to the generally accepted principle of sustainable development’, (38(d).

Sections 24.3 (b-d) and 39(1) also require that: mine operators conduct Environmental Impact Assessments (EIAs) and submit Environmental Management Plans (EMPs) as well as Social and Labour Plans (SLPs) to the Department of Minerals and Energy (now DMR) to be approved before mining leases will be granted or renewed.

In their review of De Beers' NM Amended EMPR, CSA and Bench Marks found the following:

	Criteria for Responsible Practice	Company Claims and Assessment of Action	Recommendation
2. Financial Quantum of the Liability	The MPRDA requires companies to provide financial assurance to the level of environmental liability assessed	De Beers have substantially underestimated their environmental liability, in order to minimise their costs. Costs externalised or avoided by the company will fall on future land owners and/or the state.	A fully independent assessment of environmental liability costs is undertaken.
3.1 Closure Model for Calculating the Financial Quantum of the Liability	Government Guiding Principles for Closure ¹¹³ state that the ‘closure measures stipulated in the closure plan must limit the potential (not just actual) adverse effects of the closed mine site on the receiving environment, and to ensure that the quality of life of the surrounding mine	No mine closure models are included in the Amended EMPR, nor have any of the outputs or results of models that may have been used been clearly included in the Amended EMPR. Neither the models, nor their outputs, have been shared with stakeholders, IAPs (Interested and Affected Parties) or the public in general. It is thus not	Full information regarding mine closure plans, including models used and their output should be included in the EMPR for public scrutiny and comment. Only with the inclusion of these models can the company’s adherence to Guiding Principles for Closure be assessed.

¹¹³ DME, Financial Quantum Guidelines, 2005. ‘Guideline document for the evaluation of the quantum of closure-related financial provision provided by a mine’ of the Department of Minerals and Energy (2005)

	is not compromised after closure’.	possible to evaluate the reliability of the models, the methodology and assumptions used in them, or their outputs to determine the extent to which the calculation meets the Guiding Principles for Closure.	
3.2 Transparency on Quantification of Components of the Liability or Any Spatially Explicit Information	How components of the liability are quantified and spatially explicit information regarding different land use zones, including detailed information on areas that have been mined should be included in order to assess whether the mining company’s strategy will prove adequate.	<p>No information relating to this process has been included in the Amended EMPR or been made available in contradiction to the IAP policies and practices for ‘sufficient and accessible information to be provided to IAPs’.</p> <p>No closure cost models, plans or calculations are provided in the Amended EMPR itself. No maps are provided for the identified land use zones, or for any of the areas discussed in the Environmental Management Programme section and the Closure Liability Report.</p> <p>No measurements of area or other spatial information has been provided for any features or components of the mining areas. In fact, other than an indication of the total mining degraded area, no quantification of any items, activities or features are given in the Amended EMPR at all (e.g. areas or volumes of dumps, quantity of earth to be moved, distances of earth moving, number or distance of roads, areas needing ecological restoration, size of toxic soil areas etc.)</p>	<p>CSA requested quantified information on land classes but were provided with numbers only of 1357 ha for pre-1980 areas and 1025 ha for Fine Residue Deposit (FDR) and Coarse Residue Deposit (CRD) areas.</p> <p>CSA is unable to confirm these numbers as no spatial information is provided in the Amended EMP.</p> <p>No other categories were provided and this information has not been made available in a transparent fashion to IAPs.</p>
3.3 Information on the Methodology Used in Calculations, Specialist	Where third party evaluations and specialist reports are mentioned, full information should be provided as to the methodologies used and the extent to which specialist input and recommendation has been adopted by	<p>Although the company mention use of mine closure cost models compiled by consultants; subsequent adjustments and exclusions were made to third party consultant’s closure cost models by NM themselves.</p> <p>The company mention that the expert advice of an</p>	<p>CSA & BM request a formal review by the NRI.</p> <p>Where specialist studies have been undertaken or the advice of third party consultants has been sought, it</p>

