GGA NATURAL RESOURCE GOVERNANCE

Advancing the Social Compact and Sustainability Workshop

Wednesday 5 February, 2020

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GGA

GOOD GOVERNANCE AFRICA

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OVERVIEW

Good Governance Africa is a research and advocacy non-profit organisation with centres across Africa focused solely on improving governance across the continent. GGA engages in applied research and stimulates critical debate.

All our work is based on exploring and advancing the key governance principles of democracy, accountability and transparency, and combining these with upholding the rule of law and respecting human, civil and property rights.

Democracy, accountability and transparency lie at the core of GGA, without which citizens are unable to track and evaluate government performance. Good governance involves inclusive economic growth and sustainable development, enabled through economic freedom and equal opportunities for all.

BACKGROUND

Natural Resources is one of GGA's five programmes and is centred on effective and sustainable management of Africa's resources. This programme looks at measures to manage and sustain natural resources, reporting on progress, shortcomings and offering policy recommendations for development.

The programme emphasises enhanced governance, stewardship and sustainability, particularly in respect of the continent's non-renewable resources.

The first convening of this kind was in November 2016, when GGA hosted a workshop in Johannesburg on 'Risk, Extraction and Ethics' as a scoping exercise for our natural resources programme. A workshop outcomes document, which served to consolidate gains made, identify challenges and made recommendations for further development, was produced.

In early February 2019, GGA hosted a second convening on resource governance, titled 'The Social Compact and Sustainability' in Cape Town, which provided a space for roundtable engagement and dialogue. Another outcomes document was produced and the take away points were used as a stepping stone for the next convening. The participants of the 2019 convening requested that GGA host another, more detailed, workshop.

GGA STATEMENT ON SUSTAINABILITY

Sustainability implies being ethical, which cuts across social, environmental/ecological and financial considerations. What we do is governance, how we are is ethical, which serves both as a point of departure and the end of the work that we do. Being ethical for GGA means authentic engagement, demonstrating self-confidence, responsibility, self- and other- consciousness; It means knowing our *raison d'etre*.

We need to understand the requirements of others in broad terms, which necessitates empathy and an appreciation of context and complexity. Good governance is impossible without diverse perspectives and an inclusive approach. GGA will build on existing experience to ensure continuity, consistency and sustainability, without reinventing the wheel. Thinking differently means that we embrace common but differentiated responsibilities. We seek to match ends to available means. Such consciousness results in trade-offs and the need to prioritise.

At GGA, we have identified cross-cutting core areas (natural resources, peace and security, democratic governance and political processes, improving the economic environment, and youth and marginalised/vulnerable groups). We recognise country and regional specificity in leveraging our group's cooperation and synergies, and we seek to promote networking and branding. GGA is a critical coordinating hub that brings together grassroots CSOs, as well as high-level policy actors, serving as a bridge for a "whole-of-society" approach to improve governance in Africa. We strive to build trust through effective communication, knowledge generation and sharing, which we regard as key to our mandate of societal transformation.

WORKSHOP

MODERATOR: Prof Alain Tschudin
Good Governance Africa SADC and Wits School of Governance

Professor Alain Tschudin is Executive Director of Good Governance Africa (SADC). A registered psychologist with a PhD in psychology from the University of KwaZulu-Natal, Alain was a post-doctoral research fellow at the University of Cambridge before returning to studies there, completing a MPhil in divinity and a PhD in ethics. He has broad research and community engagement interests, and has worked for universities and NGOs in Africa and Europe, with the European Commission, and as lead consultant for Save the Children and UNICEF in Africa and the Middle East. He is Honorary Research Associate on the Peacebuilding Programme at the Durban University of Technology. He is also a visiting Professor at the Wits School of Governance.

OPENING REMARKS:

Excellencies, distinguished guests, colleagues, ladies and gentlemen, friends.

On behalf of the directors and team at Good Governance Africa, it is my pleasure to welcome you to today's workshop, 'Advancing the Social Compact and Sustainability', an integral theme of our Natural Resources governance programme. It is our third engagement on the topic, with the first meeting occurring late in

2016 in Johannesburg on 'Risk, Extraction and Ethics', followed by last year's round-table dinner on 'Resource Governance, the Social Compact and Sustainability'. Some of you are veterans of all three engagements and we thank you for your unwavering support!

At the outset of this event, we are delighted to announce that Dr Ross Harvey will be joining our team to head up the Natural Resources programme. Ross completed his PhD in economics at UCT on the political economy of oil and institutional development in Angola and Nigeria and served as a senior researcher at SAIIA on extractives and on wildlife governance. Welcome aboard, Ross! He joins us on a panel that goes to the heart of contemporary resource-related challenges, namely the socio-economics and ethics of extraction and how different stakeholders respond to the challenges that arise.

Within the South African context, there is perhaps no other current example (Marikana has happened) that is as festering a wound as Xolobeni – named after a school and not even a place. It pits an unscrupulous Australian mining company (Mineral Commodities Ltd and its subsidiary Transworld Energy and Mineral Resources), with questionable support from our national government's Department of Mineral Resources (DMR), against the landowners of the Amadiba community in the amaMpondo area of the Eastern Cape, Mbizana municipality. I met Nonhle Mbuthuma, founder of the Amadiba Crisis Committee, at the Alternative Mining Indaba last year and immediately indicated our interest in learning more. The ACC unites five villages representing the Amadiba Tribal Authority and Nonhle forms the nexus between the local people and their legal representation. She engages in sustainable farming and promotes food security in her community.

