Mining and tax in South Africa:

Costs and benefits

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February 2009

SUMMARY

The South African economy overall continues to benefit greatly from mining, but it is not benefiting as much as it could, and the costs of mining are increasingly borne by communities in rural areas.

Mining accounted for 7 per cent of GDP, $20.7b worth of primary exports and employed 459,000 people in 2006. The mining sector's total contribution to the South African economy is estimated at $25.9b in 2006, including all taxes, procurement and wages.

However, South African mining companies enjoy generous tax treatment: they are able to deduct 100 per cent of much of their capital expenditures against tax while gold mining companies pay a corporation tax rate according to a formula that keeps remittances to government low. Moreover, the government is introducing a new mineral royalty system after caving in to many of the mining industry's demands: this will impose very low royalty rates that this report estimates will cost the country $359m - $499m a year compared to previous proposals made by the government. Mining companies paid taxes of $2.01b in 2006 – equivalent to 9.9 per cent of exports: a low figure.

At the same time, many companies are making large profits. Gold mining companies collectively made pre-tax profits of $672m in 2007, of which only $127m went to the state in taxation. Platinum companies did better: Anglo Platinum, the world's largest platinum producer based in South Africa, made $1.6b after tax in 2006; Impala Platinum, the country's second producer, made a massive $2.2b.

Mining in South Africa has major costs for many mine-workers, no less than 2,869 of whom have died in the mines over the past ten years while over 4,000 were injured in 2006 alone. Health and safety regulation has been shown to be inadequate.

Furthermore, many rural communities are now in open conflict with mining companies, seeing few benefits from their activities or being made poorer. Some entire villages are being 'relocated' while losing farmland or access to water. There is evidence of water pollution and harmful health effects on people from gold, platinum and uranium mining. Companies' 'community development' spending is miniscule in comparison to profits.

The South African government needs to review its fiscal policies and audit the local impacts of mining.

INTRODUCTION

The economy of South Africa has been built on mining and has greatly benefited from its rich deposits of platinum, gold, diamonds and coal. South Africa's two major mineral exports – platinum and gold – both saw large price rises in 2006: the platinum price rose by 27 per cent in 2006 and the gold spot price by 45 per cent.[1] But this report asks: is South Africa benefitting as much as it could be?; and how extensive are the costs, notably for the communities in the mining areas as well as mine-workers?

1. BRIEF HISTORY OF MINING

Large-scale mining has taken place in South Africa for well over a century. Diamonds were first discovered in the 1860s near the town of Kimberley followed over the next two decades by the discovery of several diamond-bearing kimberlite pipes. Gold mining began in the 1870s but took off when gold was discovered in the Witwatersrand area in the 1880s, triggering a gold rush and thousands of foreigners to descend on the region. By the turn of the century, the value of South Africa's gold output exceeded $40m.[2] Ownership of the diamond and gold mines sector was concentrated in a few hands - in the early decades, by a handful of entrepreneurs known as Randlords.

The mining industry, led by gold and diamonds, continued to grow throughout the twentieth century, with revenues providing capital to purchase machinery and petroleum products to support an expanding manufacturing base, driving South Africa's industrialisation. Many towns and cities and much of South Africa's infrastructural development – the road and rail networks in particular – arose due to the development of the mining industry.

Under the apartheid regime after 1948, the mineral industry continued to grow, and, with high commodity prices in the 1970s and early 1980s, boomed. South Africa's minerals continued to be seen by Western governments, especially the USA and UK, as vital for their postwar economic development, their militaries and their own commercial interests – factors which explain why Washington and London gave de facto backing to white-ruled governments for so long, allowing them to escape full international censure and sanctions.

A year after the end of apartheid and the election of a democratically elected government in 1994, a review of the mining industry began and culminated in the release of a White Paper – *A Minerals and Mining Policy for South Africa* – in October 1998. The White Paper set the basis for the principal mining legislation, the Mineral and Petroleum Resources Development Act (MPRDA), which recognized state rather than private custodianship over minerals in the country; it was passed in October 2002 and came into force in 2004. However, these policies made few major changes to the structure of the mining industry and the power of the large companies, some of which had profited under the apartheid regime and which continued to operate in the new era.