<p>Reports and Third Party Evaluations</p>	<p>the company.</p>	<p>NRI ecological consultant has been used; but in response to queries by CSA, the NRI specialists were not involved in the development or review of the Amended EMP.</p> <p>NM's approach appears to have been strongly biased towards an outcome that significantly lowers the cost of the liability, and it does not appear to follow a defined, consistent and objective methodology.</p> <p>In some cases the rational used to calculate the reduced cost is not based on generally accepted engineering or scientific principles, or on specific feasibility studies.</p> <p>No specialist studies (or the details thereof) are included in the Amended EMPR. The costs of specialist studies have been excluded from the closure cost estimate.</p> <p>Financial information, unit rates and any quantification of components of the liability is entirely lacking from the Amended EMPR available to IAPs. It is therefore not possible to evaluate the accuracy of the financial liability or any other quantification relating to the liability. Neither is it possible to evaluate the methodology that has been used to arrive at this quantification.</p>	<p>should be clarified where the company have altered this input themselves, and reasons for the alteration.</p> <p>The company should use generally accepted engineering or scientific principles or specific feasibility studies, in order to outline a consistent and objective methodology.</p> <p>Calculation methodology and information used to make calculations should be made explicit in the publicly available EMPR.</p> <p>Where specialist studies will be undertaken, these must be factored into the closure cost estimate.</p>
<p>4. Methods Outlined to Undertake Rehabilitation</p>	<p>Biodiversity specialists within SAs National Biodiversity Institute recommend extensive EIA and consultation discussions for land-use decision-making in all Critical Biodiversity Areas (CBAs) as identified</p>	<p>The methods recommended in the Amended EMPR will not be able to achieve the restoration to the level required by the MPRDA.</p> <p>Some of the approaches will simply not achieve the stated outcomes, and are unsound environmental</p>	<p>Restoration and rehabilitation measures and post-mining land use plans for the Namaqualand Mines territory, considered part of a fragile ecosystem and Critical Biodiversity Area of conservation priority, should</p>

	<p>in Bioregional Plans defined by the Biodiversity Act (2005) under NEMA.</p> <p>Application of a standard practice spatially mapped restoration index and map is essential for enhancing understanding, application, and compliance monitoring by DMR of the restoration process required by the new mine owner.</p>	<p>practices (i.e. negligence of the mines environmental responsibility).</p> <p>However, the biggest weakness in the Amended EMPR is the complete lack of spatial information and quanta relating to the components and practices of rehabilitation discussed.</p>	<p>involve extensive expert and public consultation discussion.</p> <p>The company need to use a standard practice spatially mapped restoration index and map; and budget for best possible practice of environmental restoration, in order to facilitate compliance by the new mine owner and monitoring by the DMR.</p>
4.1 Haul Roads and Access Roads	<p>All salt-treated and compacted roads comprise and unsuitable growth medium for plants and will not be environmentally sustainable unless they are removed (and the soils buried in voids).</p> <p>The road network on all diamond mining operations including NM is extensive and saline treated road create potential future secondary impact liabilities in adjacent areas.</p>	<p>In the EMP a full remediation treatment in envisaged for all haul and access roads.</p> <p>In the Closure Liability Report, some treatments are only envisaged for a portion of the roads, and others treatments have been removed entirely.</p> <p>Allowance made is only for treating 10% of soils to alleviate salinity. NM road network is extensive and saline treated road create potential future secondary impact liabilities in adjacent areas.</p> <p>No allowance has been made for covering the roads with growth medium or for establishment of vegetation where the road disturbed area is wider than 50 m.</p>	<p>The roads and their restoration is significant and a public consultation process should be implemented to determine which roads will improve community livelihoods and which should be restored to prior land use.</p> <p>For all roads that are to be removed, soils must be treated and buried. Cleared areas should be re-vegetated.</p>
4.2 Plants and Infrastructure	<p>DME Financial Quantum Guidelines (2005) stipulate that, "With the determination of the quantum for closure it must be assumed that the mine infrastructure has no salvage value. This is necessary as it is often difficult to determine the salvage</p>	<p>The Amended EMPR assumes the removal of the redundant plant infrastructure is 'cost neutral' as the salvage value of the materials is sufficient to offset the costs of dismantling and removal by a contractor. But no formal arrangement exists covering demolition of the mine infrastructure and the payment to be received.</p>	<p>Full costs of removal and disposal of plants and infrastructure must be factored into the quantum for closure.</p>

