Resource nationalism in the South African mineral sector: Sanity through stability

by F.T. Cawood* and O.P. Oshokoya*

Synopsis

Despite economic law and policy instruments with righteous intentions, the politics of resource nationalism could render these instruments unworkable. South Africa is a case in point. After the establishment of democracy, the country's outdated law and policy framework was replaced with a modern system, and in many respects an exemplary one. Converting the privately-owned mineral right system into a scheme of state custodianship allowed for several resource nationalism instruments, in addition to a resources royalty structure that first, compensates for the loss of a non-renewable resource; second, provides for optimal resource use through encouraging value addition to mineral production; and third, effectively targets economic rents. However, despite these improvements, the country went through a process of fierce debate on whether or not mines should be nationalized: the debate was fuelled by public anger with claims of political non-delivery. The result was considerable noise because of public unawareness of facts and distortion of the facts in political rhetoric. The purpose of this article is, first, to establish the status of resource nationalism in South Africa's mineral and fiscal frameworks; second, to give an opinion on the findings of the African National Congress's document on state intervention (*Maximising the Developmental Impact of the People's Mineral Assets: State Intervention in the Minerals Sector (SIMS)*, 2012); and third, to fruitfully contribute to the fundamental discussion on how South Africans benefit from their mineral riches. The methodology is to start with explaining resource nationalism as an international issue for the extractive industries; then to offer an overview of existing resource nationalism instruments in South Africa—along with their effectiveness in attracting rents and investment. The major finding is that South Africa has resource nationalism firmly ingrained in its current suite of instruments. However, it is necessary to address the perceptions of bad governance, and above all, maintain the stability of the rules governing mineral development in South Africa.

Keywords
South Africa, mineral policy, resource nationalism, mineral rents, mining taxation.

Introduction

Mineral resources endowment can lead to the creation of wealth, but such wealth is not automatic. With the understanding of the wealth-generation potential of their naturally endowed lands, it is generally accepted that governments and citizens consider it fair to share in this wealth. However, there has been a growing cry by the citizens of mineral-rich societies that they see no evidence of such benefit. In addition, the citizens of host countries have accused their governments of being too generous to mining investors (especially those from historical colonies in Africa) at their expense. In Africa, before the take-over of many of its mineral-rich states by colonial masters who were attracted by its mineral-based opportunities, these societies mined their own minerals or obtained them from neighbouring communities through local trade. In the pre-World War II era, colonial authorities often required that upon issuance of mining titles and extraction of minerals, royalties (which were considered to be an easy type of tax to administer and provided assurance of inflow of funds as long as there was production or sale of mineral products) be paid to government. With the increased demand for minerals and fuels resulting from economic development that took place after World War II and independence, it appeared that investors (often from colonial home countries) reaped substantial benefit from commodity price booms, with no substantial delivery of these benefits to host states. Therefore, to combat this lack of delivery, from the 1960s many mineral-rich states progressively took a more socialist approach to mineral development. By the 1980s, investors began to divest from these countries. This disinvestment caused underdevelopment of their mineral resources coupled with failure of their state-owned enterprises. In response, these socialist countries began to soften their fiscal policies and provided various tax reliefs

* *School of Mining Engineering, University of the Witwatersrand, Johannesburg, South Africa.*

© *The Southern African Institute of Mining and Metallurgy, 2013. ISSN 2225-6253. Paper received, 1–2 August 2012.*

to attract investors[1]. From the mid-1990s to date, the evolving meaning and implementation of sustainable development, linked with perceived inadequate economic benefit despite a commodities price boom, led to fresh calls for greater participation by the state in the affairs of mining and a (global) search for a new meaning of resource nationalism in the twenty-first century, followed.

Resource nationalism internationally

Resource nationalism has its origins in Spanish colonial philosophy[2]. There does not seem to be a single workable definition and its meaning is often confused with resource nationalization. Nationalism could be explained as '*a patriotic feeling, principles, or efforts; an extreme form of patriotism marked by a feeling of superiority over other countries; advocacy of political independence for a particular country*'[3]. In this context, resource nationalism has been described as:

'*… government efforts to maximise revenues from and exercise greater direct and increasing State control over the economic activity of exploiting natural resources … A key priority being to enshrine the right to the full and independent expression of territorial sovereignty. Also, too was the right of developing countries to control fully the activities of multinational corporations in their territories*'[4].

Resource nationalism is also summarized as:

'*… the phenomenon of sovereigns seeking to assert greater control over and ownership or revenue stakes in the extractive process by setting or hanging contractual or regulatory terms for foreign resource extraction companies … it is appropriate to use the term 'nationalism' since in addition to states seeking additional revenues they are also responding to populist, often emotive calls for greater local control over finite mineral resources …*'[5].

