

Case study: South Africa

Mine nationalization
debating mineral policy



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SOUTH AFRICA, KEY INDICATORS 2015

POPULATION

55.0 millionⁱ

GDP PER CAPITA (PPP)

\$13,200ⁱⁱ

MAIN NATURAL RESOURCES

Gold, platinum, coal

RESOURCE RENTS AS % OF GDP

8ⁱⁱⁱ

POLITICAL SYSTEM

Parliamentary democracy

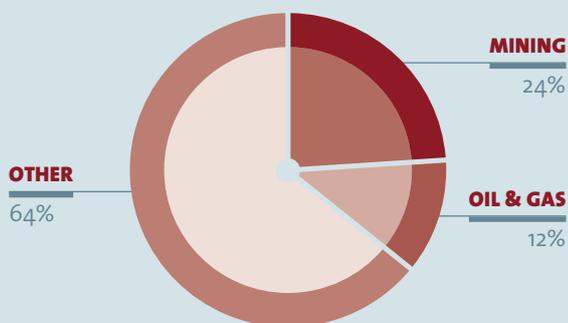
RULING PARTY

African National Congress (ANC)

OPPOSITION PARTIES

Democratic Alliance (DA),
Economic Freedom Fighters (EFF),
several small parties^{iv}

EXPORT SHARES, 2015^v



ⁱ "DataBank 2015: Population, total," World Bank (2015), accessed 5 September 2016, <http://data.worldbank.org/indicator/SP.POP.TOTL>.

ⁱⁱ "DataBank 2015: GDP per capita (current US\$)," World Bank (2015), accessed 5 September 2016, <http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD>.

ⁱⁱⁱ "DataBank 2015: Total natural resource rents (% of GDP)," World Bank (2015), accessed 5 September 2016, <http://data.worldbank.org/indicator/NY.GDP.TOTL.RT.ZS>.

^{iv} Parliament of South Africa, http://www.parliament.gov.za/live/content.php?Category_ID=107.

^v "DataBank 2015: Fuel exports as % of merchandise exports," World Bank (2015), accessed on 5 September 2016, <http://data.worldbank.org/indicator/TX.VAL.FUEL.ZS.UN> and "DataBank 2015: Ores and metals exports as % of merchandise exports," World Bank (2015), accessed on 5 September 2016, <http://data.worldbank.org/indicator/TX.VAL.MMTL.ZS.UN>.



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Political system

South Africa is a parliamentary republic. The African National Congress (ANC) has governed the country since the first democratic elections in 1994, after leading the fight against the apartheid regime. The ANC-led government is based on a coalition called the Tripartite Alliance, including the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU). The largest opposition party is the liberal Democratic Alliance (DA).⁶⁰ The second major opposition party, the Economic Freedom Fighters (EFF), was founded in 2013 on the rationale that the political freedom achieved in 1994 continues to be undermined by lack of economic equality.⁶¹ While neither the EFF nor the DA have yet neared the support of the ANC at the national level, their strong performance in the municipal elections in August 2016 threatens the ANC's previously unchallenged majority and shapes the political landscape in which mineral policy debates occur.

Natural resource endowments and governance

South Africa is the world's richest nation in non-oil mineral wealth, with reserves estimated at USD 2.5 trillion.⁶² Mining played a central role in South Africa's history as key features of the discriminatory apartheid system of rule (1948–1994), such as the migrant labor system, land appropriation and pass laws, aimed to secure cheap labor for the country's mines. Therefore, correcting historical injustices in the mineral sector has been central to the ruling party ANC's mandate to build a democratic, developmental state. Against this historical backdrop, the mining sector continues to play an important role in South Africa's economic policy debates, despite its declining contribution to GDP and the recent commodity price slump.⁶³ The sector

⁶⁰ Democratic Alliance, <https://www.da.org.za/why-the-da/history>.

⁶¹ Economic Freedom Fighters, <http://effighters.org.za/about-us>.

⁶² Government of the U.K., *South Africa – mining sector – an update*, 29 January 2015, <https://www.gov.uk/government/publications/south-africa-mining-sector-an-update/south-africa-mining-sector-an-update>.

⁶³ “South Africa Foreign Exchange Reserves,” *Trading Economics*, <http://www.tradingeconomics.com/south-africa/foreign-exchange-reserves>; “Mining royalties: Minerals revenue plummets, more pain ahead,” *Business*

is governed by the 2002 Mineral and Petroleum Resources Development Act (MPRDA), amended in 2008, with new amendments currently before parliament. The Department of Mineral Resources oversees the law's implementation.