A visit to the site - under armed guard given the very real threat the committee's members face, especially after the 2016 murder of former chairman Bazooka Rhadebe - was revealing. Nonhle herself survived an assassination attempt in 2008, and 12 community members have been murdered since 2002. What stands to be lost is the displacement of *bona fide* local communities, who are self-reliant and self-sustaining off 22 square kilometres of their ancestral land, and the devastation of an otherwise pristine habitat - with a highly destructive impact on water resources, flora and fauna; all to the end of an open-cast mine with a lifespan of 22 years.

To facilitate discussion, Nonhle and Ross are joined on the panel by Deji Haastrup and Chris Assad. Deji is the CEO of Strategic Communications Solutions and he was instrumental in developing Chevron's Global Memorandum of Understanding, a community-led, multi-stakeholder sustainable development plan for mining-affected communities in the Niger Delta. Chris Assad, with a life career (for more than four decades) as a miner in the sector, served as GM of the process division at Lonmin from the late 90s, is a Lean Six Sigma trainer and currently consults to Anglo-American, Glencore Zambia, Mopani and Tharisa Minerals. Welcome back Deji and Kit.

So what, you might validly ask, does good governance have to do with all of this? Well, the very first sentence of the 2016 report of the South African Human Rights Commission titled 'National hearing on the underlying socio-economic challenges of mining-affected communities in South Africa' may provide us with a telling clue. It states that, "When underpinned by *good governance* and a respect for the community and environment in which they operate, extractive industries harness significant potential to transform a country's social and economic development."

The report continues: "Employment opportunities, increased investment and access to revenues can drive economic growth and reduce poverty at local, regional and national levels. However, often these opportunities are not realised and the negative impact of extractive industries detract from, and undermine, the potential benefits and opportunities that accompany them.

Over the past 23 years, South Africa has established a comprehensive regulatory framework to enable its mining industry to operate in a manner that protects and promotes the well-being and safety of communities affected by its operations (mining-affected communities). The framework is designed to facilitate the sustainable and equitable development of South Africa's mining industry, while enabling and promoting inclusive growth and prosperity. While the framework has the potential to drive positive social and economic development, particularly at the local level, this report reveals a disjuncture between its intended impact and the lived reality of many of South Africa's mining-affected communities.

Reality bites, as they say, and we are here today to discuss this uncomfortable disjuncture by entering the hyper-real experience of one such affected community, namely the Amadiba community.

Athi Jara wrote last month: "Fresh from the publishing of the latest version of the Mining Charter in 2018, communities again became a focal point. Two court cases were decided to shed more light on the role of communities in mining. These cases explore the tension that exists between land rights and the right to mine, which is promoted by the Mineral and Petroleum Resources Development Act (MPRDA). Both judgments affirm the link between the dignity of African communities and the land – which is considered to be their most treasured possession.

In *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Ltd and Another*, the Constitutional Court decided that communities with land rights protected by the Interim Protection of Informal Land Rights Act, 1996 (IPILRA) were deprived of their informal land rights by the award of a mining right. This deprivation requires the consent of the informal land right holders (i.e. the community) as required by the IPILRA for any mining to take place.
Closely following the *Maledu* judgment (about a month later), the High Court decided on the Xolobeni community case in *Baleni and Others v Minister of Mineral Resources and Others*. In this case, the court found that communities that fell within the ambit of the IPILRA were afforded broader protection than common-law landowners when it came to mining rights under the MPRDA. Essentially, the IPILRA imposes an additional obligation on the minister to seek the consent of the community before granting a mining right."

The court finding was highly significant, especially as Sabelo Ngubeni observes, writing in a 2019 article in *The Mail and Guardian*:

"Many of South Africa's mineral resources are found on communally owned land and subject to customary law. As such, the discourse on land in South Africa is characterised by tensions between communities who hold informal land rights; the state, which is empowered to award mining rights; and those who seek to exploit the land and its mineral resources for financial gain.

The recent Xolobeni judgment sought to ameliorate these tensions by requiring that the MPRDA and the IPILRA be read together to ensure that, prior to awarding a right to mine, the minister of minerals and energy gets the full and informed consent from the community involved as opposed to mere consultation, as is required by the Minerals Act.

The judgment is indeed a victory for customary land rights holders in mining-affected communities. But it has also created uncertainty in the mining industry, because it seems to interfere with the state's role as the custodian of all minerals in South Africa."

But how do we create a balance of interests between multiple stakeholders? Is there any ethical middle ground that can satisfy all parties? What do we do with the quick gains of an opportunistic mindset versus the long-game sustainability of an irreplaceable ecosystem? These are some of the questions arising for our panel and small work groups today.

At our last meeting, some action points and key takeaways were provided as to the role of good governance as applied to the natural resources space. One participant, a legal advisor, noted that, "Good governance in Africa is the right matter to be discussed – honesty and transparency must prevail and must

be urgently discussed." Likewise, an African Mineral Council representative put it this way: "Competence, values, ethics. We need to invest in good governance to ensure compliance and systematic investment." Finally, a multilateral representative suggested that, "Good governance is the ultimate goal and must be the pathway, not just an aspiration but a state of being to work towards."

