



## RESILIENT FUTURES PROJECT

# MINE LAND REHABILITATION THROUGH FIBROUS PLANTS

## Carrots and Sticks in the Law

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## RESILIENT FUTURES - Project 3:

### Post-mining rehabilitation: carrots and sticks in the law

#### Premises



- (1) Different mining activities, similar problems (esp environmental)
- (2) Even best laid plans need an enabling legal framework



## RESILIENT FUTURES - Project 3:

Post-mining rehabilitation: carrots and sticks in the law

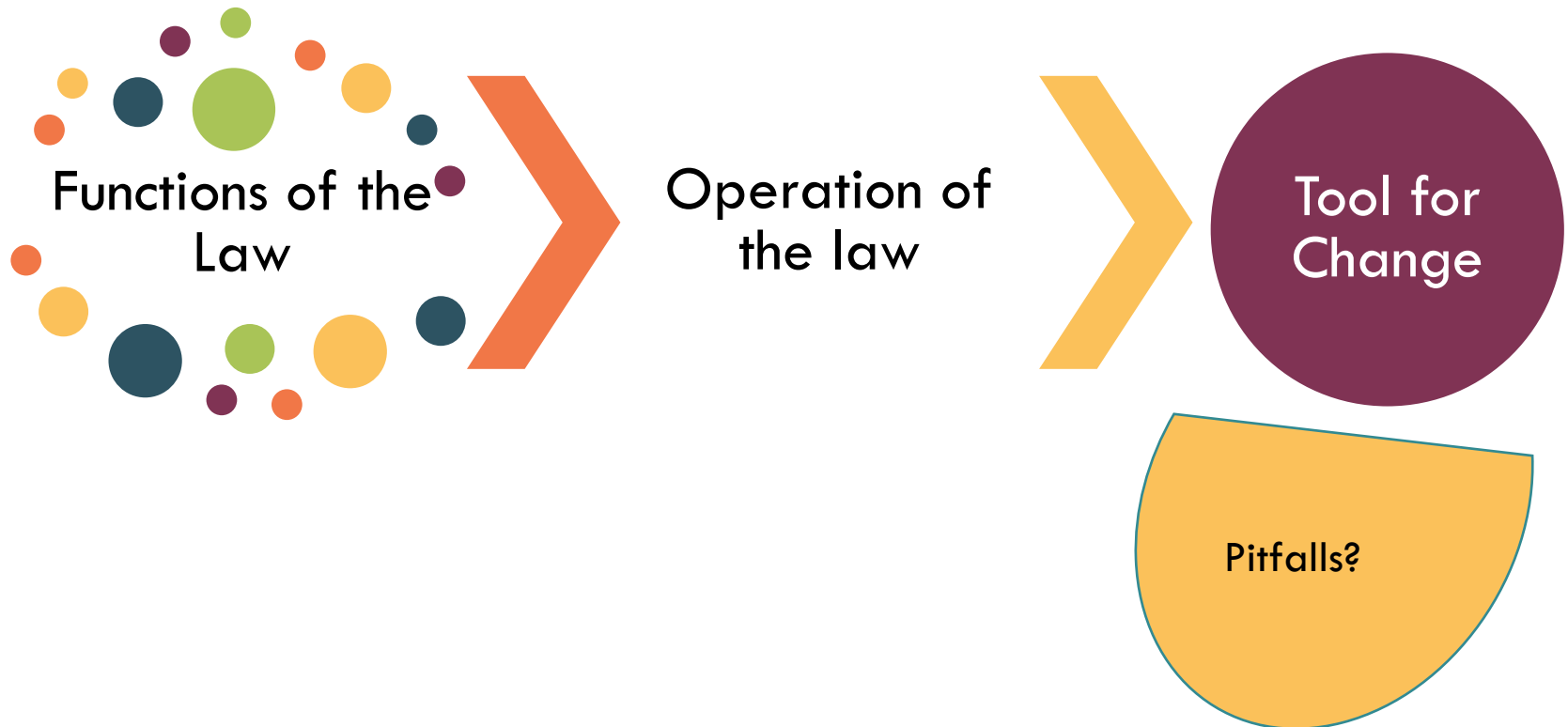
### Questions



- (1) How do current frameworks assist / hinder Mine Rehabilitation
- (2) How can legal incentives / sanctions promote sustainable solutions
- (3) (How) should law be changed?