These common elements indicate that resource nationalism seems to revolve around greater state ownership and control over national assets like mineral resources, which contribute to the international premise of national sovereignty over natural resources (NSONR), heeding earlier lessons on expropriation or nationalization of large-scale mining investments in the 1970s. In actual fact, resource nationalism can be defined as a *sovereign claim on resource assets by citizens of a mineral-rich country, in which this claim must deliver maximum benefits to them*. In doing so, it is conceivable that the implementation of resource nationalism has a range of policy options with extreme variations at opposite ends of the range. Currently, as in the post-colonial era, resource nationalism is gaining momentum globally, but there are more drivers than in the 1970s when it the trend was triggered as a reaction to colonization and high commodity prices. Some of these new drivers of resource nationalism include the following:

- Governance and trends in politics where there is more government sensitivity to the public's perceptions and misgivings about foreign involvement in strategic sectors[2]
- Increasing OECD country concern over the economic significance of sovereign wealth funds
- Practical efforts to measure socio-economic development contributions of extractive sectors
- Balancing an enabling environment for responsible business practice with immediate economic interests by governments seeking to increase their share of profits, bilateral relations, and diplomatic ambitions[5].

In the name of resource nationalism, a number of producer nations are seeking to increase local participation in projects and/or change their fiscal environment to receive higher taxes or royalties. Examples include Australia (Minerals Resource Rent Tax), the United Kingdom (increased tax take from the North Sea oil industry), and South Africa (premature nationalization debate before considering the impact of the new royalty regime that followed a shift to state custodianship). In Africa, resource nationalism is a growing trend because of the increased pressure on governments to counter exploitation of natural resources and obtain a greater share of economic rents[6]. The manifestations of this trend range from the radical measures being put in place in Zimbabwe, to the calls by the President of Guinea for the establishment of a national mining company, to numerous changes in the countries' fiscal environment (taxes, royalties) - South Africa's new royalty regime, Ghana's proposed doubling of royalties on mining, Zambia's doubling of some mineral royalties, and South Africa's debate on nationalization are several cases in point[7].

It should be noted that resource nationalism usually holds negative connotations for industry, especially from investors' perspective. Investors generally view resource nationalism as an emerging market risk which could involve the enforced transfer of value or ownership without fair compensation, thereby undermining the economics of their projects[6]. They therefore resist these developments by minimizing such forced transfer of value. In the long run, this forced transfer might not be beneficial for producer countries because investors would not hesitate to divest from socialist, nationalized mineral-rich countries, as they did in the 1980s. From the foregoing, it must be accepted that resource nationalism is a phenomenon that is here to stay, and the industry will have to live with it. It does not necessarily have to spell woe for investors, if they forge more sustainable bonds with these mineral-rich countries by providing them with more benefits, thereby working in favour of their longer-term interests by improving the stability of their projects[5].

Resource nationalism in South Africa

In the South African context, with the mineral sector serving as a pillar of its economy, the Minerals and Mining Policy for South Africa (Mineral Policy[8]) released in October 1998 outlined the 'resource nationalism' objectives of the country. The intention is 'to develop South Africa's mineral wealth to its full potential and to the maximum benefit of the entire population'. The Mineral Policy and the Freedom Charter[9] served as the foundation for the enactment of the Mineral and Petroleum Resources Development Act 2002 (MPRDA[10]). The main objective of the Freedom Charter was that national wealth be restored to the people and the ownership thereof transferred to the people. This fed into one of the main objectives of the MPRDA, which was to vest mineral right custodianship in the state and that all South Africans must benefit from the country's vast mineral resources. Also, a more recent initiative – Polokwane Resolution on the

Economy[11] – further supports the achievement of the MPRDA's resource nationalism goals. However, in light of recent commodity price booms and despite the mining sector's significant contributions to the economy of South Africa, popular feelings revealed disenchantment with the sector and the people lashed out at the government as they felt that foreign mining investors were benefiting at the expense of South Africans. These reactions served as the basis for the Youth League of the ANC, to use the political tool of heralding the call for the nationalization of South Africa's mines[12]. For the purpose of maximizing the nation's economic gain from minerals in order to contribute to its social and economic development, the Youth League suggested that a State mining company should be established and that the MPRDA be amended to ensure that all private mining investors operate in partnership with this state mining company[13].

In conclusion, it can be deduced from the above that the current understanding of resource nationalism depends on finding an appropriate working relationship between the state, mining companies, the markets, and citizens[14]. This relationship requires that resource nationalism be understood in the context of global concern for resource security, climate change, sustainable development, and poverty reduction[4]. Hitherto, except for a few cases, governments were focusing on increasing revenue flows through taxes, royalties, taking equity stakes, or boosting local empowerment initiatives[5]. The development of tax and royalty regimes that automatically adjust according to the commodity cycle renders renegotiation or changing of project's fiscal terms based on cyclicality of commodity prices unnecessary. The new South African royalty regime is an example. To summarize, there is some confusion in the meaning of resource nationalism. While nationalization is an extreme interpretation of resource nationalism, the complete absence of State intervention lies at the other extreme. Therefore, the purpose of this paper is to explore what optimal mining means within the wide range of interpretations of resource nationalism and to position South Africa's mineral and fiscal regimes in such context.

