

## **Legislation, Performance Standards and the Dingleton Resettlement**

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### **Abstract**

During the recent two decades, resettlement in South Africa has changed significantly, and whilst the country does not at this time have a national resettlement policy or a law specifically addressing resettlement, the process is supposed to be in accordance with the Constitution of South Africa and the country's legal framework. On occasion, a private sector implementer will claim to adhere to international performance standards and policies of the International Finance Corporation (IFC). In December 2007, AngloAmerican Kumba Iron Ore announced that it will relocate the Dingleton town to another location, and the first group of Dingleton residents were resettled to temporary accommodation in late 2014. As of March 2021, the process is ongoing with at least 50 households still in temporary accommodation with no real end to the resettlement in sight, with the company suing resettled persons for rental in arrears for accommodation provided for them in company housing post-resettlement, with mediation and arbitration processes also ongoing for other cases.

### **Background**

Dingleton was a town located adjacent to the Sishen Iron Ore mine, which is located near Kathu in the Northern Cape Province of South Africa. Sishen Iron Ore belongs to Anglo American subsidiary, Kumba Iron Ore.

The town of Sishen was built in the early 1950s by the then state-owned mining company Iron and Steel Corporation (ISCOR), which was founded by the South African government in 1928. In 1989, ISCOR became the first South African state-owned entity to be privatized in a R3.7 billion deal that led to its listing on the Johannesburg Stock Exchange at R2 a share. In December 2003, Anglo American Plc acquired 67% of Kumba Resources. In November 2006, Kumba Resources was reorganized when its coal and heavy minerals operations were spun off to form Kumba Iron Ore Limited and Exxaro Resources. Kumba Iron Ore Ltd listed on the Johannesburg Stock Exchange with a market capitalization R36 billion. Sishen Iron Ore Company (Proprietary) Limited (SIOC) is a subsidiary of Kumba Iron Ore Limited, which has a 73.9% interest in the company, with the remaining 26.1% held by Exxaro Resources Limited (19.98%), SIOC Community Development Trust (3%), and Envision, an employee share participation scheme (3.1%). SIOC owns the operating assets of the company.

The town, Sishen, was intended to primarily house white employees working on the mine, in accordance with the Apartheid laws of the time, thus Sishen town essentially only housed white South Africans from the time it was established until the white residents were resettled by the company in Kathu in the early 1970s. Despite resettling its white workers for operational considerations, the mine sold 178 of the now empty houses in Sishen to the then Department of Local Management, Housing

and Agriculture, who after the town was proclaimed as a 'Coloured township'<sup>1</sup> on 24 June 1988, in turn sold or rented<sup>2</sup> them to private individuals classified as 'Coloured' in the late 1980s.

In 1990, the name of the town changed to Dingle (but it is colloquially known as Dingleton). By 2011, the company owned only about 20% of the property in Dingleton. During the 1990s there was also talk by the company about relocation, primarily because it wanted to expand its mining operations.

On 15 December 2007, the company announced through a media release<sup>3</sup> that "In response to numerous requests from the community of Dingleton Township, the boards of Sishen Iron Ore Company (SIOC) and Kumba Iron Ore (Kumba) agreed in principle to relocate the Dingleton Township and the entire infrastructure to a more suitable location, in the vicinity." The press release further noted that "the resettlement will only proceed if:

- The resettlement can be planned collaboratively by the residents, Kumba and the appropriate public authorities; and
- The overwhelming majority of residents support both the principle of resettlement and the detailed proposals for rehousing residents; and
- International best practice requirements, as set out in the World Bank's resettlement guidelines and the International Finance Corporation's Performance Standards, can be met; and
- All relevant South African legislation is adhered to; and
- The resettlement leads to an improvement in both the standard of living and the sustainability of the affected communities; and
- The viability of the resettlement can be accommodated."

In its 2010 Responsibility Report<sup>4</sup>, the company reported that the prefeasibility stage of the potential Dingleton Relocation had been completed. It reported that a social impact baseline assessment, baseline asset inventory survey, environmental impact assessment and an economic impact assessment had been completed and these documents would inform the final Resettlement Action Plan (RAP), which would be completed during the feasibility phase which commenced in 2010. It should be noted that despite several requests for these studies to be made available, the documents were not made available. It should also be noted that only the RAP Administration Plan was made available but not the entire RAP.<sup>5</sup>

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<sup>1</sup> This was done in terms of the Group Areas Amendment Act (no 56 of 1965), the Community Development Act (no 44 of 1965) and the Group Areas Development Act (no 69 of 1955) as amended.