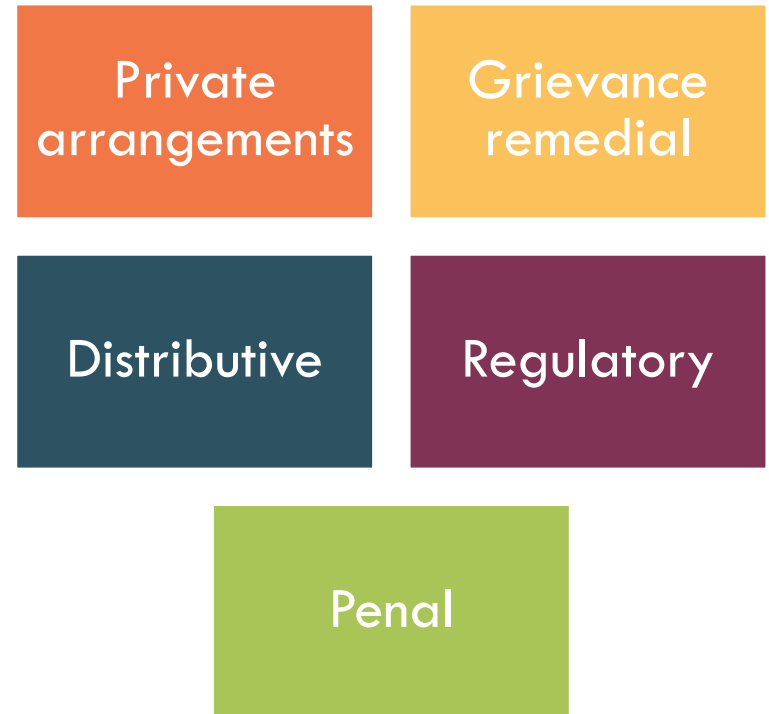
# OUTLINE



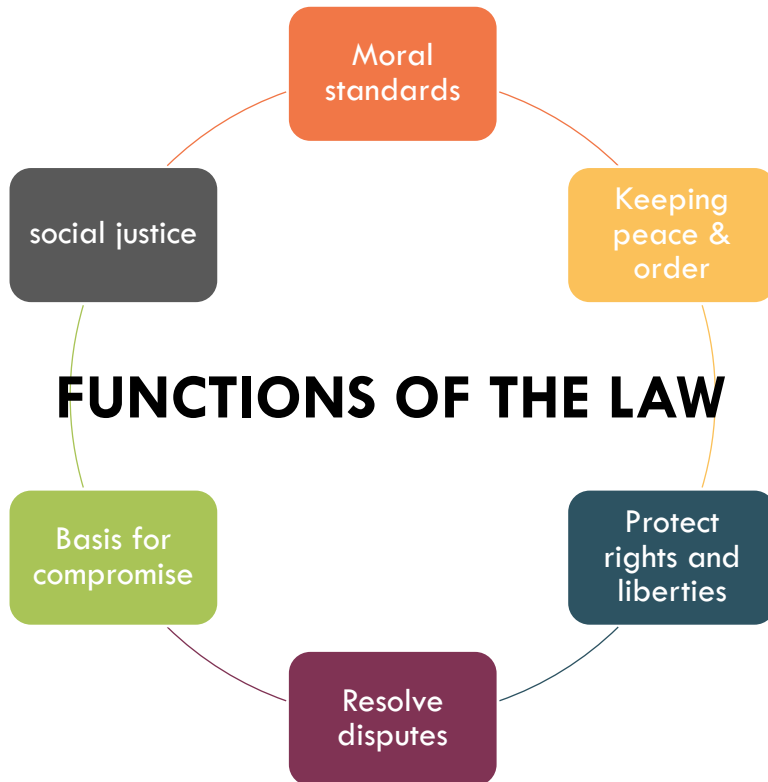




## TECHNIQUE TYPES

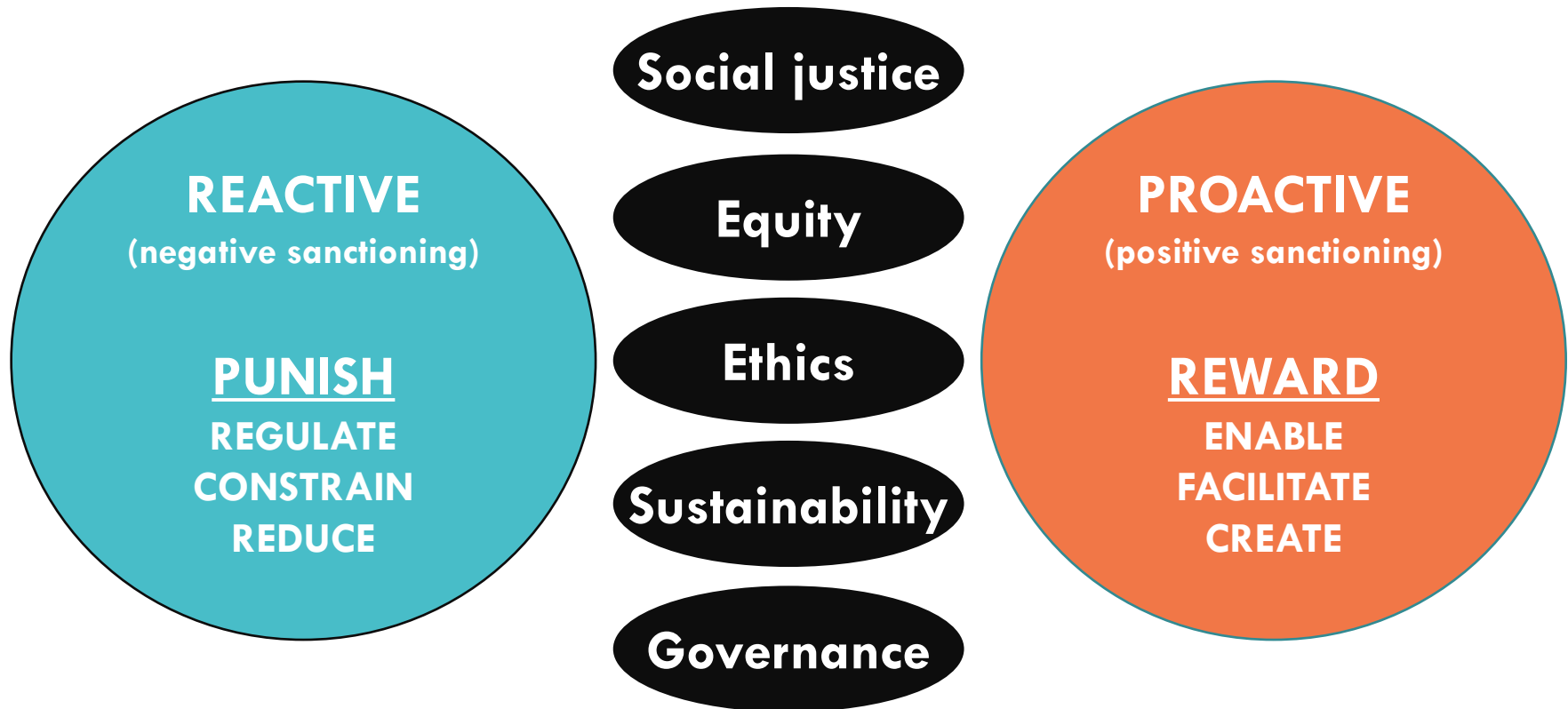


## FUNCTIONS OF THE LAW



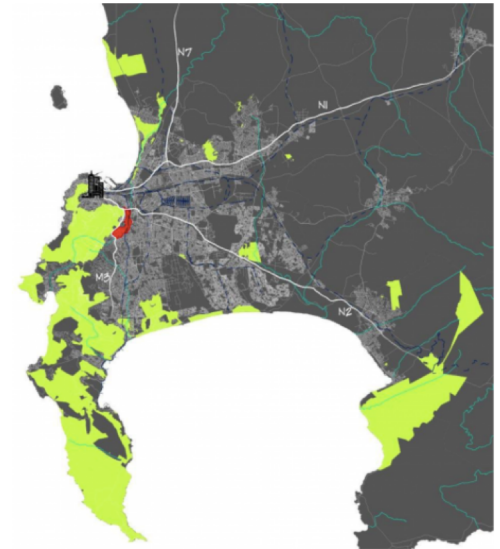


# REHABILITATION: OPERATION OF THE LAW





# MINE LAND REHABILITATION: SOME LEGAL ISSUES





# SURFACE LEASE AGREEMENTS



- Contract between landowner and right holder
- Governed by the law of contract ie voluntary agreement between parties
- Not a prerequisite of the legal framework
- Does contract provide/allow for alternative land uses?
- Implications for right holder? ie, further rights/duties created by contract?