Resource nationalism instruments in South Africa

Most of the current resource nationalism instruments in South Africa were designed and implemented as mechanisms to firstly ensure that the state collects a reasonable share of resource revenues, and secondly to address inequity and other apartheid legacies. However, an orebody becomes valuable only after extraction and transformation into a product that is of some use in the markets. This marketable product is exchanged for cash which the company uses to pay for the cost of finance, labour, goods, services, and several forms of taxes. What is left as 'profit' does not necessarily become investor dividends, because in the context of sustainable development some profit must be set aside as environmental and social contributions, in addition to the economic imperative to sustain the mining activity through reinvestment in the business and replacement of depleted reserves. The reality is that mining investors are often rewarded long after their first capital instalment. The secret from government's perspective is to allow a sufficient flow of funds through to investors so that they do not leave the country for other, less risky and more rewarding investment destinations. Fundamental to any discussion of resource nationalism is a realization that minerals are wasting assets, which implies that minerals present a one-off opportunity to extract maximum benefit. Therefore, designing and managing the process of mineral development requires careful thought. The discussion in this section gives the authors' perspective of the broad list of instruments that could be grouped under resource nationalism. The list must not be regarded as exhaustive as classification of these instruments differs from one researcher to the next.

Instruments contained in the mineral law and policy framework

The resource nationalism instruments discussed under this heading appear in the Mineral Policy of 1998[8], the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA)[10], and supporting legislation. This section questions the statement in the SIMS report[13] that the MPRDA is an inadequate instrument for the delivery of benefits from mineral development in South Africa.

State custodianship over mineral resources

In South Africa, the concept of 'ownership' played an important role in the development of mineral law. The colonial system (starting with the Dutch era in 1652 and effectively ending with the conclusion of apartheid in 1994) was based on the premise that mineral and mining rights ownership could belong to individuals. Conversion of this mineral ownership system to a new system where the state has custodianship over mineral resources could be regarded as the first significant resource nationalism instrument of the new era. State sovereignty over mineral resources is an accepted principle in international law (UN GA Res 1803 of 1962, 3201 of 1974, and 3281 of 1975) and critical for enabling the state to introduce resource nationalism instruments. To this effect, the Preamble to the MPRDA states that '*South Africa's mineral and petroleum resources belong to the nation and the State is the custodian thereof* '. Although it is nowhere expressedly stated that mineral rights ownership belongs to the state, its exercise of custodianship minimized the rights of historic owners to the point that ownership has effectively been transferred.

Use-it-or-lose-it and conversion from the old order to the system of the MPRDA

The principle of use-it-or-lose-it was introduced on the back of the fundamental policy objective of equitable access, which is broadly understood as the prevention of exclusionary acts and concentration of development rights. The conversion process itself could be interpreted as a resource nationalism instrument because it sped up the introduction of the new order. Conversion of old-order rights took place from 2004 to 2009 and was not automatic because of the *use-it-or-lose-it* requirement. The transitional rules required that all old-order rights had to be classified as either active or inactive, with the intention to open access of inactive rights to new entrants. It was therefore inevitable that some holders of old-order rights had to 'lose out' during the conversion process. Use-it-or-lose-it is further enforced by making it possible for rights to lapse, which lapsing occurs, for example upon expiry, cancellation, or abandonment.

Implementation of sustainable development and moving the industry beyond mining

The mineral law and policy framework stimulates sustainable development through the promotion of economic growth, environmental management according to leading principles, and enforcing socially responsible actions by the holders of rights. The system includes concepts like the promotion of socio-economic development, the optimal use of minerals mined, provision for opportunities for historically disadvantaged South Africans (HDSAs), and so forth. The mineral development regime also provides for, for example, preferential rights to communities, community participation in decision-making, mineral royalties payable directly to communities, an empowerment charter, as well as social and labour plans as part of the application process for mineral development rights. In an attempt to increase the value of mineral production and to create more employment, it has become a national imperative to add value to mineral production. The system provides for two beneficiation acts[15] to ensure that the intent of adding value to production is realized.