	value for the infrastructure. However, salvage value can be off-set if the mine can demonstrate that a formal arrangement exists covering demolition of the mine infrastructure and the payment to be received.”	There is no evidence that removal of infrastructure and rehabilitation activities and costs, which would be significant in this case, have been factored into the removal and dismantling contract.	
4.3 Course Residue Deposits (CRDs) and Fine Tailings Residue Deposits (FRDs)	<p>According to established practice, CRDs do not need to be rehabilitated as they do not normally lead to significant secondary degradation. However, FRDs do require substantial management as they: a) do not constitute a natural substrate for the establishment of plants or natural ecosystems; b) they are frequently massive in terms of surface area; and c) they are not stable to the force of wind, and can constitute the single most toxic substrate to plant and ecosystem establishment in typical surface diamond mining operations on the west coast. Failure to manage FRDs could mean contravention of NEMA, the Water Act and Air Quality Act.¹¹⁴</p>	<p>The Closure Liability Report indicates that for CRDs no action other than to fence off the tailings is envisaged.</p> <p>The company state that, FRDs ‘are stable, but provision is made for the netting of areas which may be affected by dust plumes in extreme cases’. This is misleading as dust plumes are clearly already evident, and have been netted, at a number of FRDs at NM.</p> <p>The problem at present is relatively minor as the most of fine material are not liberated from the FRDs as these remain wet. Once the FRDs dry out, netting will be wholly inadequate to stem the problem at its source.</p>	<p>The standard procedure to cap FRDs is to cover the surface with CRDs or other gravel. This stabilizes the FRD substrate to environmental forces, i.e. it is effective in preventing wind transport of the substrate.</p> <p>This form of intervention has been successfully undertaken at a number of mining operations on the west coast.</p> <p>In the past ten years other mining operators on the west coast have been compelled by legal action to cap their FRDs in this way in order to limit further secondary degradation to natural areas.</p>

¹¹⁴ According to the Air Quality Act (39 of 2004), communities are to be protected from air pollution by ‘providing reasonable measures for the prevention of pollution and ecological degradation’ (Mohamed, 2006, p. 35). Specifically in relation to mine closure, the Act requires that within 5 years prior to cessation of the mine, the owner must notify the Minister of DEAT of post-mining rehabilitation plans and measures to prevent atmospheric dust pollution, which must use the ‘best practicable means’ (ibid). Meanwhile, the Water Act (36 of 1998) should ensure that the owner or person in control of a water resource has the responsibility of avoiding pollution of the water resource and is liable for damaged cause, costs of clean-up and remedial expenses for benefits derived from polluting activities (ibid p. 35-36). Mining companies are

	<p>Standard procedure is to cap FRDs is to cover the surface with CRDs or other gravel to prevent wind erosion.</p> <p>Devastating environmental impacts will occur wherever fine tailings materials have been pumped, whether into dedicated tailings facilities or simply onto old mined out areas or natural pans.</p> <p>There can be substantial leakage of seawater from both CRDs and FRDs into the surrounding landscape, and this can significantly increase the impacted footprint area of these facilities possibly necessitating restoration or rehabilitation of the surrounding areas.</p>	<p>Information on areas where fine tailings have been dumped into old mined areas and natural pans, and references to the size of tailings facilities or discharge areas, included in a 2004 EMP, have been excluded from the Amended EMPR. More comprehensive rehabilitation procedures mentioned in the 2004 EMP have been omitted from the 2011 EMPR.</p> <p>This pollution is only obliquely mentioned in the Amended EMPR, 2011, and is not mentioned in the Closure Liability Report. The Bench Mark report (van Wyk et al., 2009) presents a study in which potential human health may be impacted from water sources proximal to the FRDs.</p>	<p>The 2004 EMP outlined a more thorough and ecologically-informed approach to management of FRDs. The 2011 EMPR approach is wholly inadequate and needs to be revised.</p> <p>Further studies need to be done to ascertain secondary environmental degradation from seawater leakage and health risks of pollution among local communities.</p>
4.4 Ecologically Restored and Naturally Vegetated Areas	<p>A proper assessment of ecological stability is required to ensure degraded lands do not trigger secondary disturbance and leave massive environmental and livelihood</p>	<p>There is very little information about ecologically restored and naturally vegetated areas, and no indication of the areas or extent involved.</p> <p>It is indicated both that these areas have been</p>	<p>The DMR must follow up on company claims that ‘ecological sign-off is done in collaboration with an external specialist west coast ecologist’, and that ‘areas have been fully reclaimed</p>