In particular, the industry remained overwhelmingly controlled by whites. The government's Mining Charter ('The broad-based socio-economic empowerment charter for the mining industry') of 2002, which came into effect in 2004, has sought to promote black empowerment in the sector, and calls for 26 per cent ownership of mining assets by 'historically disadvantaged South Africans' (HDSA) by 2014; 51 per cent ownership of mining projects by HDSA by 2014; and 40 per cent of mining managers to be HDSA and 10 per cent to be women by 2009.[3] The Charter, whose goals are rather technocratic and modest, is being reviewed in 2009. Currently, while blacks account for more than 70 per cent of the mining industry's labour force, they still occupy less than 5 per cent of management positions.[4] Some black-owned mining companies, such as Mvelaphanda, African Rainbow Minerals and Exxaro Resources, are, however, beginning to play important roles in the economy.

2. IMPORTANCE OF MINING

South Africa is the world's largest producer of platinum group metals, chrome ore, manganese and vanadium and a major supplier of gold (world rank 2) coal (5), iron ore (9), nickel (5) and uranium (5).[5] The Bushveld Igneous Complex in northern South Africa is a hugely mineral-rich region extending for 400 kilometres which contains most of the world's platinum reserves. In 2006, the country produced 53 different minerals from 1,212 mines and quarries of which 47 produced gold, 33 platinum group minerals, 89 coal and 240 diamonds.[6] Many of the world's largest mining companies are South African or have their origins there, notably De Beers, Anglo American, Anglo Platinum and Anglo Gold Ashanti.

In 2006, mining accounted for:

- 7 per cent of GDP, which rises to 18 per cent if the indirect multiplier effects are considered, according to the Chamber of Mines of South Africa (CMSA).[7]

- \$20.7b worth of primary mineral exports and \$28.9b worth of sales. This amounts to 32 per cent of South Africa's merchandise exports (and 25 per cent of all exports), but 50 per cent if 'beneficiated' (ie, processed or refined) mineral goods (eg ferro-alloys, steel and catalytic converters) are added.[8]
- 459,000 workers; the CMSA estimates that five million people are directly dependent on mine employees for their daily subsistence. [9] Mining is the largest employer after the public sector.[10]

Platinum is the country's largest export – accounting for 2.1 per cent of GDP and 15 per cent of merchandise exports - followed by gold (1.1 per cent of GDP and 8 per cent of merchandise exports); diamonds accounted for 0.4 per cent of GDP and 2.3 per cent of merchandise exports in 2006. [11]

Although mining remains vital to South Africa, the pace of mineral exploration has fallen over the years and the mineral base has been depleted. Twenty years ago, mining accounted for a much higher proportion of GDP - 12 per cent. Gold, traditionally the major driver of the economy, has seen a consistent contraction; it reached its production peak in 1970 (1,000 tons); in 2006 production was at its lowest level since 1922 (275 tons). China overtook South Africa as the world's major gold producer in 2007. Reports suggests an average annual growth in South Africa's mining sector of just 0.47 per cent over 2007-11.[12] The number of people employed in mining has fallen by 17 per cent since 1997, mainly due to rising production costs and automation.[13]

3. OUTLINE OF THE MINING TAX REGIME

In the past few years, a number of mining laws have been revised. New legislation has been introduced for diamonds, precious metals and health and safety, while a new MPRDA and a new royalty bill have been written. Most of the tax provisions for the mining sector are outlined in the Income Tax Act (ITA) of 1962. Its key provisions are:

Income tax

The standard corporate income tax rate for all mining companies except gold miners was 29 per cent of profits in 2007 and 28 per cent in 2008. Companies have also been required to pay a Secondary Tax on Companies (STC) of 10 per cent (in 2007) of the net amount of dividends declared; however, this is due to be abolished in 2009 and replaced by a withholding tax on dividends paid to shareholders.[14]

Gold mines' taxable income is derived from a formula which takes account of the ratio of profits to revenues. As profits rise, the state takes a larger proportion in tax; if the company makes no profits (or low profits at around 5 per cent of revenues), the state receives no tax; however, shareholders can still receive dividends in this time.[15] For example, companies with a profit to revenue ratio of 15 per cent paid 30 per cent corporation tax in 2005; those with a 30 per cent ratio paid 37.5 per cent corporation tax.[16] Gold mining companies can elect to be taxed with or without paying the STC; the basic rate of tax for gold mining companies in 2008 is up to 34 per cent for those paying the STC and up to 43 per cent for those electing to be exempt.[17] With the proposed abolition of the STC in 2009, the 43 per cent option will be discontinued.[18]