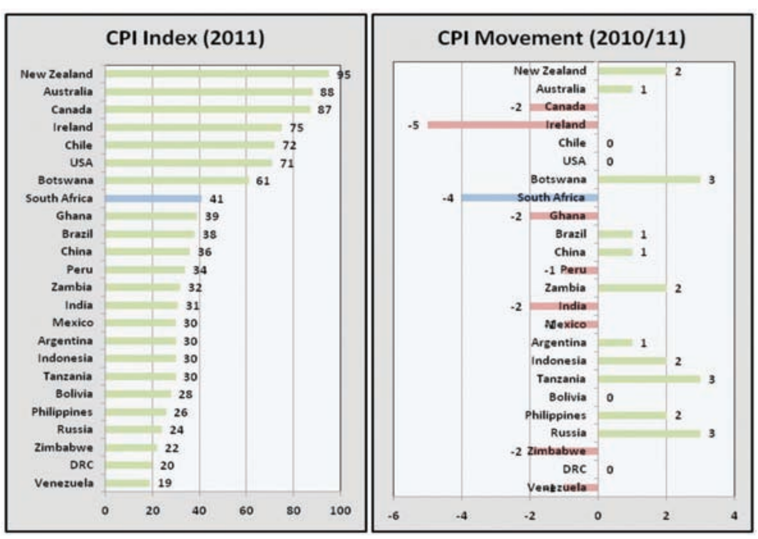
Broader participation through new entrants to mining

Historically, the mining industry was dominated by a few large mining companies that secured the mineral rights to vast areas in order to protect future supply. This acquisition meant that it was virtually impossible for small and medium companies to gain entry to the sector. The new Mineral Policy included a correction to the situation through policy intents like '*Government will lower barriers to entry for new investors*'. New investors included a drive to attract black economic empowerment (BEE) participants to the minerals sector. The new framework, therefore, promotes broader participation through the following policy intents, like '*Government will promote a wider spread of ownership and Government will focus policies on Black Economic Empowerment*'. In addition, the preamble to the MPRDA states that it is 'the State's obligation under the Constitution to take legislative and other measures to redress the results of past racial discrimination'. The state now has a legal empowerment obligation (MPRDA, Sections 2(d), 2(f), 100(2)(a)[10], South African Constitution[16], and the mechanisms to ensure that all South Africans benefit from its mineral wealth include the following:

- During the transitional period, holders of historic rights had to demonstrate opportunities to new entrants
- The introduction of an empowerment charter and a scorecard for measuring progress
- The requirement for social and labour plans as part of the mineral rights application process.

Impact of Mineral Law and Policy Framework

The SIMS report[13] recognized the impact of the MPRDA in correcting the mineral resources ownership issue, with a qualifier: '*However, when we subsequently concessioned them, via a Mining Right, we failed to ensure that their developmental impact was maximized. This needs to be urgently remedied.*' The authors disagree that the mining right system can be held responsible for failure in delivery of benefit because several resource nationalism instruments, all with righteous intention, were 'packaged' as conditions for obtaining a mining right. Any failure should rather point to administrative inefficiency and political intervention during the implementation and governance of the MPRDA. Transparency International's Corruption Perception Index (CPI) is a measure of the transparency within the country. This index is a reflection of how the international community perceives transparency in the minerals sector. The assumption is that the less transparent (the lower the index), the more corrupt is the regime (an index of 100 denotes perfect transparency). Figure 1 on the left hand side illustrates that there is room for improvement in South Africa, while the right hand side demonstrates that the perception that South Africa is corrupt is on the increase.



Source: Transparency International (www.transparency.org)

Figure 1—South Africa corruption perception index

Figure 2 relates the CPI with another perception as published by Canada's Fraser Institute. The Fraser index is an attempt to quantify the 'goodness' of the mineral regulatory regime. The graph illustrates year-on-year changes, with 2011 being perceived as a particularly bad year; that is, South Africa has low potential associated with high levels of corruption, despite being one of the most blessed countries from a mineral abundance point of view. The statistics thus far certainly indicate that, as a country, South Africa does not live up to the potential of its mineral resources.

Although there is a perception of a gradually deteriorating legal framework in South Africa, which is endorsed by World Bank governance indicators for rule of law, regulatory quality, and government effectiveness, the indicators in Figure 3 also show that South Africa scores considerably better that the averages for Africa. Improving indices are political stability and rule of law, while control of corruption and government effectiveness are the problem areas. Although the SIMS report[13] recommends that a Minerals Commission might be a better mechanism for regulating the industry and could be explored, the authors believe that the effort should rather be channeled into developing better regulatory and compliance capacity in the Department of Mineral Resources (DMR). The creation of a super-ministry to manage the country's minerals and energy complex (MEC) might also be an option to explore. Such a ministry must explore the linkages between mining and the well-known problems, including the following:

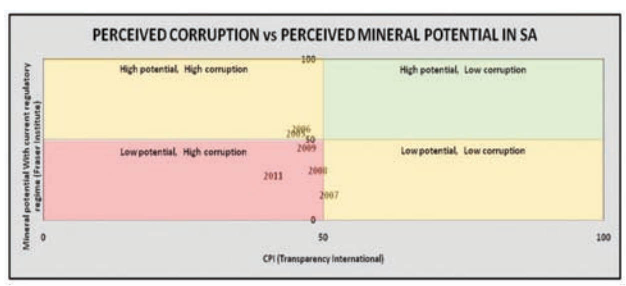
- Unemployment
- Poor standard of education
- Unsustainable labour productivity
- Inadequate minerals-based research and technology development
- Insufficient and poorly maintained infrastructure
- Meagre public service
- Corruption
- An ongoing divided citizenry.