<sup>2</sup> In its weekly edition for the week ending 13 October 1988, the local newspaper, 'Die Ghaap', reported that at the time of publication, 126 houses were already sold and that the number of inhabitants exceeded 600 and the primary school had 210 children enrolled.

<sup>3</sup> <https://www.angloamericankumba.com/media/press-releases/archive/2007/15-12-2007.aspx>

<sup>4</sup> Kumba Iron Ore Limited: Responsibility Report 2010 (pg.21-23)  
<https://www.angloamerican.com/~media/Files/A/Anglo-American-PLC-V2/investors/reports/csreports/2011br/kumba-ironore-responsibility-report2010.pdf>

<sup>5</sup> It should be noted that the Anglo Social Way Version 2 (November 2014), indicates clearly that "All RAPs and LRPs shall be publicly disclosed in a manner that is accessible to the affected households and individuals." (pg. 21)

Similarly, Clause 10 of the PS5, which states: "Disclosure of relevant information and participation of Affected Communities and persons will continue during the planning, implementation, monitoring, and evaluation of compensation payments, livelihood restoration activities, and resettlement to achieve outcomes that are consistent with the objectives of this Performance Standard."

The RAP Administration Plan was approved in July 2013. The first group of Dingleton residents were resettled in late 2014. The Dingleton resettlement continues to occur in waves, with at least 50 households still not permanently resettled, and there are several court cases, mediation processes and arbitration processes still ongoing, despite the company announcing at its annual general meeting (AGM) in May 2021 that the resettlement is complete.

### **South African legislation**

The South African legislation which deals with resettlement, specifically related to Dingleton, which was a town with freehold property ownership (as opposed to communal property<sup>6</sup>) are:

- 1) The Mineral & Petroleum Resources Development Act (MPRDA), No. 28 of 2002, specifically Section 54, which makes provision for avenues to resolve disputes between a mining right holder and lawful occupier. The legislation allows for the expropriation of land, should all negotiation and court processes fail.
- 2) The Prevention of Illegal Eviction from, and Unlawful Occupation of, Land Act (PIE), No 19 of 1998, which applies to all land throughout South Africa. It explains that “no one may be evicted from their home .... without an order of court made after considering all the relevant circumstances ....” and that unlawful occupiers do have rights. PIE requires a court to consider: (i) whether the occupiers include vulnerable persons; (ii) the duration of the occupation; (iii) whether the occupiers will be homeless as a result of the eviction, and in which case the state must provide alternative accommodation if the occupiers cannot afford to do so.
- 3) The Extension of Security of Tenure Act (ESTA), Act 62 of 1997, which only applies to one Dingleton household yet to be resettled, protects people who have permission to live on land belonging to another person. Such a person is considered an occupier, and Section 8 of ESTA limits the cancellation of consent. The general rule is that an occupier’s security of tenure can only be terminated on legal grounds and only if the process is fair and equitable.
- 4) The 1996 Constitution of South Africa, specifically (i) Section 7, which affirms the democratic values of human dignity, equality and freedom; (ii) Section 25, which stipulates that no one may be deprived of property, and that property may be expropriated only in terms of general application; and that a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices, is entitled either to tenure which is legally secure or to comparable redress. (iii) Section 26 stipulated that everyone has the right to have access to adequate housing; No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the circumstances. No legislation may permit arbitrary evictions.

### **Brief legal history of the Dingleton resettlement**

In summary, a brief legal history of the Dingleton resettlement.

Of the first group of Dingleton residents resettled in late 2014, at least 20 families who were at that time resettled to a ‘holding camp’ called the Old Caravan Park (OCP), remains there still in June 2021. Their case is in mediation.

In 2015 some households were relocated to containers for a year, then moved to the Community Residential Units (CRUs), i.e., flats/apartments, for which Anglo American charges rent. By June 2021, several CRU residents have received lawyers’ letters, and many are currently sued by the company for

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<sup>6</sup> Other legislation is used to address resettlement in areas where communities as a group own the land, thus communal ownership, instead of individual ownership as is the case with freehold ownership in urban areas, such as Dingleton.

non-payment of rental. These households cannot afford legal representation and are forced to represent themselves against the company's legal representatives.