Improved governance is our target and also our pathway. These convenings represent our aspirational attempts to realise this sea change. It is a dynamic and rapidly morphing space. There have been changes, developments and it is important to recognise this. Whereas social interventions were once hailed as revolutionary, now we expect the "social plan" to be integrated into the mainstream business plan. Helpfully, last year in his keynote address, Deji shared the key elements of the "Chevron model":

1. Multi-stakeholder engagement

2. Ethical business practices

3. Conflict sensitivity

4. A robust commitment to inclusive, collaborative and participatory solutions

5. A strong commitment to integrating business and social performance

6. Continuous monitoring and evaluation

7. A viable exit strategy

He left us with three concluding insights, namely that:

i. a little humility goes a long way in building lasting bonds between a giant multinational and a disadvantaged community;

ii. business performance risk is mitigated against by the diminished social risk that arises from a social performance plan; and

iii. social performance tends to be successful and sustainable when it is inclusive, collaborative and participatory among multiple stakeholders.

Indeed, many argue that the sector has evolved to move beyond the bog-standard corporation's "social licence to operate" and FPIC (Free Prior Informed Consent) on the part of communities. Moreover, at our event last year, one iNGO mining and development specialist noted:

"With FPIC, the question of who should own the resources rights arises. There should be a tripartite agreement between governments, investor companies and communities. Social licences to operate must be applicable to governments as well, not just to investor companies. Governments are being viewed as allies of investor companies, and communities are saying that this is not enough – they need answers."

So it is that I would like to open the panel discussion with this somewhat tricky notion, of perceived alliances between states and corporations, and of resource ownership and social responsibility towards communities. How do we advance this so-called tripartite meeting of minds between the critical stakeholders?

PANELLISTS

Chris Assad: Chris has 42 years' experience in mining process operations. He went into management in 1981, working up to general manager of the Lonmin process division in 1999.

There, his operational responsibilities included platinum concentrating, smelting and refining operations. In 2004, he was selected to be one of the first Lean Six Sigma Black Belt candidates, trained by the international company Carnell Shank International (CSI), which included training Lean Six Sigma Green Belts.

In 2008, Chris qualified as a Lean Six Sigma Master Black Belt, which included training 42 Lean Six Sigma Black Belts. In 2011, the Lonmin Group sent him to qualify as an international Lean Six Sigma trainer. This experience included a "deep dive" into training Lean Six Sigma Green and Black Belts for international qualification.

Chris is currently providing consultation and operation audits to Anglo American; consulting to Glencore Zambia; Mopani Plc; and a management development programme for Tharisa Minerals (Pty) Ltd.

Deji Haastrup: Born on 23 November, 1956, Deji holds a master's degree in communication arts from the University of Ibadan, Nigeria, with specialisation in communication and conflict resolution. This is in addition to a post-graduate certificate in general management and leadership from the Columbia Graduate School of Business in New York and a professional diploma in mass communication from the University of Lagos.

Deji began his career in 1975 with Western Nigeria Television and Western Nigeria Broadcasting Service [WNTV/WNBS] – the first television service in Africa – where he excelled as a continuity announcer, presenter and newsreader, becoming a household name throughout the old Western region.

In 1995, Deji switched careers and joined international oil company Chevron, as coordinator for community and government affairs in the Nigeria-Mid Africa business unit, where he established Chevron's first community relations unit in Africa. He served the company at its corporate headquarters in San Ramon, California between 1999 and 2001 and was international liaison for its Latin America business unit in Caracas, Venezuela.

Over the next 15 years, Deji occupied several positions of increasing responsibility at Chevron, initiating the company's code of conduct for security and human rights for the Mid-Africa Business Unit. He also led the team that developed Chevron's acclaimed Global Memorandum of Understanding, a community led, multi-stakeholder sustainable development model credited for its effectiveness in conflict management and sustainable development in the Niger Delta communities.

Ross Harvey: Ross has been working on natural resource governance problems in various forms since 2007. He has a PhD in economics from the University of Cape Town. His thesis research focused on the political economy of oil and institutional development in Angola and Nigeria. While working on the PhD, Ross worked as a senior researcher on extractive industries and wildlife governance at the South African Institute of International Affairs. In May 2019, he became an independent conservation consultant. He looks forward to joining the GGA team in May.

Nonhle Mbuthuma: Nonhle is an activist who fights for land and environmental rights for her community in South Africa's Eastern Cape province. Nonhle hails from Xolobeni, a collection of villages that lie along the cragged cliffs and white sand beaches of Pondoland, on the Wild Coast. Here the indigenous Pondo people have lived for generations, farming and fishing. And here, too, they have defended their lands from colonisation, apartheid and now, industrial-scale mining.

In 2007, Nonhle founded the Amadiba Crisis Committee (ACC) to unite community members in five villages of the Amadiba Tribal Authority region to work together in opposition to destructive mining projects. She is now the most visible leader of the campaign against the Australian corporation Mineral Commodities Ltd (MRC). A crucial link between the indigenous community and the ACC's legal team, Nonhle also engages the community in farming and food security workshops and has launched such projects in local schools. In 2008, Nonhle survived an assassination attempt. In the intervening years, she has reported constant death threats and warnings.

PANELLISTS OPENING REMARKS

Advancing the tripartite meeting of minds between the government, communities and private investors.

The Mpondoland mining experience

The Mpondoland community in the Eastern Cape faced a big challenge in 1996, when it found out that an Australian company had discovered titanium there and wanted to start open-cast mining on a 22 km stretch of coastline. The community asked how they would coexist with mining and they were promised employment. However, that was not the answer that the community sought. Community members wanted the assurance that any development would not destroy their social fabric.