Resource nationalism instruments contained in the fiscal (tax) law and policy framework applicable to South Africa's minerals sector

This section attempts to describe the instruments contained in the tax law and policy framework of South Africa that could be interpreted as mineral resource nationalism instruments. Taxation is important: firstly, to government, because states need to raise money to achieve their policy objectives and manage fiscal flows for economic development; secondly, to the public, who expect socio-economic benefits; and thirdly, to investors, whose short-term profit goal may conflict with long-term government objectives. Government can claim its share in more than one way, but taxation of private companies has emerged as the least risky and most secure way of extracting revenues. It is unlikely that the perfect regime will ever be found, but forward-looking regimes have more potential to be sustainable compared to quick fixes that are responses to *ad-hoc* issues. The emerging era, therefore, favours progressive taxes aimed at rents, while combining fiscal policy with linkage issues.

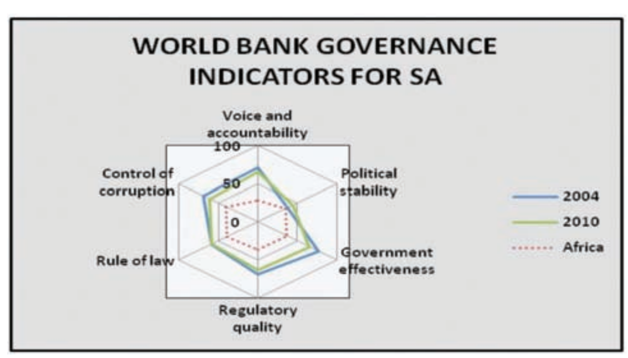
A short explanation of resource rents is necessary for a basic understanding of this often-misunderstood concept. Several authors have explained the existence of rents in the past. Adam Smith[17] explained rents as the additional earnings that could be earned by producers with costs that are less than the highest cost producer; that is, the highest cost mine determines the size of the rent produced by other mines. More recent authors, for example Cordes[18], described rents as bonus (surplus) returns over and above what was expected initially. Under these circumstances, the surplus will not be missed by the investor and can be taxed away without influencing the investment decision. The market requires a certain quantity of mineral production at which a price is established to clear the market. Mines that supply the market with costs in excess of the price received will operate at a loss and, unless assisted in one form or other, exit the market.

It is inevitable that some mines will be better off in terms of profits than other mines. This scenario is not entirely unique to the mining sector because similar profits are earned by other producers in the economy. If, for some reason, the market needs more production, it causes a shift in demand. Prices will rise accordingly, and historically marginal mines become profitable. During the period it takes to find, capitalize, and build mines to meet the new demand, producers already in the market receive inflated prices, which means that there are bonus rewards over and above normal profitability in the short run. These surpluses are termed economic rents or, more appropriately for the mining sector, mineral rents.



Sources: Transparency International (www.transparency.org) and Fraser Index (www.fraserinstitute.com)

Figure 2—Impact of corruption on mineral potential



Source: World Bank governance indicators (www.govindicators.com)

Figure 3—Governance in South Africa

Mineral development, therefore, allows mining companies the opportunity to benefit in an extraordinary fashion, while it should also allow the public to share in the associated economic rents. From the state's perspective, all rents can be taxed away without influencing the investment decision because the bonus is a direct result of resource and market characteristics. Companies take a different view by arguing that entrepreneurship optimizes the return, and without allowing them to retain a significant portion of the rents, there will be no incentive to skilfully employ the factors of production. This is the optimistic perspective. A downward shift in demand has the opposite effect, namely a devastating impact on mines, mine profitability, and complete evaporation of rents. Historically profitable (and even rent-earning) mines may become unprofitable and they will, for economic reasons, be forced out of the market (e.g. the closing of platinum-producing shafts by Aquarius Platinum in 2012). Mining companies have no choice, because of their price-taking nature, other than to correct the market imbalance by limiting supply. Therefore, new expansion plans will be delayed (e.g. Lonmin), production at other mines will be scaled down (e.g. Anglo Platinum), while others will be placed on care and maintenance. It is also unavoidable that jobs will be lost in the process. It is little wonder then that this industry is called a boom-and-bust industry, and the period from boom to bust and *vice versa* can be very short. Miners and their investors, therefore, must be respected for their unusual appetite for taking on risks.