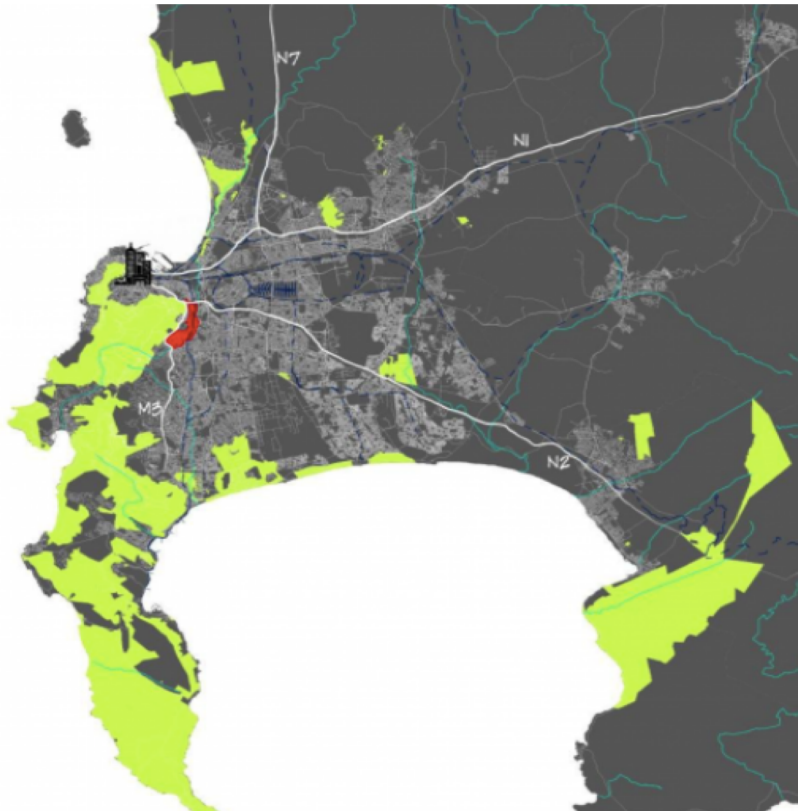
# DEFINITION OF 'COMMUNITY'



- Consultation should be key requirement in terms of decision-making around post-mine land use
- BUT: Consult with whom?
  - Traditional communities?
  - Mine communities?
  - Labour-sending areas?
- Conflicting/differing definitions in law
  - Historically disadvantaged persons
  - Interests/rights in area of land
  - Members exercise communal rights in terms of agreement, custom or law



# ZONING REQUIREMENTS



- What are the implications for zoning of land?
- What about the municipality's Integrated Development Plan (IDP)?
- Conflicts between national government and local government to be resolved?