The Australian company conducted a survey and reported finding only two graves along the 22 km stretch. This was questionable because the speaker's family has lived there for centuries and in that family alone there were more than 25 identifiable graves. It was pointed out that the reason they only found two graves was because they used Google, which does not recognise graves without concrete and tomb stones. Furthermore, the discovery of only two graves implies that nobody in Mpondoland was dying, which was not the case.

When the Australian mining officials realised that the community was questioning them and refusing their offer of jobs, they went to the government for buy in. They asked the government for permission to position dust monitors to determine how much dust might be generated by the mining activities.

But all attempts by the Australian mining company to get buy in were fruitless because the community was still against the initiative. The community was particularly worried about the aftermath of 22 years of mining and the exhumation of their ancestral graves. At the time, the Mpondoland community was happy with the way they earned their livelihood, generated mainly through agriculture and livestock.

The local government sided with the Australian mining company and tried to convince the community to agree to the mining initiative. The government highlighted that the mining initiative was in the interests of the economy, which is primarily reliant on minerals.

In 2018, the community took the government to court because they believed they had the right to decide on the type of development they wanted, and that the mining initiative should not be imposed on them. A Pretoria High Court judgment subsequently ruled that the people of Xolobeni must give consent before any mining right was issued.

The government responded by arguing that if the issuing of all mining rights required that communities give consent there would be no mining development since communities would likely decline.

Furthermore, the government wanted to do a survey on behalf of the Australian mining company to determine the real stance of the community. The community strongly refused to participate in any survey, arguing that the government could not undertake this initiative on behalf of a foreign company using their hard-earned tax money.

To date, it is unclear to the Mpondoland community whether the Australian company is still interested in the mining initiative because it is the government that is playing a more active role in getting the mining rights.

Facing the challenges in the mining industry in South Africa

With a 29% official unemployment rate, joblessness growing and ongoing load shedding, the South African economy faces real challenges. Along with these challenges, there are also government structures in place that seem to incentivise taking short cuts. It is this culture of taking short cuts that has led to cases like Xolobeni as highlighted by the first speaker.

The amendment of the Mineral Rights Act in 1991 made a mistake by investing sub-soil mineral rights in the hands of the state. This was expropriation in its own right because the focus should rather have been on security and tenure for the affected communities.

Mining companies now have an incentive to strike deals with government authorities at the expense of communities. It is of greater value to follow the right governance procedures in order to bridge the trust deficit between mining companies and communities, as well as between government and communities. Bridging the trust deficit is particularly important when, in the eyes of communities, the state is seen as doing the bidding of foreign companies. An alliance exists between insecurity of tenure when it comes to land rights and security of tenure in mining rights.

The evolution of mining in South Africa

Previously, in the 1960s-1980s, mines had free rein, but with time legislation got tighter and tighter. In the 90s, the third speaker was involved in mining at a time when they were entitled to pump 48 tonnes of sulphur into the atmosphere a day. This changed as new environmental legislation came in, and this amount was reduced to only four tonnes a day. It cost the mining company R380 million to get to the stipulated four tonnes a day.

Unfortunately, there were a lot of loopholes in the system. For example, since the early 90s, mines were entitled to contribute to a rehabilitation fund so that when the mine shut down the fund would rehabilitate the property.

A certain mine has already contributed R450-R500 million for this purpose and that mine still has another 30 years to go. The main concern is whether the money for rehabilitation will still be available when it is needed and who will look after it.

Coastal open-cast mining leaves an approximately 40 m deep open pit that can stretch for 3 km. To mine in such a place, the whole of the area on the coastal front needs to be cleared out. How does effective rehabilitation take place years later when everything has been cleared out?

Another case was that of a mining company based in Johannesburg that looked at mining heavy minerals in the Mthunzini area. After identifying the place that they were interested in mining, they applied for the mining rights from the government. A professor from the University of Potchefstroom came on site to do an assessment of the area and it was identified as a conservancy.

Upon completion of the mining activities over the years, rehabilitating nature conservancies can take up to 300 years.

New technologies in the mining space afford opportunities to invest in minimal environmentally invasive ways of mining. However, there are also instances where mining may have irreversible ecological consequences. In cases where the ecology of a place risks being destroyed, we need to ask ourselves: "Are we willing to sacrifice this?"

Conversely, there are other instances where mining makes sense. But in such instances the community should be actively assured that mining will take place in a responsible manner. The revenue from these mining activities should be distributed in an equitable way.

It was emphasised that mining should be a catalyst for economic growth, but not at the expense of the community and the well-being of the environment.

A farmer who stayed within the intended mining area also identified a frog that was unique to South Africa. The government denied the company the rights to mine in Mthunzini because the area was classified as a conservancy.

Some years later, the speaker was surprised to see the Fair Breeze mine operating in the conservancy. The whole area was being mined and all the nature conservation areas were taken down. The mine recently closed and the rehabilitation of four hectares of land was needed. They have, however, started to build a dam, and judging from the height of the dam, they have been there for approximately 10 years.

The government and the mining industry may promise to rehabilitate and put things back, but the reality is rehabilitation may only start in 40 to 50 years. Unfortunately, by then, the people would have moved on and it would not be the same place that it was before.

