

## Nomsa Mbere

Partner



### Area of speciality

Mining corporate and commercial. The corporate aspect covers M&A, transaction structuring and related transactions. I have expertise in the mining sector.

### Experience in ESG (focus being within SA and especially in the deal making / financial market space)

I do a lot of work with mining clients, where there is now a pressing need to include

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sustainability goals as an integral part of the mining company strategy. This includes, among other things, promoting thriving communities, protecting the natural world and promoting equal opportunities. These goals all lead to a sustainable future, through and beyond mining, for host communities. We are now having to include more clauses in agreements to comply with certain compliance laws and ESG requirements imposed upon the entities by their international customers, for example clauses on compliance with the applicable laws on (i) the protection of women and children, (ii) equal treatment and prohibition of discrimination, abuse and harassment; and (iii) prohibition of hard labour and forced labour practices. In this regard, my focus is on social and governance areas.

### Thoughts on ESG as a whole in the context of SA

SA has quite a way to go on ESG. It is still seen as a separate item, and not being fully integrated into companies' key strategic objectives or into all the various business unit activities. People tend to still work in silos, each concerned with their areas of expertise, resulting in ESG principles being implemented in various splintered initiatives. As a result, money and resources are not efficiently utilised. This could be avoided if a single, holistic approach throughout a group of companies was adopted.

I look forward to a time when it would become the norm for mining companies to create a community umbrella structure (HoldCo) holding several different subsidiaries with their own investments. Over time, HoldCo could generate enough capital through collecting dividends for its subsidiaries and develop enough competency that ultimately the whole structure could become self-sustaining, comparable to a fully mature investment company. This could then be used as a tool by the mining company to invest in various initiatives for the benefit of the community. As the investments continue to pay dividends, HoldCo would grow its investment portfolio and, at the same time, be able to fi-

nance community development projects— rather like the role that the Public Investment Corporation (PIC) plays as a government investment body. The problem tends to be that companies often have a limited view of the community trust rather than looking at the bigger picture and thinking how they can grow the community trust to become a self-sustaining investment vehicle, with the necessary competencies and strong corporate governance structures to enable it to make its own investment decisions. Granted this will require commitment on all sides.

### Hurdles | challenges within this sector

There is a lack of innovative ideas on empowering and growing community trusts. Rehabilitation guarantees or funds are often put aside for mine rehabilitation, which is good, however we need to start creating long-term, sustainable community industries such as large agricultural concerns, or enable local communities to participate effectively and in their own right as independent power producers (IPPS) in the renewable energy sector. What tends to happen is that some mining companies wait for the mine closure to be imminent before starting to plan ways in which they can help the community left behind. The regulatory environment also does not necessarily support innovative ideas, as the DMRE continues to require sizeable rehabilitation guarantees instead of enabling alternative ways to use the funds much earlier to create sustainable industries and projects to prepare in advance for mine closures.

### Some personal information, eg how did you get into this speciality?

I have always been concerned about the sustainability of host communities in Africa. Companies have in the past come and mined and then departed, having made a small contribution to host communities thus leaving ghost communities behind. Many of us do not have the option to emigrate abroad, so we are left to deal the consequences of social instability in our communities when the mining companies move elsewhere.

### Interesting fact(s) about yourself / your achievements

Rather than just seeing my work as a series of transactions, I have always worked casting one eye on the community. Therefore in giving legal advice, that passion for economic development of our communities is strong.

Before I became a lawyer, I was a dentist. What attracted me to law was that during the height of the HIV pandemic, academics from Harvard came to Botswana (where I lived) to conduct patient trials for ARVs and at that time we had no patient codes. I decided to study law, aiming to assist in protecting patients' rights by developing patient codes. Later, I became involved in charity work, including for the Botswana Red Cross, and it made me realise that without capital we will always be beholden to the person with the money. I started a foundation to raise funds to support communities in areas where my friends and I thought would make most sense. ●

