

The Minerals Bill

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To understand the current debate about the mining charter, it's useful to put it into an historical context. The Minerals and Petroleum Resources Development Bill passed by South Africa's Parliament in June this year has its roots in the Freedom Charter – a manifesto adopted by the African National Congress and its allies in 1955. In addition to such goals as a society based on racial equality, the Charter contains a commitment to a degree of economic egalitarianism in a democratic South Africa. In particular, the charter includes the clause: "*The mineral wealth beneath the soil, the Banks and monopoly industry shall be transferred to the ownership of the people as a whole*".

These ideas were not unusual by international standards of the day – remember that the mining industries of many Western democracies were state owned – and, in the South African context, the approach was also informed by the racially distorted patterns of land and hence mineral rights ownership.

The 1913 Land Act barred black citizens from land ownership other than in 13% of the country's total available land. It goes without saying that that 13% was all rural, and largely excluded areas where gold, diamonds and other valuable minerals had been discovered. South Africa's old mineral rights legislation gives to the owner of surface rights, in perpetuity, all rights to the sky above and the earth below.

The ANC's economic perspectives changed quite radically in the early years after its 1990 unbanning. What has emerged over the past 8 years of ANC government is a pragmatic and conservative macro-economic and monetary

regime with more in common with mainstream Western European economic policy than it has with Central European socialism. In this period of moderation, the interpretation of the Freedom Charter as signifying nationalisation of the mines was abandoned and replaced with the notion of state custodianship of mineral rights which would be leased to private sector applicants. Given that this has been the position in many western countries, including here in Australia, this adjustment should, in itself, be of little concern to anyone.

In terms of the Bill, so-called “old order” mineral rights will remain in force for five years after the promulgation of the new Act, by which time, in order to continue mining, the owner will have had to apply successfully for new mining rights. These newly-acquired rights will remain in force for up to 30 years in a renewable lease.

Applicants for new rights will have to satisfy the Minister of Minerals and Energy that environmental programmes are adequate, and will have to submit detailed proposed mining plans over the life of the right. In addition, the application will have to include a “prescribed social and labour plan” and a programme to advance the empowerment in the industry of “historically disadvantaged individuals”.

The new law does not, in itself, spell out what is required in this regard. Instead, the Minister is required, within six months of the Bill’s coming into effect, to *“develop a broad-based socio-economic empowerment charter that will set the framework, targets and timetable for effecting the entry of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources”*.

AngloGold has no difficulty with any of these underlying propositions. However, it is with respect to their conversion into practice that the controversy has erupted. It was an early draft of the socio-economic empowerment charter that caused the market anxiety after its leak to the media on July 26. Once its impact became clear, it was described as merely a rough draft designed to stimulate debate. The Department of Minerals and Energy, in a release issued jointly with the industry and trade unions on Tuesday last week, said that the draft “*did not in any way represent official government policy or position*”.

It is our view that there are three guiding propositions, which need to inform the process of developing the Charter into an instrument, which restores confidence in the South African equity market and promotes the objectives of the Bill. The first of these is that it should be broad-based, rather than narrow in its focus. Ideally, it should set out guidelines within broadly-stated parameters rather than seeking to set out prescriptive, quantified targets with hard time limits. A useful model here might be the arrangements for promotion of employment equity in South African companies, where the company develops internal targets and timetables in line with Government’s objectives, but not targets set by the Minister.

Secondly, the Charter should promote real (rather than symbolic) black ownership based on value transactions which place equity and proportionate control in broad-based ownership structures . In this respect, we at AngloGold can very justifiably lay claim to having already launched a successful and real empowerment vehicle when we sold seven viable shafts in the old Vaal Reefs complex to African Rainbow Minerals. This transaction was no hand-out but was conducted on commercial terms, to the advantage of the shareholders of both companies. The sale of our assets in the Free State to the Harmony-ArmGold JV falls into the same value-adding empowerment deal category.

Thirdly, the Charter should promote the development of a truly non-racial South African mining industry and society. For any sustained empowerment plan to succeed, it needs to address the development of employees and citizens to the point that can indeed participate in the economy. This means having the genuine capacity to earn, to save and to invest those savings.

This work has already begun in earnest in AngloGold. We have for some time now had programmes in place which, for instance, will raise substantially – hopefully to 100% – the literacy level of our workforce; which will ensure a racial profile at senior management and professional level that more closely reflects the country's demography; and strategies to cultivate partnerships with our host communities to develop basic health care infrastructure and indicators through, at least, the provision of potable water and sanitation. You may be aware, in this last respect, of the announcement yesterday by Anglo American, that its associated companies (including AngloGold) would begin rolling out programmes to administer ART drugs to HIV positive employees.

There is, of course, one final piece to this puzzle. South Africa has a robust Constitution and Bill of Rights, tested on a number of occasions since 1994, often to the cost of Government. In that Constitution is a clear and emphatic protection of property rights, which rights are acknowledged and supported in the Bill. While we are confident that the broadening of ownership and control of our industry can be achieved on a willing buyer and seller basis, if necessary, we'll rely on the safety net of our Constitution.

Over the next few weeks – for that is the time frame that we will be promoting – stakeholders in this industry – government, labour unions, the other big mining companies represented by the Chamber of Mines and the smaller emerging mining companies – will be considering propositions such as these. We are confident that good sense will prevail. What gives us this confidence is the

centrality of the mining industry to the South African economy and the real chance that that, after eight years of prudence in its macro-economic policy, the Government is not likely to change its mind now. We won't get precisely what we want – that's the nature of negotiation and compromise – but we will get an arrangement which will promote the participation in our country's most successful industry by all South Africans and preserve the interests of our shareholders.

Kalgoorlie

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