required to submit Environmental Management Programme Reports to the Department of Water Affairs, and their management programme should involve systems and structures of water use that avoid contamination of clean water systems with polluted water, that will remain functional for at least 50 years subsequent to mine closure (ibid, p. 36).

	<p>impacts to adjacent communities who will seek to graze livestock on this land in the future.</p> <p>Current good practice for mine closure involves developing a post-mining land-use plan, and evaluating all rehabilitation criteria in that context.</p>	<p>removed from the closure costing, and that allowances have been made for supplementing these areas by establishing vegetation pockets, which is contradictory.</p> <p>No information is given as to what criteria have been used to determine whether areas are sufficiently naturally vegetated and whether they are environmentally sustainable, or whether this has been independently evaluated.</p> <p>The major post-mining land-uses outlined in the Amended EMPR, have not been vetted by IAPs who will be left with this as their end land use plan.</p>	<p>and signed off by the mine', to ensure that the state is not left with future liabilities prematurely signed off by inexperienced consultants.</p>
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<p>4.5 Re-Establishing Natural Vegetation and Ecological Restoration</p>	<p>A highly developed ecological approach to rehabilitation could involve the establishment of numerous pockets of vegetation across the disturbed areas that can spread by natural dispersal and succession to fill in the open areas between them. However, a detailed assessment of the areas required to be re-vegetated to create self-sustaining vegetation cover needs to be determined.</p> <p>Restoration activities have and can continue to provide significant jobs.</p>	<p>Despite outlining an ecological-informed approach to rehabilitation in an appendix to the report, the company's intention in the Closure Liability Report to only re-establish vegetation on half of each disturbed area in the hope that the other half will re-vegetate by natural spreading is 'wishful', as vegetation in the Namaqualand region does not simply spread to un-vegetated areas and, in fact, bare areas create a risk for adjacent vegetated areas due to the burying impacts of high winds and sandy soils.</p> <p>The Rehabilitation and Restoration Procedure outlines methods for netting, restoration packs, transplants and broadcast seeding but only netting and restoration packs appear to be included in the unit rates of the closure cost model which would result in insufficient funding calculations for restoration.</p> <p>The opportunity for creating employment from environmental rehabilitation efforts is now being lost through the approach outlined in the Amended EMPR.</p>	<p>Stipulations fail to adhere to basic ecological principles for restoration and, not only should be considered inadequate under the MPRDA, but should also be seen as something contrary to the National Strategy for Sustainable Development (2010) and other legislation that South Africa has instituted to achieve the Millennium Development Goals to alleviate poverty and restore degraded ecosystems.</p> <p>All rehabilitation and restoration procedures must be accounted for in mine closure model calculations.</p> <p>A more substantial and ecologically appropriate commitment to re-vegetation and ecological restoration is required. This could also benefit local communities through creating significant numbers of jobs.</p>
<p>4.6 Alternative Land Uses</p>	<p>Alternative land uses must be given governmental permission, following consultation with IAPs, and with proof that adequate financial provisions have been made.</p> <p>Current good practice for costing mine</p>	<p>A correctional facility, marine aquaculture, wind energy (electricity generating turbines) and a hazardous waste disposal site are indicated to be in progression towards alternative land uses in the mining areas. These alternative land use areas have been removed from the liability cost, though there is little publicly available information of the progression of the correctional facility and the hazardous waste site.</p>	<p>DMR must ensure that these areas are properly provisioned for and that a full public participation process on this matter will be required as per regulations of NEMA.</p>