General tax compliance and minimizing exemptions from taxes

Enforcement of the tax laws, the efficiency of the collection agency, and compliance systems have a direct impact on the amount of revenue collected. Competence and efficiency of the National Treasury and the South African Revenue Service (SARS) allow for proficient administration of the Income Tax Act 58 of 1962. This administration allows for tax compliance to a level where it has become unacceptable for companies to risk penalties and reputation due to non-compliance. Exemption from taxes is the exception and, when granted, applies to government income, subsidies and grants, and SARS-approved non-profit institutions. Exemption of private company income is mostly partial and applies only when it can be justified to support specific national imperatives, for example SARS-approved scientific research institutions, receipts and accruals derived from mine closure rehabilitation funds, and reimbursements for approved economic development areas and industrial development zones (IDZs).

The sliding-scale nature of the gold income tax formula

The current formula for calculating the annual tax rate is $Y = 43 - 215/X$, or stated alternatively, $Y = a - ab/X$ where the percentage tax rate (Y) is determined by the formula and varies according to profitability over a year; a is the marginal corporate rate and applies to taxable income in excess of b; b is the (5%) tax-free tunnel, which is effectively a tax exemption of the first 5% of profit, which allows mining companies to continue operating in marginal and loss situations so that employment can be maintained; and X is the taxable income divided by gold mining revenue, expressed as a percentage. This allows for an inflated rate of taxation during high gold prices and automatic relief during times of low prices and/or high costs of extraction.

Mineral royalties

The Mineral and Petroleum Resources Royalty Act (MPRRA) of 2008[19] came into existence as a direct result of the implementation of the principle of state custodianship over mineral resources provided for in the MPRDA. The regime aims to enforce three policy objectives; namely, to encourage value addition to mineral production, to compensate the state for the loss of minerals under its custodianship, and to target mineral rents in times of high commodity prices. As is the case with the gold income tax, the rate of payment is determined by a formula. Where the two systems differ is that in the case of the royalty, the rate is applied to a base of gross sales, and not a definition of income that allows for most costs to be deducted. In the case of production meeting the definition of refined minerals, the rate (Yr) = 0.5 + [EBIT/(Aggregate gross sales x 12.5)] x 100, where the factor 12.5 determines the maximum rate, which is 5%; the minimum rate is 0.5%; and the rate fluctuates according to EBIT (or EBIT-to-sales ratio, which is a measure of profitability) over the period. In the case of an unrefined classification, the rate of (Yu) = 0.5 + [EBIT/(aggregate gross sales x 9)] x 100, allows for a maximum rate of 7%. The nature of both formulae is sliding-scale, with profitability the mechanism for determining the rate, which allows for automatic relief during hard times and automatic rent collection during good times – that is, a self-adjusting system.

Diamond export levy, special treatment of mine development capital and ring-fencing of expenditure

To discourage the export of raw diamond production, the diamond levy regime provides for a 5% levy upon the transfer of unpolished diamonds. As an incentive to develop new mines, development capital is treated similarly to an expense, and in the case of gold, unredeemed amounts can be indexed through a compound interest calculation. It works in the opposite direction too, for example as a disincentive to use (e.g. exploration) expenditure to reduce the tax base of producing mines, a system of ring-fencing applies. According to Cohen[20], the South African ring-fences are the following:

- ➤ Taxpayer ring fence
- ➤ Mining activity ring fence
- ➤ Capital expenditure ring fence
- ➤ Capital expenditure per mine ring fence
- ➤ Prospecting ring fence.

International considerations

The main purpose of these instruments is to protect the South African tax base and to prevent the shifting of taxable income to low- or no-tax jurisdictions. Examples are rules on the treatment of foreign currency income, transfer pricing, thin capitalization, double taxation agreements, and foreign exchange controls. Capping of foreign ownership happens inadvertently as a result of compulsory BEE stakes (e.g. the 26% participation of HDSAs as stipulated in the Mining Charter).

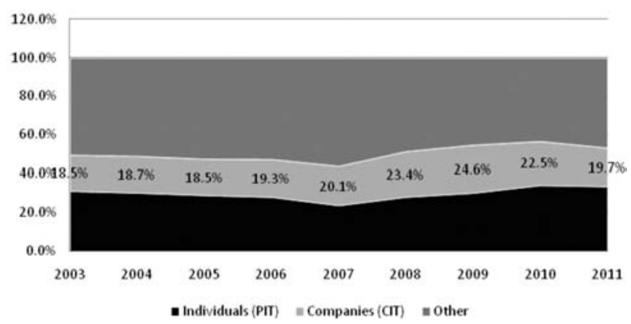
Impact of mineral tax law and policy framework

It seems that the effectiveness of SARS and the emphasis on tax compliance on companies in South Africa have had a positive impact on the amount of revenue collected. Figure 4 shows that companies' share of payments to the fiscus gradually increased from 18% in 2003 to 25% in 2009. The impact of the 2008/09 global economic crises is also illustrated, resulting in company income tax shrinking to 20% in 2011. This shrinkage was at the expense of individual taxpayers, who paid more taxes (34% of all taxes) after the crises.