# ENVIRONMENTAL CHECKS AND BALANCES

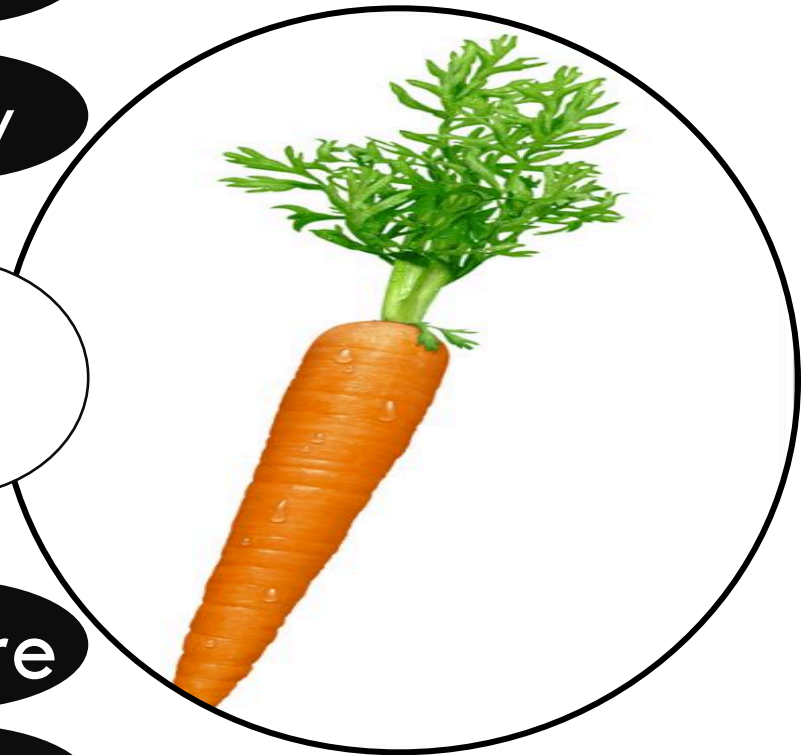
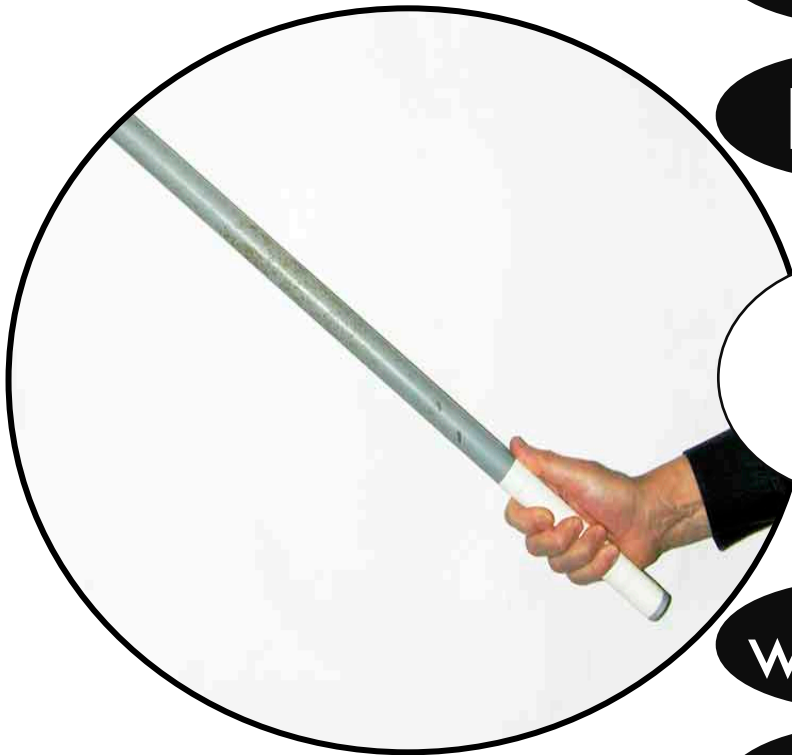
what

how

OR

where

who





# ENVIRONMENTAL CHECKS AND BALANCES...

## Legal Scope?

**NEMA**

‘the surroundings within which humans exist and that are made up of -

- (i) the land, water and atmosphere of the earth;
- (ii) micro-organisms, plant 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 the influence human health and well-being.’