Similarly, households were temporarily housed in company-owned houses and now threatened with legal action because they cannot afford the rental that Anglo American charges these resettled households.

In June 2021, there were at least eight court cases, a mediation process and one arbitration process related to the Dingleton resettlement, still ongoing.

### **The actors**

The actors in the Dingleton resettlement legal arena include, apart from the company's in-house legal experts, at least three legal firms representing Anglo American Kumba, a mediation firm, and one human rights law firm representing at least 50 households. All these firms, including the human rights law firm, are paid by Anglo American. This raises questions of fairness, ethics and independence. The process requires that individual lawyers rely on their own sense of ethics and norms when dealing with the company's lawyers and a mediator, also paid by the company, whilst also relying on the company to pay their fees. It leaves the process open to manipulation and unless independent donors come forward, mine-affected communities have little hope of fighting a multi-national mining company such as Anglo American in court.

My recommendation is that every mine where there is a slight possibility of resettlement as well as possible expansion in the future and possible future resettlement, should be obligated to set aside a lump sum of money in a trust (or similar financial and legal organ), to be administered by totally independent trustees not affiliated to the specific mining company, which should be used for legal action against the company by resettled persons. The affected households should have the right to apply to access the funds for legal recourse against the company without any interference from the company. The fund should be similar to that which mining companies are already obligated to set aside for environmental reclamation post-closure.

### **The IFC**

Anglo American Kumba is not adhering to the IFC PS5 in resettling Dingleton. Just one example of such non-compliance is the temporary resettlement of Dingleton households. It is unclear why it was decided to temporarily relocate residents. This temporary relocation was not addressed in the RAP Administration Plan approved in July 2013, and despite the presence of both external resettlement consultants (Nomad Consulting)<sup>7</sup> and external monitoring consultants (Synergy Global Consulting)<sup>8</sup> on the Dingleton Resettlement Work Group<sup>9</sup>; access to the SEAT Toolbox (version 2) which refers users to the World Bank Guideline for Involuntary Resettlement and which includes the IFC PS5, which frowns upon temporary relocation, the relocation to OCP was implemented. The relocation of people to a temporary location and temporary dwellings before the final replacement housing is ready, is widely considered to be poor practice. The PS5 and all other best practice guidance<sup>10</sup> indicates that unless

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<sup>7</sup> No longer involved in implementing the resettlement.

<sup>8</sup> Currently the implementing partners

<sup>9</sup> [https://conferences.iaia.org/resettlement/proceedings/9%20-%20Govt%20and%20Private%20Sector/2%20-%20Governance%20Structures%20-%20Dingleton%20\(Human\).pdf](https://conferences.iaia.org/resettlement/proceedings/9%20-%20Govt%20and%20Private%20Sector/2%20-%20Governance%20Structures%20-%20Dingleton%20(Human).pdf) (pg.10)

<sup>10</sup> Please see: ICMM (2015) Land Acquisition and Resettlement: Lessons learned;

OECD-DAC (1992) Guidelines for aid agencies on involuntary displacement and resettlement in development projects;

there is a health and safety risk, or a natural disaster, or a war, there is no need to resettle persons temporarily. It remains unclear as to why this temporary resettlement was done to OCP. Until mid-2019, no mining-related activity<sup>11</sup> had started in Dingleton.

One is perplexed as to why the IFC will allow companies, such as Anglo American to say they are adhering to the PS5 when they are obviously not doing so. In the very least, it should be possible for the IFC to insist companies must remove the "IFC PS5 compliant" mention when talking about non-compliant resettlement. One also wonders why, when it is not necessary to comply to the IFC PS5 because the IFC is not funding the project, companies will still say they comply, when they don't need to.

### **Conclusion**

The Dingleton resettlement is a very complex case from which much can be learned for resettlement practice both in South Africa but also in other jurisdictions. One of the main lessons so far is that it is nearly impossible for mining-affected communities to fight for their rights unless independent donors make funding available for independent legal recourse.

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Reddy, G., Smyth, E. and M. Steyn (2015) Land access and resettlement: a guide to best practice. Sheffield, Greenfield.

<sup>11</sup> Exploration drilling and related activity started in mid-2019.