On the other hand, mines were given some credit for their contributions to local communities, although at times the same mines fail to do right by the environment. An example given was platinum mines in the North West area, where mines look after the community, building schools, clinics and hospitals. Nowadays, mines look after the environment because it's a legal requirement.

It was said that, "the business of business is business", in that mines only look after communities because if they don't their business would shut down. Miners were advised to be more concerned about the immediate people that surround the mines as this was easier than being environmentally friendly. Loopholes will always be found when it comes to the environment and often when government devises a plan to look after the environment, there is a high risk that it will not happen.

Applying the right mining formula

Business should not behave as if it's being forced to do the things that will eventually make it profitable. The most important agenda for all stakeholders is to integrate business performance with social performance. It is just as important to understand that business forms part of society by providing services and products and in return business makes money.

It is a process of evolution, whereby the survival of the business depends on the survival of the community. It is also in the interests of government to see business thrive. Therefore, all stakeholders have mutual interests, and businesses should begin to see their social responsibility as a part of doing business.

The formula is that business should not invest without understanding the social impact and risks to the business. Part of the business plan should incorporate understanding the risks to the business and the impact the business will have on society and the environment. The best way to understand this is through stakeholder engagement. The right formula is:

> **Stakeholder engagement + social risk + impact assessment = social intervention/ social performance (translates into business performance)**

Management should understand that the business is not performing if it's responsibilities to the community are deficient. The Annual General Meeting should incorporate reporting on all aspects, including social responsibility, the impact on the environment, as well as business performance (none of these should be more important than the other). In reporting business performance, at the end of the year, the Chief Executive Officer should understand that he/she will be judged by the board not just on business performance but also on its responsibilities to the community and the environment.

If this integrated approach is effectively adopted, social performance will not just be an add-on but a part of business performance. This formula also encourages the community to be responsible for the business. If the community is certain that the mines are working towards the long-term benefit of the community, then the community will be more inclined to cooperate with the mines.

However, history has shown that the relationship between mines and the community is filled with mistrust. This needs to be overcome, and the only way to do so is by stepping over to the other side to understand what is important. This can only be achieved by implementing an integrated approach. Experience has shown that the relationship between the two starts off difficult but eventually, with time, communities start to advocate on behalf of business.

QUESTIONS TO THE PANEL
PANEL QUESTION ONE

Last year, an African iNGO representative shared the following insight: "Transformation of power is required for effective dialogue to ensure the right conversation." What does this mean and what might such transformation or transformations look like?

PANELLIST ONE

To start with, in any relationship that will require negotiation, the issue of power comes into play. The mining conglomerate is a "Goliath" and the community is a "David". Therefore, the power dynamic that is established in that relationship makes it difficult.

When one is in a position of being able to negotiate with someone who is more powerful, the assumption is often that they will be taken advantage of. Therefore, the negotiation starts off from a position of mistrust, so to move that negotiation forward there should be a transfer of power from "Goliath" to "David", so that "David" feels empowered as an equal at the negotiation table.

At this point "David" may want to test how much power he has by being aggressive and adversarial. Giving this power to "David" is also giving him the ability to trust the giant, and by gaining trust, it is actually the giant who has more power. The power equation is that, by losing power, there is a multiplication of power from both sides.

PANELLIST TWO

It is important to empower community members as opposed to empowering people in authority. The Traditional Courts Bill invests too much power in the hands of the traditional authorities (chiefs).

To improve the symmetry of power between communities, the negotiating mining partners and the state, the process needs to be democratised. This gives rise to the need to implement a mechanism to gauge what communities really want.

Group one

PANELLIST THREE

For a balance of power to be achieved, negotiations should be centred on an equal distribution of power. An example was given of when the speaker was a chief negotiator in the mining industry and a different approach was used to relinquish power through transparency. Negotiations took place from an understanding point of view, not from a position point of view.

When the mining work force came with a long list of demands, the chief negotiator asked them to go back and do a presentation, and when they came back with the presentation their demands had halved. Negotiations began and each party came to an understanding of each other's concerns.

In every negotiation there is a need to relinquish power, and the way to do this is by being open and transparent. Both parties must put their fears on the table and understand one another.

The reason that particular negotiation was successful was because the position of power was removed from the negotiation and there was an understanding of the fears and grievances of all the parties involved. Understanding and maturity are significant factors in reaching a compromise. But, the speaker cautioned, "Be careful of that compromise. Be careful of promises".

PANELLIST FOUR

The Traditional and Khoi-San Leadership Bill is taking away power from communities and giving it to traditional leaders. When an investor has interest in South African rural communities, that investor has to consult the chief or the king (who has authority to consult the community and make decisions on their behalf). The implication is that the deal ends between the traditional leader (and/or the government) and the investor.

As a result, the community's power to govern for themselves is stripped from them. Since the introduction of Black Economic Empowerment in South Africa, some traditional leaders are also directors in their BEE ventures.

An example was given whereby, in the speaker's community, the traditional leader was also a mining applicant. The speaker questioned: "How can you be a referee and a player at the same time?" When it comes to negotiations, there may be a conflict of interest between what benefits the leader as an applicant and what benefits the society that he represents.

The Bill gives powers to traditional leaders to sign deals on behalf of the community without the community's consent. In the speaker's view, this was taking South Africa backwards instead of forwards.

Group two

PANEL QUESTION TWO

Can there be a middle ground between those who are hell-bent on mining and extracting at all costs in a predatory, opportunistic approach and those who are completely resistant to any form of extraction. Is there any wiggle room between the extremes?