# ENVIRONMENTAL CHECKS AND BALANCES...

**“Environmental”**

**“Law”**

**Framework Laws**

**Natural Resource  
Management**

**Pollution Control &  
Waste Management**

**Land-use Planning  
& Development**

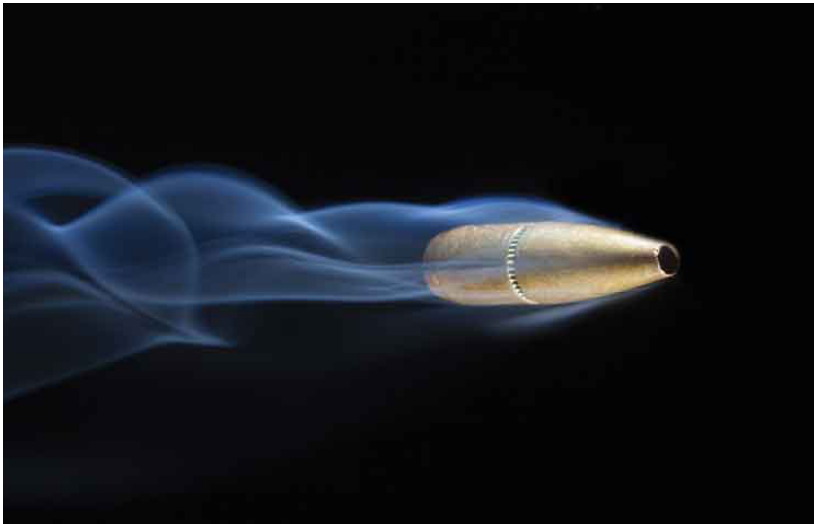


# ENVIRONMENTAL CHECKS AND BALANCES...





# IMAGINING THE FUTURE: LAW AS A CATALYST OF CHANGE



## “MAGIC BULLET” OR “POLICY TOOLKIT”?



# ANTECEDENTS: Law & Policy Innovation

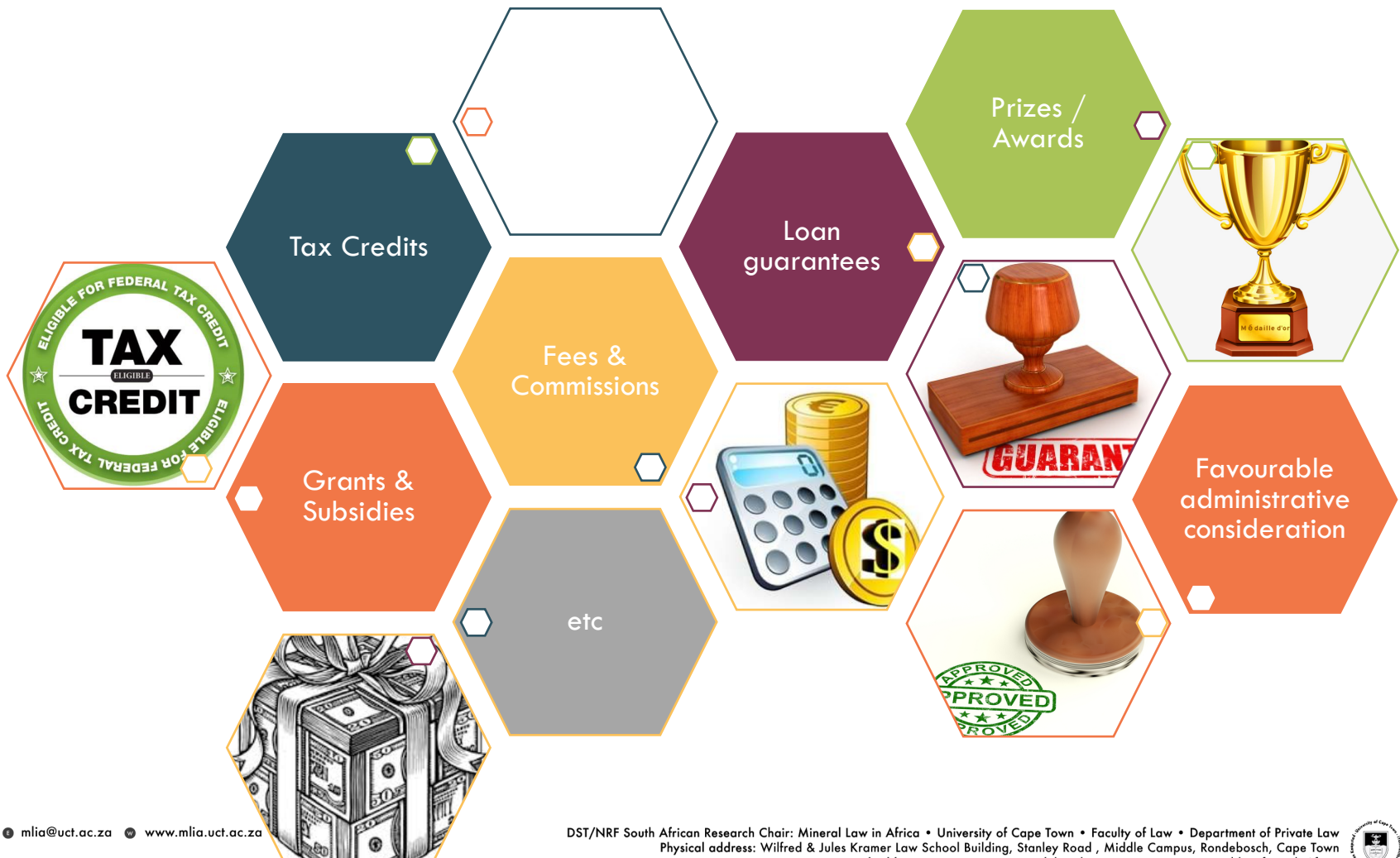
- CLEAR GOAL
- “AFFECTIVE COMMITMENT” [AKA ‘POLITICAL WILL’]
- SMART CHOICES
  - IS THE CHOSEN INSTRUMENT EFFECTIVE?
  - COST? (FINANCIAL & SOCIAL)
  - DEMOCRATICALLY / POLITICALLY LEGITIMATE?