Capital expenditure allowances

South African law offers generous capital expenditure allowances to mining companies:

- Considerable capital expenditure by mining companies can be fully deducted against tax including spending on: prospecting; mining equipment and shaft sinking; and development, general administration and management prior to commencement of production. Mining companies are allowed to deduct these capital expenditures in the year in which they occur; this is more favourable than in the manufacturing industry, which has a 40 per cent write-off in the first year and 20 per cent in the subsequent three years.[19] Some other mining company expenditures are subject to less capital allowance, such as employee housing at 10 per cent in the first year and private cars at 20 per cent.[20]
- The Income Tax Act also provides for a further capital allowance for gold mines, which is deducted against capital expenditure and which serves as an incentive for new mining development. The allowance is calculated as a percentage of capital expenditure, ranging from 10 to 12 per cent per year depending on the mine. [21]
- Mining companies can offset against tax their obligatory spending on organizations engaged in mining-related environmental rehabilitation or protection.
- As with other sectors, mining companies can carry forward any losses for an indefinite period and set these against future profits.
- There are no restrictions on the repatriation of profits.

Ringfencing

The ITA has a ring-fencing arrangement, whereby capital expenditure in relation to a mine is restricted to the taxable income of that mine and not to other mines owned by the same company. However, the Minister of Finance can rule that company costs can be offset against another mine; mining companies can then transfer up to 25 per cent of the capital exemption from unprofitable mines to offset income from profitable mines. [22]

VAT
VAT is applied at the standard rate of 14 per cent but exports are zero-rated. This means that since most mineral production is exported, mining companies not only pay no VAT on those exports but are also entitled to a refund for all the input taxes paid by them. This is a major gain for gold and diamond companies, for example, who export virtually 100 per cent of their production.[23]

Withholding tax
No withholding taxes are imposed except for the proposed replacement for the STC, noted above, and a withholding tax on royalties calculated at 12 per cent of the royalty.[24]

Diamonds
To promote its domestic diamond cutting and polishing industry the government passed in 2006 a bill levying a 5 per cent export duty on rough diamonds that are exported for processing. The previous level was set at 15 per cent; however, since 1993 there has been an agreement between the government and De Beers, which accounts for over 90 per cent of the country's diamond production and exports, allowing De Beers to export its production to London and then provide the South African sight-holders with the stones they need, and the 15 per cent export duty has almost never been applied.[25]

Fiscal stabilization
There are no provisions in the legislation (apart from in the new royalty bill, see below) to stabilize the tax regime for the duration of a mining right, unlike in some other countries.

South Africa's generous tax regime

A 2006 report by the Foreign Investment Advisory Service of the International Finance Corporation and the World Bank concluded that South Africa provides 'generous tax treatment'. Indeed, it calculated that the Marginal Effective Tax Rate (METR) – the extent to which the tax system reduces the real rate of return on investment – was just 0.4 per cent for mining sector; the lowest of six industry sectors analysed; this compared to 13.9 per cent for tourism and 5.7 per cent for agriculture.[26]
The study gave two reasons for the low mining tax rate:

- the fact that gold mines are subject to a formula for calculating corporate income tax (CIT) that depends on the ratio of taxable income to turnover, which 'substantially lowers the CIT rate in the gold sector'. Depending on their election of the formula, 'in some cases gold mines do not have to pay STC on dividend distributions'.

- mining companies are able to immediately write off 100 per cent of their expenditure on machinery and equipment and on mine development. The study noted that, in the case of equipment, the METR was *negative* 32 per cent. 'This suggests a substantial subsidy to investment in equipment in the mining sector'.[27]

One recent academic study comparing the total effective tax rate in one mining sub-sector - copper - in 25 developed and developing key mining countries found that South Africa ranked 10th lowest, with a rate of 45 per cent (the amount paid to the government in all forms as a proportion of annual cash flow). This was a higher rate than Zimbabwe and China, but lower than Ghana, Ivory Coast and the Philippines.[28]

Royalties: Profits over people?