PANELLIST ONE

If the trust deficit can genuinely be bridged, and the power asymmetries that are often played in negotiations reduced, then middle ground can be achieved.

What should be avoided is the issuing of licences to irresponsible players who cause environmental damage. Legislative steps should be implemented to reduce the possibility of irresponsible players entering the equation. There should be a transfer of power to communities from a rights and security perspective. A combination of legislative work and real on-the-ground engagement is required to effectively reach a middle ground.

PANELLIST TWO

"There is no price for compromise." There is no room for bribery in reaching a fair middle ground. An example was given of weekly "mafia" meetings on how to manipulate and influence the government and how a certain organisation openly asked for a R5 million donation.

The different lifestyles and needs of people make it easy for them to make things look lucrative and attractive. However, upright people who are prepared to stand up for their principles at all cost are needed. "We cannot allow the normal back-handed payments to buy people off," stressed the speaker. "We cannot allow people with influence to influence people who have needs."

PANELLIST THREE

Stakeholders must be responsible in reaching the middle ground, and if both parties are negative in their approach then it will be difficult to do so. Ego-driven and power-hungry people in negotiations are primarily irresponsible and do not have a community's best interest at heart.

The industry must be mindful of conflict. "You do not want to be the cause of conflict in a community but rather the cause of good." Responsible stakeholders (positive contributors) are needed and the negative contributors should be removed from the negotiation process.

The ultimate goal should be sustainable social and business performance by being inclusive and looking out for the interests of other stakeholders.

PANELLIST FOUR

Mining industry negotiations are not transparent but are rather based on where one puts the briefcase. Often, the players don't want to engage in a fair discussion, preferring to take negotiations out of the community to strike a deal.

They find ways of causing division among the community to create a minority, after which they include people from outside the community to get a majority vote on their side. An example was given of a minister who was brought in to represent a community, but the community revealed that they did not know the minister and had never seen or heard of him before.

Rejecting the briefcase in negotiations has caused deaths. "When they bring money into negotiations, they think they are doing us a favour." Conversely, the community is affected and left with irreversible damage.

PANEL QUESTION THREE

"This report (SAHRC, 2016) reveals that progressive, evidence-based reform requires more than improved cooperation and collaboration among industry stakeholders; it requires an appreciation for, and understanding of, the diversity of risks and challenges that accompany the mining industry and its impact on local communities. It shows that the prioritisation of social and environmental needs in the regulatory and policy framework governing South Africa's mining industry is crucial to ensuring equitable access to the benefits of resource development." How can this be addressed in policy development?

Group three

Group five

PANELLIST ONE

With regards to policy, the mining industry needs to understand impact and risk. Business should understand that their activities impact the environment through an environmental as well as a social impact and risk assessment. It might be worthwhile to determine that before any mining enterprise projects can be approved.

Transparency is key, and every player should have an idea of what the impact could be on the environment and the community - and these risks and impacts should be documented.

PANELLIST TWO

South Africa has very good laws in place, particularly environmental laws. If the laws were implemented, then the country would not be in the current mess it is. In the speaker's view, "As South Africans we like to take a short-cut when it comes to development."

The people responsible for regulating the laws are the very same people who are breaking the laws. The speaker asked, "What is the role of the state? Is it promoting or regulating?" With regards to environmental impact assessments, the state is meant to ensure that the data collection is done properly and is not just a tick in a box.

PANELLIST THREE

When referring to any arrangement between government and people, it is important to be conscious that promises are made to build schools, tar road, hospitals etc. The minerals in the ground do not necessarily belong to the mining house nor to the government, but to the people. However, the mining industry has taken a claim on the minerals in exchange for a small token to the communities while using the bulk of the money to gain their own riches.

A known fact on the mines is that for every single (one) employee there are approximately 10 dependants. If 3,000 workers are employed in a mine, the 30,000 dependants should be considered to create jobs and sustainable livelihoods for them. Therefore, it goes beyond the building of schools and hospitals to sustainability of the dependants.

For example, the Chinese built a soccer stadium in Zambia, which did not necessarily mean much for the "ordinary guy" in the street, considering the 40% unemployment rate at the time. The people were promised employment and other improvements. Instead, the Chinese are currently spending more money

upgrading Lusaka Airport, and while this does create employment for a small group of people, it is more beneficial to the Chinese than the impoverished communities.

PANELLIST FOUR

Looking at the East and West side of the Kei river, one notices the eastern side is prosperous while the western side is impoverished. Greater security of tenure in the legal framework is needed to empower communities through effective legislation. In terms of policy and institutional changes that must be made, the speaker was of the view that South Africa still has a long way to go.

PANELLIST THREE

In respect of employment, the mining industry has become more capital and technology intensive and less labour intensive, which means fewer people are employed. However, a sustainable livelihoods assessment can be developed to understand what other industries could be promoted in the local community outside of the mining industry.

These should ideally be operated by the communities on their own to provide employment outside of mining but funded by the mining company's social intervention. To be successful this process requires transparency from the onset.

The mining enterprise should inform the community that they may not be able to employ all of them, but they will engage in a sustainable livelihoods assessment to help identify the community's other areas of livelihood (farming, weaving, livestock etc.) and develop them.

