



**#iaia21**

# Legislation, Performance Standards and the Dingleton Resettlement

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# The Stage



South Africa

Dingleton located in  
the Northern Cape  
Province

Adjacent to the town  
called Dingleton lies  
the Anglo American  
Kumba Sishen Iron Ore  
mine



# The Actors



3131 Dingleton residents of which 47% property owners. In March 2021, approximately 76 households in some type of legal dispute with Anglo American related to the resettlement



Three legal firms plus in-house legal council on side of Anglo American  
Two firms on side of affected community, one appointed by Anglo American; one appointed by community but paid by Anglo American



## Brief History of Dingleton Resettlement

- Second resettlement – first one was of Sishen in the 1970s
- Sishen properties then sold in late 1980s, in 1990 name change to Dingle(ton)
- Sniffing around talking resettlement in late 1990s
- Planning to resettle started in 2007
- In 2010 reported that the prefeasibility stage of resettlement completed
- The RAP Administration Plan was approved in July 2013.
- 85% of Dingleton population agreed to resettlement.
- Resettlement done in waves. The first group of Dingleton residents were resettled in late 2014.
- March 2021, two households remain in Dingleton, one household on a farm adjacent to the town, all of the OCP occupiers and many households in temporary housing in Kathu and elsewhere.



# South African Legislation that impacts directly on the Dingleton Resettlement <sup>1/2</sup>

- **Mineral & Petroleum Resources Development Act (MPRDA), No. 28 of 2002**
  - Section 54, which makes provision for avenues to resolve disputes between a mining right holder and lawful occupier. Most extreme: expropriation if all else fails
- **The Prevention of Illegal Eviction from, and Unlawful Occupation of, Land Act (PIE), No 19 of 1998**
  - PIE 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:
    - whether the occupiers include vulnerable persons
    - the duration of the occupation
    - whether the occupiers will be homeless as a result of the eviction, in which case the state must provide alternative accommodation if the occupiers cannot afford to do so.
  - Relevant case law: Grootboom case and the Port Elizabeth Municipality case.



# South African Legislation that impacts directly on the Dingleton Resettlement 2 /2

- **Extension of Security of Tenure Act (ESTA), Act 62 of 1997**
  - Protects people who have permission to live on land belonging to another person. Such a person is considered an occupier.
  - Section 8 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.
- **The Constitution of South Africa, 1996**
  - Section 7: affirms the democratic values of human dignity, equality and freedom
  - Section 25: No one may be deprived of property; Property may be expropriated only in terms of general application; 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
  - Section 26: 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.



## South African Constitution and International Law

- The South African Constitution compels courts to have regard to international law in applying the Bill of Rights.
  - Section 39(1)(b): that the interpretation of the Bill of Rights must take into consideration international law;
  - Section 232: customary international law is considered law in South Africa except where it is in conflict with the Constitution or an Act of Parliament;
  - Section 233: that when interpreting any legislation, and reasonable interpretation consistent with international law must be preferred over any other interpretations that is inconsistent with international law.





## Performance Standard 5

- To avoid forced eviction.
- To anticipate and avoid, or where avoidance is not possible, minimize adverse social and economic impacts
- Avoid impoverishment as a result of the resettlement
- Ensuring that resettlement activities are implemented with appropriate disclosure information, consultation and the informed participation of those affected.
- To improve, or restore, the livelihoods and standards of displaced persons.
- To improve living conditions through the provision of adequate housing with security of tenure at resettlement sites.
- Temporary housing only under “circumstances of unavoidable resettlement”

### Important:

- PS5 does not operate in isolation, it is supported by the other IFC Performance Standards.
- The PS5 also refers the reader to various relevant United Nations principles that apply, as well as referring to domestic legislation and regulations.



# Brief Legal History of Dingleton Resettlement

- The first group of Dingleton residents were resettled in late 2014. At least 20 families were at that time resettled to a 'holding camp' called the Old Caravan Park, where they are still today.
- In 2015 some households were relocated to containers for a year, then moved to the CRUs (flats/apartments) for which Anglo American charges rent. By March 2021 several CRU residents have received lawyers' letters and two are currently sued by the company for non-payment of rental.
- 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.
- March 2021, two households remain in Dingleton, one household on a farm adjacent to the town, all of the OCP occupiers and many households in temporary housing in Kathu and elsewhere.



## Issues of Concern

- Possible Violations of ethics. Expecting individuals (whether lawyers or resettlement implementers) to rely on their own sense of ethics and norms, is not enough in such a process where the company controls the purse strings and can manipulate the situation.
- Unless independent donors come forward, mine-affected communities have little hope of fighting a multi-national mining company such as Anglo American in court.
- Recommendation is that each mine where there is a possibility of resettlement, should be obligated to set aside a substantial amount of funds (similar to that which they are obligated to do for environmental reclamation) for the use of resettled households to employ lawyers of their choice who will be paid out of this fund without any interference by the mine's owners. The fund should be administered by a neutral entity and should not be managed by the company.
- The IFC allowing companies such as Anglo American to say they are adhering to the PS5 when they are obviously not doing so. The IFC should in the very least require them to remove the "IFC PS compliant" mention whenever they speak of the non-compliant resettlement.



# ***Let's continue the conversation!***

Post questions and comments via chat in the IAIA21 platform.



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