# POSSIBLE INCENTIVE TYPES:





## ADVANTAGES OF INCENTIVES

Enhance freedom

More perceived legitimacy  
than coercive instruments

Educational / promotional  
value

Enlisting general buy-in

## DRAWBACKS OF INCENTIVES

Constrain freedom (insidious repression)

Negative motivational consequences

Erosion of morality

Commercialisation of citizenship

Accountability issues?

Costly

Risk of Subversion

Distributive inequity

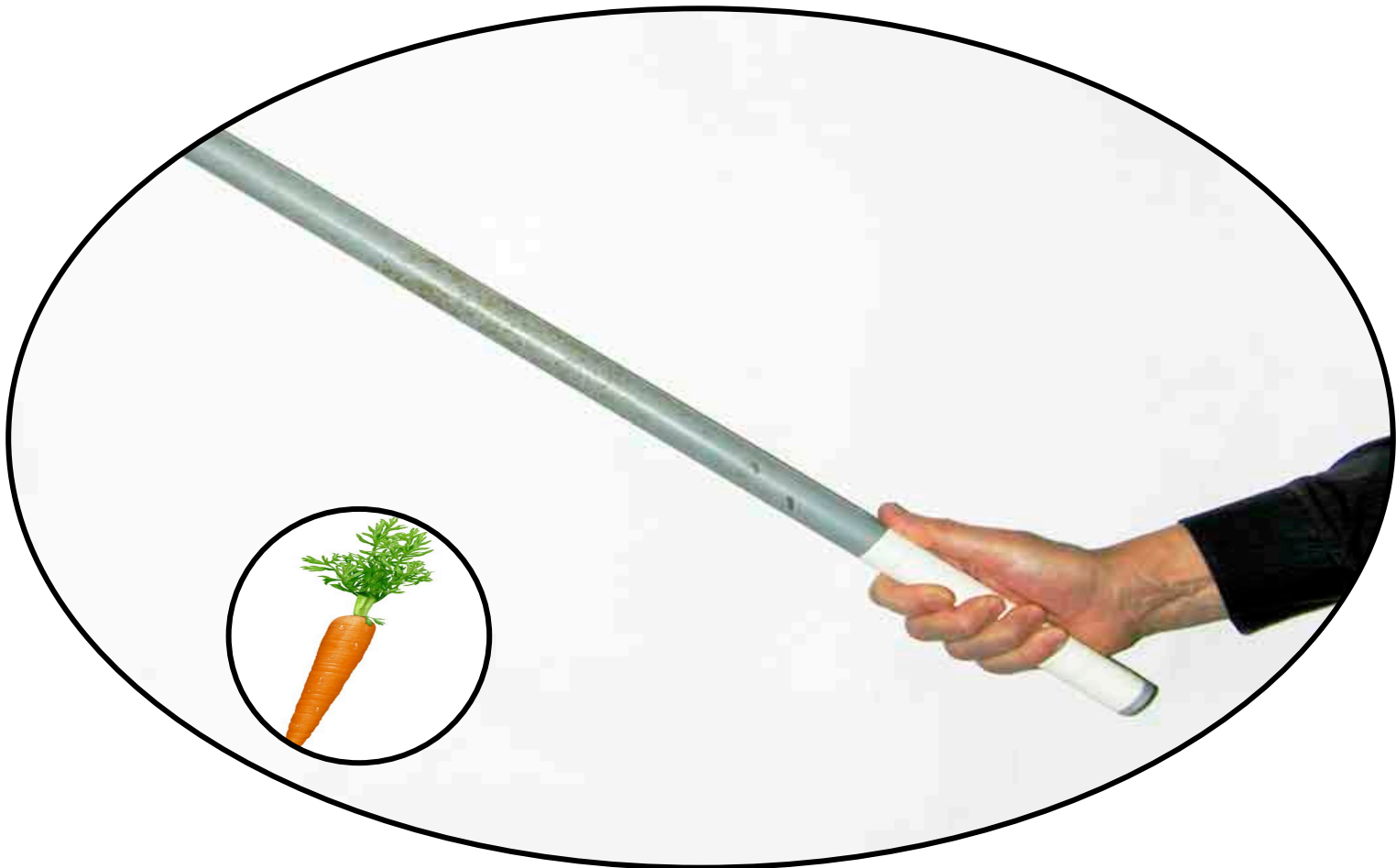


# MINING





# ENVIRONMENT







# ENVIRONMENT...

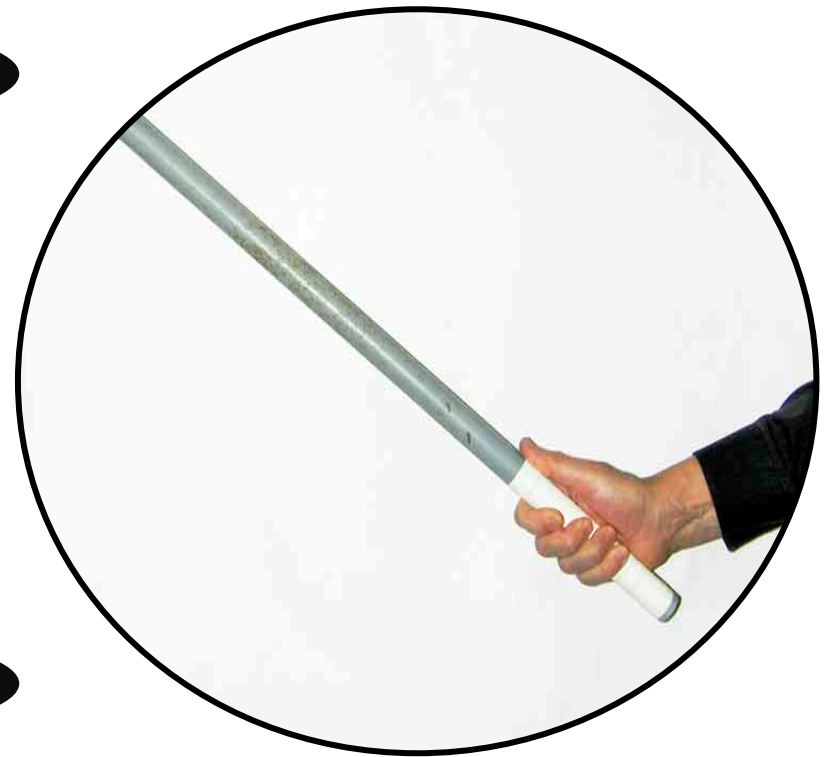
## Regulatory Incentives



existing

## Fiscal Incentives

new





# ENVIRONMENT...

## Fiscal Incentives

Hooks



Enviro Author

“Fiscal incentives are potentially powerful weapons in the defence of the environment but ... there are no environmental targets or standards to aim them at/hook them on.”

Incentives



l Authorities

1996



# ENVIRONMENT...

## Fiscal Incentives

### Have the Hooks



### Use Existing Incentives



### Create New Incentives



# ENVIRONMENT...

## Fiscal Incentives

### Existing Incentives

protected areas

elec consumption

biodiversity

light bulbs

enviro cap expend

mining rehab

renewable energy

climate change