QUESTION AND ANSWER SESSION
Multilateral HQ Representative

- The participant, from the floor, was concerned about the notion that "there is a need for activists who are prepared to die for a cause" (being upright and standing for good at all costs), stressing that all over the world activists are dying.

- The participant probed: "Is there not a role for the private sector to self-regulate, good vs bad players?"

- On the point of power and balance (the notion that we need to build communities' capacity to engage with companies), the participant suggested that it should be done the other way around whereby companies build their capacity to understand and engage with the community.

RESPONSE FROM THE PANEL

PANELLIST ONE

"There is a tested formula for doing these things." The panellist gave an example of an organisation he used to work for that operates in more than 180 different countries, citing experiences from some difficult places like Nigeria, Venezuela and Angola. The experience the company got from dealing with social issues was that, "It is in the long-term best interest of the private sector to take into consideration the interests of the local community." The panellist stressed that "If you have been in business long enough, you will understand that doing this is not a favour but an enlightened self-interest activity, and it is in your best interest to do things this way."

Communities can be very sensitive and can pick up on things very easily, so transparency is important. An example was given of a global process that the panellist's former organisation applied whereby the mining enterprise would take a back seat and let the community take the front seat. They told the community: "You are the drivers of the process, let us know what your dreams are, we cannot dream for you."

Another example was given of northern Nigeria, where the Panellist's former organisation did not see a single primary school in the community, but there were a lot of children running around and playing with goats. When they proposed building a school, the community was reluctant.

At the end of the community engagement, as the panellist was leaving, a woman approached him and asked if they could build a borehole instead because every morning groups of women walked for approximately 8 to 10 hours daily just to fetch water. The borehole would not even cost 10% of the cost of building a school, but this is what the community wanted. In the panellist's view, "Sometimes the solution is not always how much it's going to cost but rather building trust."

PANELLIST TWO

The private sector has an interest in behaving responsibly. There is a need for a culture of good governance combined with legislation. There is often reluctance on the part of responsible private-sector players to engage in pushing back or fighting for their rights because they are content with the correct procedures that they follow. A different type of engagement is needed to become a development partner rather than a mere investor. The responsible enterprises in the private sector should play a role to crowd out irresponsible players from the industry.

Government Department Representative

- To create an economic environment where there is sustainability and the economy grows in such a way that will benefit the South African community we must ask the question: "What should be the framework and foundation of the principles to create social justice and economic growth, to replace the existing economic principles that are embedded in capitalism?"

- Movement towards a social compact should include people who represent different levels in society and all concerned stakeholders. While tension exists between social partners, to work towards the social compact means having the right people in the room.

- Highly concerned about the meeting at the union buildings, which was focused on how to sustain energy supply so that business (not communities) can thrive.

- "We must go back to the basics, what is the reality on the ground? You will find poverty, unemployment and inequality."

The moderator pointed out that the points raised would be addressed in the work groups and plenary sessions. There was a tea break, after which the session could resume.

SMALL WORK GROUP THEMES

1. **Are there possibilities for an integrated approach towards ethical resource extraction that are able to "futureproof" sustainability in communities and environments? What might a long-game approach that promotes infrastructural development, allows alternatives and/or complementary activities to mining and promotes environmental integrity management look like?**

i. First group

The possibilities do exist. What should happen is that the community should have a say, not necessarily the companies with the most money having the say.

ii. Second group

It is possible to have an integrated approach using the following:

- Attention to context
- Conversations on a "new normal approach"
- Integrate ESE
- Include communities from the start
- Strengthening complaint mechanisms (AfDB)

iii. Third group

The community should be involved from the beginning in order to take the plan forward. Corporate Social Responsibility (CSI) implemented and based on community to enable sustainable growth.

iv. Fourth group

- Excellent economic succession planning built in right from the start
- If not, then options need to be implemented now
- Creation of diverse economic activities from the start

2. **An African Minerals Council representative noted: "Mining companies would not be averse to funding the establishment of a Good Governance Index, which promotes transparency and accountability in this sector." How might such an index be advanced, and could it apply to governments, with some ranking system for various players?**

i. First group

- Unintended consequences - how can they be determined, and the cost measured?
- Social economic impact assessment certificate (tick box affair). How do we put pressure on cabinet ministers to ensure that the assessment is not a tick box affair?

ii. Second group

- Involving all stakeholders from conceptualisation
- Developing a regional economic level
- Strong civil society participation to monitor everything in real time
- Can be framed as a "carrot" to tie framework to access project funding

iii. Third group

- Regional/African perspective to unite and have one voice
- Statement and resolution to ensure that good governance index is there and all players in the sectors adhere to the index
- Name and shame at high level (AU)

iv. Fourth group

- Having one voice
- Ranking of good governance laws
- Compel miners to do better

3. **In a January 2020 Bizcommunity article by Athi Jara, we read: "In light of these two cases, and the contemplated amendments to the MPRDA, we may see communities' informal land rights being recognised in the new laws. However, the DMRE needs to clarify what constitutes a "community" and which communities should be consulted by a mining company seeking to start mining operations on the land." How do we define community and what defines appropriate and adequate consultation?**

i. First group

- In practical terms, it's not easy to define community, especially a new company
- Concentric circles model has worked
- Different tiers to be developed
- Equitable plan for dealing with the community
- Mitigate the unintended consequence of causing conflict within the environment

ii. Second group

- Who is the legitimate representative "voice" of the community?
- Inclusiveness and representation of the real local interest
- Common interest and values clearly identified
- Definitions of rights and balancing
- Legitimacy, equity and free consent

iii. Third group

- Difficulty in defining community
- Who should be consulted?
- Consideration of the agricultural aspect and social injustice to ensure you have spoken to the general community

iv. Fourth group

- When defining community, it is quite big. How can an adequate consultation be done?
- Particularly the directly affected
- Interested vs directly affected
- Trust issue (consultations)