Cawood demonstrated in a 2011 study[21] that the ideological perception that the commodities boom did not benefit South Africa is not true. We therefore strongly disagree with a recommendation of the SIMS report[13] of the introduction of a 50% resource rent tax (RRT) as a targeted state intervention. There is no justification for a RRT in either the SIMS report or in the actual amounts collected from mining companies to indicate that a RRT will be more efficient than the current system. However, where we agree with the SIMS report is that the fiscal linkages need some refinement - which is a revenue management rather than a revenue collection issue. There is, therefore, no evidence to suggest that a RRT will achieve the desired developmental objectives. The existing fiscal instruments are adequate, but could be 'tweaked' so that the important economic linkages can be established and managed for accelerated benefit. Table I demonstrates the importance of mining fiscal flows to the South African economy in relation to other sectors. Mining taxes increased from R10 billion in 2009 (the year before the Royalty Act was introduced) to R25.7 billion in 2011 (the year after the Royalty Act was introduced).

Table II further demonstrates how mineral rents cause mining companies to be significantly more profitable compared to other companies. What is also clear is how the current tax regime targets the rents through the significantly higher tax–to-turnover ratio compared to the overall economy.

Table II illustrates that mining companies are already paying more taxes than the rest of the economic sector. The impact of the new royalty regime, which started in March 2010, is already visible in the 2011 statistics. The mineral sector is certainly becoming more important to the national economy from a taxpayer's perspective. Cawood[21] estimated that the expected impact of the Royalty Act is about an 8% rise in mining's contribution to company taxes or, stated alternatively, in boom times mining taxes are expected to rise by about 50% after the introduction of the new royalty regime. The statistics convincingly suggest that once the new royalty regime is better understood and the broader benefits



Source: SARS tax statistics (www.sars.gov.za)

Figure 4—Sources of taxes in South Africa

Table I

Actual tax collected (SA rand, million)

	2009					2010					2011				
	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total
All sectors	22726	20418	20093	21908	85145	26819	24898	26374	27476	105567	27696	28214	30715	28875	115500
Mining sector	4575	3142	647	1687	10051	3230	4526	4576	5263	17595	6128	6603	6575	6435	25741

Source: STATSSA P0044 and P0441(www.statssa.gov.za)

Table II

Comparison of profitability and tax take between mining companies and the total economy

	All Sectors							
Year	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**
EBIT/revenue before royalty (%)	11%	12%	13%	14%	15%	11%	11%	11%
Tax/turnover (%)	1.8%	2.2%	2.6%	2.6%	2.6%	1.8%	2.0%	2.1%
	Mining Sectors							
Year	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**
EBIT/revenue before royalty (%)	18%	24%	29%	31%	41%	18%	23%	23%
Tax/turnover (%)	4.3%	5.5%	7.2%	7.6%	8.1%	3.2%	4.6%	5.9%

Source: STATSSA P0044 and P0441 (www.statssa.gov.za) of mining are being communicated on a frequent basis, the calls for nationalization (and resource rent taxation for that matter) will gradually disappear. Patience and stability are required because, as DMR Minister Shabangu correctly mentioned '*For me as Minister, we cannot come up with a process that will stifle and kill the industry. We must come up with a regime that will allow us to compete in an advantageous way as South Africa*'[22].

Conclusion

This paper established the following facts.

1. Resource nationalism is already entrenched in both the mineral and tax regimes of South Africa
2. The many resource nationalism instruments of the mineral law and policy framework are not as effective as the few tax instruments. In fairness, the mineral framework is new and it will take some time before the true impact of all the socio-economic instruments are visible at a citizen level
3. It is premature to call for either nationalization or an additional form of resource rent taxation
4. Mining companies are already paying more taxes (relative to turnover) than other companies in the economy because of a combination of income tax and the recent introduction of mining royalties. These facts suggest that that the existing tax law and policy framework already collects resources rents, without the need to introduce a separate resource rent tax.

The authors believe that the new mineral law and policy framework is starting to make an impact and government should not be too hasty to introduce more and new instruments. The 1908 quote by Lord Selbourne, the British High Commissioner after the South African War, is still relevant today - 'What South Africa requires more than anything else is stability - Stability in political conditions, stability in economic conditions, stability in industrial conditions ...[23].

Recommendation

The conclusion above suggests that the South African mineral law and policy framework does not live up to the potential of the mineral resources in the ground. It will be wise to first address the following issues before changing the system:

- The concern that corruption is on the increase
- The need to increase the capacity of the DMR to become more effective with the implementation of the new system. It is necessary to increase government effectiveness because bad governance prevents the country from converting mineral resources in the ground to tangible benefits
- The need to determine how the royalty regime actually impacts on mining revenues and rents collected by SARS before experimenting with nationalization and new resource rent taxation instruments. However, this should not preclude the state from investigating mechanisms for better delivery of public benefits
- The need to inform the public of the many existing resource nationalism instruments in the mineral and tax law and policy frameworks.