	<p>closure involves clearly defining the post-mining land use or land uses, then planning the process and steps that need to be followed in order to achieve those land uses.</p> <p>Feasibility studies undertaken by specialists should be undertaken to determine technical feasibility and potential social and environmental impacts of development projects.</p>	<p>The removal of the correctional facility and BMC hazardous waste site from the closure cost model contradicts De Beers correspondence that ‘the area under consideration has not been excluded from liability calculations and as per discussions with the DMR will only be excluded from future EMP amendments once the projects have been approved by the authorities and implemented’ (April 2011).</p> <p>No information is presented in the Amended EMPR as to the size of alternative land use areas but indications are that the area is significant.</p> <p>It is unclear whether revenues from sale or lease of land will be used as a contribution to the wider liability of the mine either its restoration or to social development.</p> <p>The length of time for the development of these new enterprises is not indicated and information on how this relates to the anticipated life of mine by 2023 and the associated transition plan has not been provided to IAPs.</p> <p>No technical reports have been included in the draft EMPR provided to CSA.</p>	<p>Earthmoving costs to establish alternative land use facilities may be greater than the earthmoving required to modify slopes in order to rehabilitate. This cost may be passed on to the developer of the project rather than born by the mine. But assurance of this must be agreed before the mine can cede this liability.</p> <p>This information should be provided in the ongoing public consultation on the EMP to determine the ultimate optimal end land use.</p> <p>Revenues from sale and lease of land could contribute to meeting social and environmental liability costs.</p> <p>A number of technical reports are needed to ensure the feasibility of these projects, and in particular, the hazardous waste disposal site.</p>
<p>4.7 Exclusion of pre-1980 Footprint</p>	<p>In addition to any obligations that may have existed under governing legislation and regulation prior to</p>	<p>The draft Amended EMPR states that liability for rehabilitation is limited to those operations that took place after the coming into effect of the amendment</p>	<p>The mining company has a legal obligation to address pre-1980 mining footprints. According to NEMA (1998)</p>

	1980, section 28 of NEMA ¹¹⁵ , DBCM, or any subsequent right holder, has an obligation to take measures to remediate environmental degradation even if it was caused prior to the legislation coming into effect.	to the Regulations to the Mines and Works Act on 21 March 1980. The claim in the draft Amended EMPR obligations to rehabilitate only exist from 1980 is simply incorrect.	the company has a retrospective duty to 'minimise and rectify such pollution or degradation to the environment' (s. 28). Otherwise, the company could be prosecuted for infringing environmental rights and the rights of local communities to 'an environment that is not harmful to their health and well-being' (NEMA 1998, preamble).
4.8 Earth Moving and Profiling Model	<p>Earth Moving and Profiling are by far the largest and most costly components of mine's rehabilitation liability.</p> <p>Where slopes of mine dumps and pits are too steep, serious erosion can occur, prohibiting re-establishment of vegetation and leading to secondary degradation and pollution.</p>	<p>Information concerning these activities and costs amounts to less than one page in the entire Amended EMPR. Specifics, quanta and assumptions relating to earth moving, profiling and their models are hopelessly inadequate.</p> <p>The stated aim of earth moving is to: stabilize slopes and prevent erosion by shaping and contouring to emulate the natural stable land forms which will provide suitable conditions for sustaining vegetation. A 'dedicated reclamation model' was reportedly used in 2007 to determine the volume of material that will have to be moved across the full mine site. However, many deductions have been made to unit cost rates, and that assumptions and approaches have been changed from those in the specialist model.</p>	<p>An application of the precautionary principle and financial provisioning for the prior model, informed by expert advice, should be instituted until such time as further research has provided conclusions and recommendations.</p> <p>Adequate financial provision for earth moving and profiling across the whole mine site must be made in order to meet legal requirements and standards of best practice.</p>

¹¹⁵ NEMA (Act 107 of 1998) creates a retrospective duty of care and remediation for environmental damage. Section 28(1) provides that "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" S.28 (1A) provides that this obligation also applies to significant pollution or degradation that occurred before the commencement of NEMA or that arises or is likely to arise at a different time from the actual activity that caused the contamination.