4. **Despite extensive regulation and notable attempts by mining companies and government to implement progressive and sustainable projects, current industry practice is characterised by inconsistent legal compliance and reflects concerning legislative gaps. As a result, many mining-affected communities continue to experience significant levels of poverty and systemic inequality, which reinforces the notion that the benefits of mining operations disproportionately favour mining companies and the state, and are often to the detriment of local communities." How do we reach a more equitable distribution of benefits?**

i.   First group

- To arrive at equity, it has to be a transparent process where people understand benefit sharing
- Employment (employing from communities closest to your operations)
- Whatever is decided should be in an exclusive and transparent way

ii.   Second group

- At the basic level there is a need for all the stakeholders to perform their very basic role
- Shared environmental stewardship
- Sustainability - mindset intergenerational equity and justice
- A new norm and mindset where all stakeholders regard each other as equal

iii.   Third group

- Transparency from government
- Broad outreach - if people understand what is happening, they can also contribute

iv.   Fourth group

- BEE has not proved to be the most optimal platform with regards to benefits
- Often not appointed by communities
- Royalty distribution has become highly questionable
- New instruments, or distributing revenue in a more transparent and equitable way

5. **The World Bank suggests that world demand will double the volume of minerals and metals currently mined. In the African context this will have a particularly profound effect given the abundance of bauxite, chrome, coltan, copper, manganese and titanium, amongst others on the continent. We have identified a baseline set of challenges in our workshop. How do we interrogate the fact that the nature of supply and demand are changing because of advances in technology? How do we marry that to concerns raised and what new technological opportunities exist to extract in a less environmentally degrading and more sustainable way?**

i.   First group

- Technology will definitely disrupt the current way of extraction
- What happens to communities who will be left on the sidelines?
- Exit strategy to be created upfront (what happens to the mining and community after 40 years)
- Just transition: if you don't have an exit strategy upfront it is very difficult to implement a "just transition"

ii.   Second group

- Leverage technology to do things differently
- Avoid environmentally evasive mining methods
- Careful panning from inception to closure

iii.   Third group

- Problematised the initial question (increase in demand)
- More substitution of the minerals taking place
- Brings a particularly sharper focus on the view of mineral sector to think about long-term sustainability
- Possibilities as a result of recycling operations seen as new surface mining operations

iv.   Fourth group

- Job losses – Anglo American perception is to broaden the economic compact (create five jobs for every job lost)
- Offsite job creation
- Reimagine mining to improve people's lives
- Holistic approach
- Consider water

6. **"Existing socio-economic challenges in mining-affected communities are compounded by a lack of coordination and cooperation among industry stakeholders and a general disregard for South Africa's unique context and the cultural affiliation to land that grounds social relations and livelihoods. These challenges are heightened in rural or remote communities, where inadequate access to basic services, poor infrastructure, endemic unemployment and high levels of poverty often reflect an unresponsive and inactive local government." (SAHRC report, 2016)**

i.   First group

- What can be done to address the notion of the lack of cooperation and what might this look like at the local level?
- Core of the model of inclusion and integration
- Collaboration amongst stakeholders
- Not just employment onsite but economic development onsite
- Holding all stakeholders accountable for all results
- Implementing periodic reviews (quarterly meetings with communities)

ii.   Second group

- Clarity of the role and responsibility of different actors
- Collective problem-solving approach
- Actors engage with respect and understanding across the board

iii.   Third group

- There are five stakeholders involved:
  1. Government
  2. Community
  3. Mining
  4. NGOs
  5. Suppliers
- The key players need to understand their role
- Having a regional approach
- Transparency to be addressed
- Community engagement across the board

iv.   Fourth group

- Capacity of local municipalities, government, engineer's development planning, local development
- Mining in rural areas
- Politics of the area and lack of governance. Ministers changed after a year or two
- Municipal infrastructure support
- Skilled workers staying in remote areas
- No development because municipality does not have the capacity
- What is the role of government in developing mining communities?
- Red tape in terms of development

RECOMMENDATIONS AND SUGGESTIONS

1. IGA membership

2. Session is helpful, do the same for business

3. Mining representatives NUM, COSATU

4. A senior government representative from the specific ministry office of Gwede Mantashe

5. To become more regional, set mining standards for the region and decision-making processes

6. Realistic and attainable goals - starting with small steps for regional (SADC) then by 2022 expand

7. Circulate the agenda for next year's convening in advance, looking at action items that we can implement and accelerate

8. Arrange a convening in SADC office

9. One of the participants, who has worked for the department of mines for eight years, was hearing about GGA for the first time

10. Possible collaboration with AU

11. Suggestion of bank finance projects

12. Forming a compliance unit to go after people/enterprises involved in sanctionable practices

13. Mining industry to adopt this approach in the financing process

14. Requested further discussions in a GGA forum

The workshop closed with a vote of thanks to the panellists and to the participants, as well as the organising team, after which a social networking lunch was held to facilitate further debate and discussion. At least one follow-up event is planned prior to the next Indaba week engagement.

GGA