References

1. KUMAR, R. Mine taxation: The evolution of fiscal regimes. Otto, J. *The Taxation of Mineral Enterprises*. Graham & Trotman, London, 1995. pp. 1-23.
2. DARGIN, J. Resource Nationalism: From Spanish roots to an Arab tree. Dubai Initiative Brown Bag Lecture presentation, 2011. Belfer Center for Science and International Affairs. http://belfercenter.ksg.harvard.edu/events/5456/resource_nationalism.html [Accessed May 2012].
3. OXFORD DICTIONARIES. Nationalism. Oxford University Press, 2012. http://oxforddictionaries.com/definition/nationalism [Accessed May 2012],
4. WARD, H. Resource nationalism and sustainable development: a primer and key issues. 2009. pp. 1–58. International Institute for Environment and Development. http://pubs.iied.org/pdfs/G02507.pdf [Accessed May 2012].
5. OXFORD ANALYTICA. Resource Nationalism: Myths and Realities. A briefing produced for the AngloGold Ashanti Legal and Compliance Risks Workshop, 2012. pp. 3–9.
6. AFRICAN REVIEW. Africa's new resource nationalism. *African Review*, 2010. Alain Charles Publishing. http://www.africanreview.com/financial/commodities/951-africas-new-resource-nationalism.html [Accessed May 2012].
7. ERNST & YOUNG. Business risks facing mining and metals 2011–2012: 1. Resource nationalism. Ernst & Young Global, 2012. http://www.ey.com/GL/en/Industries/Mining---Metals/Business-risks-facing-mining-and-metals-2011-2012---1--Resource-nationalism [Accessed May 2012].
8. SOUTH AFRICA. White Paper on a Minerals and Mining Policy for South Africa, 23 September 1998. *Government Gazette*, no. 19344, (Cabinet approval on 20 October 1998).
9. AFRICAN NATIONAL CONGRESS.The Freedom Charter. Kliptown, South Africa, 1955. http://www.anc.org.za/show.php?id=72.
10. SOUTH AFRICA. Mineral and Petroleum Resources Development Act 28 of 2002 as amended, 3 October 2002, *Government Gazette*, vol. 448, no. 23922. (Date of commencement 1 April 2004).
11. AFRICAN NATIONAL CONGRESS. Polokwane Resolution on the Economy. 2007. Section 2.10.
12. AFRICAN NATIONAL CONGRESS YOUTH LEAGUE. Nationalisation of the Mines. A discussion paper. 2010.
13. AFRICAN NATIONAL CONGRESS. Maximising the Developmental Impact of the People's Mineral Assets: State Intervention in the Minerals Sector (SIMS). 2012. http://www.anc.org.za/docs/discus/2012/sims.pdf
14. NDLOVU-GATSHENI, J.S. Is nationalization the solution to the expropriation of African resources? Nationalisation Debate: Public Lecture organized by the African Democratic Institute, 2010. http://www.adi.org.za/index.php?option=com_content&view=article&id=10&Itemid=1[Accessed May 2012].
15. SOUTH AFRICA. Diamonds Act 56 of 1986 and the Precious Metals Act 37 of 2005.
16. SOUTH AFRICA. Constitution of the Republic of South Africa as adopted by the Constitutional Assembly on 8 May 1996 and as amended on 11 October 1996. (B34B-96.). Sections 9(2) and 25(8).
17. SMITH, A. Wealth of Nations. 1776. *Great Minds Series*, Prometheus Books, New York, 1991.
18. CORDES, J.A. An Introduction to the Taxation of Mineral Rent. *The Taxation of Mineral Enterprises*. Otto, J.M. (ed.). Graham & Trotman, London and Martinus Nijhoff, Norwell, USA, 1995. pp. 25–46.
19. SOUTH AFRICA. Government Gazette o. 31636, vol. 521. Assented to 17 November 2008 and signed into law 24 November 2008.
20. COHEN, A. Taxation in the Minerals Industry. Mining Law course, University of the Witwatersrand, 22 October 2008.
21. CAWOOD, F.T. An investigation of the potential impact of the new South African Mineral and Petroleum Resources Royalty Act. *Journal of the Southern African Institute of Mining and Metallurgy*, vol. 111, no. 7, 2011. http://www.saimm.co.za/Journal/v111n07p443.pdf.
22. MINING NEWS. 2012. Rent tax won't be a burden. www.miningne.ws./pg/mining/news/100366/shabangu-rent-tax-wont-be-a-burden [Accessed 16 May 2012].
23. MEREDITH, M. Diamonds, Gold and War: The Making of South Africa. Jonathan Ball, South Africa, 2007. ◆