A new draft Royalty Bill was first introduced in March 2003 and has undergone four revisions; it was finalized at the end of 2008 and is set to become law in May 2009. Until now, royalty payments for privately-owned mineral rights have been determined by agreement between the mineral rights holders, often meaning local chiefs, and mining companies. For state-owned mineral rights, the standard royalty rate has been 1 per cent of gross mine revenue for all minerals except diamonds, where the rate has been 5 per cent. The new bill has the following main features:

- The royalty rate is a variable one based on profitability and calculated according to a formula which takes account of earnings before interest on loans and taxes (a measure of companies' operational profits). Thus royalty rates will be higher at a time of high company profits and high commodity prices. At the same time, the variable royalty rates mean that marginal mines will pay little or no royalties.[29]
- Two different formula are applied for unrefined (ie, raw) and refined (ie, processed) minerals. The minimum royalty rate is 0.5 per cent while the maximum royalty rates will be 7 per cent for unrefined minerals and 5 per cent for refined minerals.[30]
- Royalty payments are tax deductible.[31]
- In determining the royalty calculation, mining companies have the option of obtaining fiscal stability for the term of the mining agreement. In this case 'legislative amendments will have no force and effect', the government has said, and companies will be entitled to compensation in the event of the state breaching the agreement. The government says this provision is intended 'to

ensure that an extractor's investors have certainty with respect to the royalty regime…given the substantial investments and long lead times to production required for most mining operations'. For prospecting and exploration rights, such a fiscal stability agreement can also be 'freely' assigned to other companies when selling mining rights; for companies in production, fiscal stability can only be transferred within the same group of companies.[32]

Problems with the new royalty law

The government has said that the revised royalty regime is both 'investor friendly' and ensures 'that the fiscus receives its fair share of tax revenue'.[33] The government is more right on the first point than the second; there are three major problems:

1. Low royalty rates. Due mainly to industry pressure, the government substantially reduced the proposed royalty rates for most minerals with each draft. The first draft of the royalty bill called for royalties of 8 per cent for diamonds, 4 per cent for platinum, 3 per cent for gold and 2 per cent for copper, coal, nickel and manganese.[34] The study for the International Finance Corporation and World Bank noted above stated that, at these levels, 'there is little to suggest that imposing royalties as outlined in the proposed legislation will render South Africa's mining industry uncompetitive'.[35] Yet the second draft of the bill reduced these rates, then the third draft reduced them still further, as outlined in table 1:

Table 1: Average royalty rates in the 2nd and 3rd drafts of the Royalty Bill (%)

	2nd draft	3rd draft
Diamonds	5	3.7
Gold	2.25	2.1
PGMs	4.5	2.7
Manganese	3	3.3
Iron ore	3	3
Coal	2	2.1
Chrome	3	1
Base metals	3	1

Source: National Treasury, Media statement, 6 December 2007, www.treasury.gov.za

By the fourth and final draft average royalty rates were reduced even further. Table 2 below shows the average royalty rates that would have prevailed in retrospect in 2006 and 2007 using the new formulae agreed in the final draft of the bill.

Table 2: Average royalty rates that would have prevailed using the proposed new formulae (%)

	Refined minerals	Unrefined minerals
2006	1.56	1.97
2007	2.55	3.4

Nb. The rate increases in 2007 is due to higher commodity prices
Source: National Treasury, Media statement, 3 June 2008, www.treasury.gov.za

2. Profit rather than revenue-based. Earlier drafts of the bill called for royalties on turnover not profits; the move towards a profit-based system is again due to industry pressure.[36] The profit-based system means that the state will accrue little from the (depleting) resources extracted unless the companies make significant profits.

3. No guarantees to communities. The government also rejected proposals by some civil society groups and unions, and indeed some mining companies, to earmark royalty revenues to communities affected by mining: all the royalty revenues go to the central government. The Minister of Finance, Trevor Manuel, has said that 'not only is earmarking contrary to sound fiscal policy, but also earmarking would negate the underlying principle of the MPRDA that the minerals of our country belong to all South Africans'.[37] However, Manuel has also said that the 'government is amenable to consider an on-budget spending programme targeted at mining and labour supplying communities directed at human and/or local economic development'.[38]

South Africa's lost income

Table 3 shows the difference in government revenues from the fourth and final draft Royalty Bill and the rejected third draft.