biofuel production

renewable energy

vehicles

waste tyres

energy efficiency

plastic bags

### Future Incentives

CO2

waste water

waste products

landfill

traffic congestion

?



# CARROTS & STICKS

- NEITHER MUTUALLY EXCLUSIVE; NOR INEXTRICABLY LINKED
- VARIOUS COMBINATIONS POSSIBLE
- RESULTS DEPEND ON WHO THE ACTORS ARE, WHAT THEIR NEEDS & MOTIVATIONS ARE



# OUR QUESTIONS

1. WHAT ARE THE LEGAL **BARRIERS/DIFFICULTIES** EXPERIENCED IN PRACTICE WITH REGARD TO THE IMPLEMENTATION OF A PROJECT THAT TARGETS POST-MINING LAND USE CHANGE?
2. TO WHAT EXTENT DO MINING COMPANIES **ALREADY IMPLEMENT PROCEDURES** TO REVIEW POST-CLOSURE REHABILITATION PROGRAMMES DURING THE LIFE CYCLE OF THE MINE?
3. WHAT ARE THE DIFFICULTIES EXPERIENCED IN PRACTICE WITH THE DEVELOPMENT OF **ENVIRONMENTAL IMPACT ASSESSMENTS AND ENVIRONMENTAL MANAGEMENT PLANS**?
4. HOW DO THE LEGAL OBLIGATIONS IMPOSED BY ENVIRONMENTAL AUTHORISATIONS **RESTRICT OR HINDER INNOVATION/CREATIVITY** IN TERMS OF POST-CLOSURE MANAGEMENT OF THE MINE?
5. HOW DOES **GOVERNMENT (AND GOVERNMENT DEPARTMENTS)** **FACILITATE/HINDER** THE ABILITY OF RIGHT HOLDERS TO COMPLY WITH LEGAL OBLIGATIONS?





# THANK YOU

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