		<p>It is stated that “Generally slopes will be profiled to a gradient of 1:3 and 1:5 where required”. Though no natural stable sand systems on the west coast have land forms with a slope as steep as 1:3. Many, if not most, mine overburden slopes and dumps of this angle on the west coast show deep erosion scars and extremely little re-vegetation.</p> <p>This model is very unlikely to comply with the standard for rehabilitation set in the MPRDA.</p>	
4.9 Total Mining Damaged Area and Liability Calculations	<p>Minimum Financial Liability of the mine can be calculated using the DME Financial Quantum Guidelines to meet the MPRDA standard for restoration. Accurate information regarding disturbed (mined) areas and estimated rehabilitation costs is required.</p>	<p>No attempt to calculate liability of NM is made in the EMPR. The only figures given are for the total area estimated to be disturbed by mining.</p> <p>In the Amended EMPR the combined total mining licence area (i.e. the six rights together) is given, on the first page of the report, as 97 000 ha, and the total mining disturbed area as approximately 10 000 ha. However, the combined areas of the three licence areas given individually in Amended EMPRs indicate a total disturbed area (actual area mined) of over 17 000 ha.</p>	<p>The company must give accurate information about the areas disturbed by mining, not understate their environmental impacts.</p> <p>Using the DME Financial Quantum Guidelines, and the company’s own stated commitments, CSA’s conservative estimate of NM minimum liability for restoration is: R 738,094,742.</p> <p>Any difference between this figure and that submitted to the DMR without expert review and auditing should be considered a risk to the state, if the changes and considerations made in this review are not incorporated and reflected in the Amended EMPR.</p>
5. Lack of Stakeholder	Interested and Affected Parties (IAPs) should be involved through	Stakeholder engagement for the draft Amended EMPR has been virtually non-existent and “sufficient	More substantial stakeholder engagement and IAP consultation is

<p>Engagement Process and Social Concerns</p>	<p>stakeholder engagement and consultative processes, in order to ensure plans for mine closure and/or sale are transparent and democratically accountable.</p> <p>IAPs should be provided with 'sufficient and accessible information' and invited to comment on and have input on EMPRs, Social Labour Plans, and plans for Mine Closure and alternative land uses, before these documents are finalised and accepted by government.</p> <p>It is standard practice in public consultation for any environmental authorisation is to make documents available at a number of different venues, as well as on a website for download.</p> <p>IAPs must have adequate time and notice to enable them to contribute meaningfully to the process.</p> <p>The interests of IAPs should be incorporated into the relevant plans.</p>	<p>and accessible information" has not been provided to the IAPs.</p> <p>The public meeting held in 'early 2011' was held on 1 February 2011, after the draft Amended EMPR was generated, according to the date provided. Copies of the draft Amended EMPR were not available at this meeting and participants were informed that it was not a consultation on any formal process but rather an opportunity for De Beers to share information on their sale plan.</p> <p>There was less than one week between notification of the meeting and the meeting itself, giving insufficient notice to many stakeholders.</p> <p>The draft Amended EMPR documents were only available at one urban location (Springbok library), and were thus inaccessible to many affected communities (e.g. Hondeklip Bay).</p> <p>The Amended EMPR also fails to 'maximise the socio-economic benefit related to mine closure' by reducing employment opportunities available for the creation of 'green jobs' through restoration activities.</p>	<p>required, wherein sufficient, accessible and accurate information should be provided, and made available in a number of suitable locations and online.</p> <p>IAPs should be invited to contribute to EMPR, Social Labour Plans and plans for Mine Closure and/or sale of mining rights, as well as post-mining development projects. Their interests should be taken into account, as well as concern for environmental sustainability.</p> <p>IAPs should be given adequate notice about their opportunities to contribute and the occurrence of public meetings.</p>
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