Table 3: Government revenues from royalties: proposed Bill and rejected Bill, ($m)

		2006		2007	
		Refined minerals	Unrefined minerals	Refined minerals	Unrefined minerals
Fourth draft Royalty Bill	Average royalty rate (%)	1.56	1.97	2.55	3.4
	Revenues	394m	498m	923m	$1.24b

	to government				
Rejected Third draft Royalty Bill	Average royalty rate (%)	2.98	3.94	3.48	4.63
	Revenues to government	753m	997m	1.26b	$1.68b
DIFFERENCE		- 359m	-499m	-337m	-440m

Source: This table has been produced using figures provided by the government in National Treasury, Media statement, 3 June 2008, Annexure 1, p.3, at: http://www.treasury.gov.za/legislation/bills/2008/royalty/2008060301.pdf.[39]

This table shows that the South African government would have earned $1.24b in 2007 from unrefined minerals by introducing the proposed royalty rates; however it could have earned $1.68b by adopting the formula rejected in the third draft - a gain of $440m. Overall, the table shows that the government will lose $359-$499m a year.

We turn now to the current situation with government revenues, which shows that the mining sector already contributes a significant amount to the South African Treasury, and that many companies are making large profits.

4. GOVERNMENT REVENUES

Economic benefits

The mining sector provides large revenues to the government in South Africa, as outlined the following table, based on information from the CMSA. The total amounts to R205b, or $25.9b.

Table 4: Contribution of mining to the national economy, 2006, Rand billion

Procurement (eg, materials, electricity, legal services)	90
Wages	40
Capital expenditure	25
Direct company tax	16.2
Dividends to providers of capital	15.6
Interest payments	5.5
Payments to specialized sub-	5

contractors	
Payments to municipalities for services	5
Insurance premiums	1
Spending on advertising	1
R&D and product development	0.8-1

Source: StatsSA cited in Dick Kruger, Chamber of Mines, Presentation to Sustainable Development Conference, 18 October 2007

The mining sector in South Africa is so large that it contributes a number of 'multipliers' and 'linkages' to the wider economy - between 7 and 10 people rely on each mineworker for their daily survival while mining creates or sustains various other services and thus employment. Backward linkages arise from the sector's purchase of goods and services (eg, the gold mines consume 15 per cent of all the electricity generated in South Africa); forward linkages arise from the use of minerals in other industries, such as jewelry and manufacturing.

The government ministry responsible for mining, the Department of Minerals and Energy (DME), notes that the mining industry contributed R94.3b ($11.9b) to gross value added (GVA) in the South African economy in 2005 and has over the past decade accounted for around 7.4 per cent of all GVA; if the contribution of processed minerals is added, the figure is higher.[40]

'Beneficiation' - the smelting or refining of mineral ores to a more finished product - has been identified by the government as a major growth area. Processed minerals now account for significant export revenues and grew by 16 per cent in 2006 to reach R43b ($5.4b); the most important areas were chromium alloys and aluminium.[41] However, the Minister for Minerals still notes that 'with mining activities ongoing for well over a century in this country, there has been limited value addition or beneficiation of some of the commodities produced in this country' and that many of the ores exported by South are processed elsewhere.[42]

Taxes

Taxes paid by the mining sector were:

- R16.2b ($2.06b) in direct taxes and 'a major portion of indirect taxes' to the government in 2006.[43] This figure is the equivalent of 9.9 per cent of mineral exports and 7.2 per cent of sales, using the same export/sales figures noted above. This ratio (at around 10 per cent or less) is no greater than in many other African

countries, such as Tanzania, where mining is widely seen as benefiting the country little.
- Around R17b ($2.1b) in the fiscal year 2007/08. This represented 12 per cent of all corporation tax revenues - the second largest sectoral contribution after manufacturing.[44]

Revenues to the state from mining have fallen over the past ten years. In 1990, the mining sector paid income tax of 6.7 per cent of gross sales, which fell to 1.5 per cent in 2001; this decrease was partly attributable to declining profits rather than low tax levels.[45] Gold mining companies now pay a much lower proportion of their operating profits in taxes than in the past; in 1975-84, their taxes amounted to 48 per cent of operating profits, while in 1995-2004, the proportion was 13 per cent.[46] This is also partly explained by declining profits (given the tax formula applied to gold which increases taxes as profits rise). South Africa is the highest-cost gold producer in the world and has the deepest gold mines, the production costs increasing significantly as depth increases. Though gold prices have recently been at a high, there are also very high production costs.[47]

Company profits and taxes

However, the available figures show mining companies are still making large profits. As shown in table 5, gold mining companies made total profits in 2007 of R5.28b ($672m), of which R1b ($127m) went to the state in taxation. R650 million ($83m) in dividends were paid out to shareholders in 2007.

Table 5: Gold mining companies profits and taxation, 2006-07 (Rand billion) (1 Rand = $0.127)

	2006	2007
Total profits	6.69	5.28
Of which: taxation to the state	0.98	1.00
Capital expenditure	5.95	8.14
Declared dividends	1.25	0.65

Source: Chamber of Mines of South Africa, 'Summary of quarterly statements of working results, 2007 and 2006', www.bullion.org.za

Other of South Africa's leading mining companies are making larger profits. Table 6 shows that these five selected companies collectively made after-tax profits of nearly $4.8b in 2007 and paid $2.1b in taxes to government.

Table 6: Profits and taxation for five selected companies in their operations in South Africa ($)

	Mining operations in SA	After-tax profits 2007	Taxation 2007	After-tax profits 2006	Taxation 2006
Anglo Platinum	7 PGM mines	1.6b	867m	1.5b	172m
Kumba Iron Ore	3 iron ore mines	496m	225m	544m	129m
Impala Platinum (*)	3 platinum mines	2.2b	650m	931m	495m
Harmony	21 shafts and one open-cast mine	122m	52m	1.5m	27m
Lonmin	2 PGM mines	408m	297m	431m	202m

Notes: Figures provided by companies in Rands have been converted to US dollars at exchange rate 1 Rand = $0.127. All 2007 figures are for year ended 31 December 2007, except Impala Platinum for year ended 30 June 2008, Harmony for year ended 30 June 2007, Lonmin for year ended 30 September 2007
(*) Figures includes two mines in Zimbabwe, but overwhelming majority of profits/tax are in S.Africa

Sources: Anglo Platinum, 'Abridged financial results for the year ended 31 December 2007', www,angloplatinum.com; *Sustainable development report 2007*, p.34; Kumba Iron Ore, *Annual financial results 2007*, p.9, www.kumba.co.za; Impala Platinum, 'Condensed consolidated annual results for the year ended 30 June 2008', www.implats.co.za; Harmony Gold, *Annual report 2007*, pp.180-1 and *Annual report 2006*, section 45; Lonmin, *Annual report 2007*, p.43, www.lonmin.com

These figures suggest that, while mining companies are certainly contributing to the South African treasury, the government is failing to tax them to the extent to which they could afford.

5. ADVERSE IMPACTS OF MINING

The fact that mining has adverse impacts has often been drowned out in debates in South Africa, including in the media, which tends to focus on the benefits that mining has brought. Yet for many mineworkers, and increasingly for many communities in the mining areas, the impacts are often extremely severe.

Mineworkers

Mining accounts for 4.7 per cent of those employed in the non-agricultural formal sector of the economy and 2.7 per cent of all employees.[48] Wages per mining worker amounted to R86,345 ($10,890) in 2006, considerably higher than R49,435 ($6,240) a decade earlier (in real terms with 2006 as the base year).[49] In 2008, average monthly wages in the mining sector were R8,305 ($1,047), higher than in the manufacturing and construction sectors, but lower than in the transport and finance sectors.[50]

Yet mining in South Africa remains dangerous for many while some mineworkers endure inhuman working and living conditions. Two big strikes in the mining industry have taken place in the last two years. One in August 2008 brought the industry to a virtual standstill when the umbrella union, COSATU, protested at the rising cost of living, demanding higher wages for workers including mineworkers; another took place in December 2007 when the National Union of Mineworkers held a national strike protesting at the rising death toll in the mines.

South Africa is notorious for its high fatality rate in mining, the most common cause of which are falls of ground. The Minister of Minerals and Energy, Buyelwa Sonjica, has referred to mining deaths as 'a dismal and abysmally dark side of our mining industry'.[51] Figures from the CMSA show that 199 people died in the mines in 2006 and that 2,869 people died in the ten year period to 2006 – the majority of them in the gold mines which are the deepest in the world.[52] By May 2008, there had been 71 fatalities in the mining industry so far that year, compared to 96 in the same period the previous year.[53]

After 3,200 workers became temporarily trapped underground at the Elandskraal gold mine in 2007, operated by Harmony Gold, President Thabo Mbeki ordered a full safety audit for 333 mines across the country. The chief inspector of mines at the DME has said that 'generally levels of compliance [with health and safety legislation] in our industry are low'.[54] Many companies have recently improved their performance on fatalities, and the government has increased the fines payable by companies. However, mines managers are still not held criminally liable for fatalities under the law; therefore the costs of upholding the laws on safety are not punitive.

The problem is not just fatalities, but injuries and adverse health impacts. Over 4,000 people were injured in the mines in 2006 alone.[55] South African mine-workers have long suffered from lung diseases, such as silicosis, while tuberculosis rates are ten times higher among mine-workers than in the general population.[56] Another problem is noiseinduced hearing loss; Impala Platinum alone, the country's second major platinum miner, recorded 43 new cases in 2007.[57]

Many South African mines also rely heavily on sub-contracted labourers, who have long played an integral role in the mining industry, especially gold. They tend to be less unionized, less well-trained and live in poorer accommodation than other workers. These workers also tend to be migrant labourers, notably from Lesotho; the Chamber of Mines estimates that 60 per cent of Lesotho's GDP is accounted for by mineworkers' remittances to the country.[58]

Housing offered to mine-workers is often extremely poor quality, with some labourers living in shacks with poor access to water or electricity. A recent report on the Helam diamond mine, in North West province, owned by Petra Diamonds, the country's second largest diamond producer, claimed that hostels were filthy, that the grounds stank of raw sewage, that food was kept in filthy kitchens, and was overall 'unfit for human habitation'.[59] The housing situation in the mining industry 'remains a sore point', Buyelwa Sonjica has said.[60]

Communities

This paper, focused mainly on revenue issues, cannot do justice to the large range of impacts that mining in South Africa has on local communities, which have been highlighted in a number of recent NGO reports.[61] The key issues include:

- Relocation. There have been several relocations of village communities, sometimes involving thousands of people at a time, especially in platinum mining. The result has sometimes been a net loss of agricultural land and access to water while compensation provided tends to be low.
- Intrusion. Some communities have lost farming land due to mining encroachments or been subject to intrusive and sometimes harmful (especially to houses) dynamite blasting by companies; mining rigs all too easily pop up in the centre of villages or on grazing or farming land.
- Pollution/health. There are significant concerns about water pollution and the impact of mine waste facilities such as tailings dams on air quality. The gold and uranium mines are the most common source of trace and heavy metal water pollution in South Africa. One recent NGO report, by the Benchmarks Foundation, noted doctors in the Rustenburg platinum mining area of North West province reporting a dramatic increase in respiratory ailments in the last five years: mine waste management, especially

of tailings, combined with carbon dioxide emissions and sulphur dioxide have contributed to a toxic mix which affects breathing.[62]

- Consultation. Mining companies are required under the legislation only to 'consult' with communities who might be affected by their operations in areas where they hold mining rights; their consent is not required even for relocations. Consultation processes between companies and communities are clearly weighted more in favour of the former than the latter, who have more money and legal advice, in dealing with communities where many people are illiterate, read little or no English, and poor. Communities are often excluded from policies that affect them, such as the Social and Labour Plans which companies are obliged to draw up in their localities, but which communities rarely if ever even see let alone influence.
- Security. Some companies have resorted to calling in the police or private security forces to clamp down on protests against their operations, which have often turned violent, and use legal methods to prosecute protesters or to silence lawyers defending them.

The impact of Anglo Platinum in Limpopo province

A recent report by ActionAid analyses the impact on local communities around three platinum mines in Limpopo (Twickenham, Modikwa and Potgietersrust) managed by Anglo Platinum.[63] The company is the world's largest platinum producer, based in South Africa, and majority-owned by the global mining giant, Anglo American, based in the UK. The report found that thousands of poor rural people have lost agricultural land – their principal means of subsistence – due to mining activities. They are generally offered little compensation and insufficient ways of making an alternative living. Some communities have lost access to adequate clean drinking water while independent water sampling commissioned by ActionAid discovered serious water pollution near one of the mines; mining activities are the most likely cause of this pollution, which has made the water unfit for human consumption.

Around 10,000 people from the villages at Mohlohlo near the Potgietersrus mine are being 'relocated' to new villages built by Anglo Platinum. Villagers were never offered a choice as to whether they wanted to move or not and although they signed relocation agreements, these are with associations (Section 21 companies) that Anglo Platinum claims represent the community but which have been established by the company itself to effect the relocation; the Section 21 companies' legal advisers are also paid by Anglo Platinum. Community protests here, and near other mines in the area, to improve services offered to villagers or to challenge the company over land take-overs are routinely met with brutality by the police or legal action by the company. Anglo Platinum has refuted the analysis in the report, calling it 'extremely one-sided' and saying that it 'distorts the facts'.[64]

The large transnational companies do have internal policies that require consultation with affected communities and monitoring of social and environmental impacts. However, these are not always implemented while the reporting often glamourises reality in a context of inadequate monitoring by the local authorities. The smaller companies provide very little reporting on their environmental policies at all.[65]

The companies' voluntary spending on community development around the mines is usually completely inadequate to compensate villagers for the adverse impacts of mining. The international diamond industry website, diamondsfacts.org, notes that the South African diamond industry produces $1.5b worth of diamonds each year and spends approximately $4.15m on community development projects – this amounts to just 0.28 per cent of the value of the exports.[66] Table 7 shows that companies are spending a miniscule proportion of their profits on local community development.

Table 7: Community development spending of five selected companies, 2007 ($m)

	Community development spending (CDS)	Profits	CDS as % of profits
Anglo Platinum	15.9m	1.6b	0.99
AngloGold Ashanti	3.2m (*)	657m	0.49
Impala Platinum	5.7m (**)	2.2b	0.26
Lonmin	2.8m	408m	0.68

Figures provided by companies in Rands have been converted to US dollars at the rate of 1 Rand = $0.127
(*) Includes spending in southern Africa region from where a number of employees in South Africa are drawn
(**) Includes community development spending in Zimbabwe, to be consistent with the fact that profit levels also includes Zimbabwe

Sources: Anglo Platinum, *Sustainable development report 2007*, p.34; AngloGold Ashanti, *Country report South Africa: Vaal river, 2007*, p.56; Impala Platinum, *Annual report 2008*, p.31; Harmony Gold, *Sustainable development 2007*, p.42; Lonmin, 'Lonmin development trust', www.lonmin.com

The government's ambivalent role

The government's role in mining is very ambivalent. Ministers regularly complain that the mines have brought too few benefits to the country[67]; at the same time, they continue to offer generous tax treatment to corporations. In many rural areas, communities simply do not see the local government as an independent arbiter between them and the companies but as siding with the latter and failing to uphold peoples' rights; indeed, there appears to be widespread collusion between the state and mining companies in undermining the constitutional land rights of communities.[68]

The biggest overall problem is that the South African government largely accepts the same neo-liberal, economic model, based on arguments about international competitiveness, low tax rates and improving investment climates, that primarily benefits corporations. There are also concerns about current and former government officials acting as shareholders, board members or managers in mining companies.[69] The board of one major gold company, Goldfields, for example, includes a former premier of Gauteng province, a senior member of the ANC and a senior civil servant in the office of the President.[70]

Another issue is that the DME lacks the capacity to adequately oversee and regulate the mining industry, notably its social and environmental impacts. The department has a staff turnover so high that the Minister has called it 'scary'.[71] It is clear that improvements in both the will and the means to address the mining sector in South Africa need to be made.

6. RECOMMENDATIONS

South African minerals still have tremendous potential to contribute to the long-term development of South Africans. Yet for this to happen, a number of major steps need to be taken. The South African government should:

- Review again the Royalty Bill, and increase the royalty rates upwards.
- Conduct a comprehensive audit of the impact of the country's largest mines on human rights and the environment, with a view to ensuring that the constitutional rights of South Africans

(to water, adequate housing and land) are upheld. This audit should follow the recent audit into mine safety.

- Strengthen the MPRDA to ensure that community rights to land and water are respected in mining operations
- Ensure that all company Social and Labour Plans around mines involve the participation of local communities, and are made public.

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[34] Foreign investment advisory service, *Sector study of the effective tax burden: South Africa*, April 2006, p.96
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