This case study analyzes the policy formation process and related debates within the ruling alliance and between other parties. The main example used for analysis is the countrywide debate on nationalization of mines, which took place from 2007 to 2013, and culminated in the breaking away of an ANC faction to form a new party, the EFF.

Origins of the nationalization debate

The ANC's policy positions on the mineral sector are derived from the party's founding document, the Freedom Charter (1955), which states: "Mineral wealth beneath the soil, the banks and monopoly industry shall be transferred to the ownership of the people as a whole."⁶⁴ In the ANC's first draft mineral policy (1994),⁶⁵ this objective was translated into transferring subsoil mineral assets from private landowners to state ownership. Interpreted as such, this objective was achieved with the adoption of the 2002 MPRDA, which states: "Mineral and petroleum resources are the common heritage of all the people of South Africa and the state is the custodian thereof for the benefit of all South Africans."⁶⁶ In addition, the 2004 Mining Charter,⁶⁷ negotiated between the ANC government and the Chamber of Mines, set targets for the empowerment of black South Africans and other disadvantaged groups, including, most importantly, a 26 percent ownership share of assets to be transferred primarily to the black population.

Since the completion of this first legal and policy framework for mining under democratic rule, several factors have led to a resurgence of policy debate on whether successive ANC governments have effectively delivered the promised benefits to all South Africans.

Live, 25 February 2016, <http://www.bdlive.co.za/business/mining/2016/02/25/mining-royalties-minerals-revenue-plummet-more-pain-ahead>.

⁶⁴ The Freedom Charter outlined principles for the struggle against the apartheid regime. See <http://www.anc.org.za/content/first-national-consultative-conference-freedom-charter-revolutionary-programme-anc>.

⁶⁵ African National Congress, *Draft Mineral and Energy Policy*, <http://www.anc.org.za/content/draft-mineral-and-energy-policy>.

⁶⁶ Article 3 (1) of the Mineral and Petroleum Resources Development Act. See http://cer.org.za/wp-content/uploads/2010/08/28-OF-2002-MINERAL-AND-PETROLEUM-RESOURCES-DEVELOPMENT-ACT_7-Dec-2014-to-date-1.pdf.

⁶⁷ Government of South Africa, *Scorecard for the Broad Based Socio-Economic Empowerment Charter for the South African Mining Industry*, Government Gazette, 13 August 2004, <http://www.mqa.org.za/sites/default/files/Mining%20Charter%20August%202004.pdf>.

Box 2.3**Resources for policy position development in South Africa's ANC**

The ANC's main arenas for policy development and debate are its internal policy conference and sectoral committees. The Economic Transformation Committee (ETC) is responsible for the formation of mineral policy within the party. The ETC has mineral policy advisors and utilizes external research in the form of expert reports for policy development. Policy positions are debated in a policy conference, with the participation of all the alliance partners and also the provinces and regions, before decisions are taken in the national congress, which takes place every five years.

Access to policy analysis and research is all the more important at all stages of policy-making in the party, government and parliamentary committee, because very few MPs have a specialized experience or education in the mining industry, making a technical area of work in terms of policy adjustments and legislative amendments difficult to comprehend at a detailed level for sound decision-making or necessary change. "It is important to debate all issues thoroughly within the ruling party and organizational platforms, with the necessary support from people who specialize in the field of mining and mineral policy, so that by the time the portfolio committee makes a decision on what changes to make, it will be well informed with the relevant decision-making skills for legislative amendments. I will thus be in a position to take a staunch decision to ensure policy and/or legislative change and amendments as a member of the Portfolio Committee," says Faith Bikani, former MP and chair of the Parliamentary Committee on Mineral Resources.

First, commentators both inside and outside the ANC argued that other development objectives than those of black economic empowerment, outlined in early policy documents of the ANC, had been overlooked. This particularly concerned the creation of a developmental state⁶⁸ aimed at value addition and job creation, an objective stated in the *Ready to Govern* (1992) policy guidelines and *Reconstruction and Development Plan* (RDP, 1994)⁶⁹—documents that were widely debated and supported by the whole Tripartite Alliance. The former reads: "Policies will be developed to integrate the mining industry with other sectors of the economy by encouraging mineral beneficiation and the creation

⁶⁸ Referring to state-led planning of industrial and macroeconomic policies to support industrialization such as in the Nordic and East Asian countries. On the concept of "developmental state," see, for example, Thandika Mkandawire, "Thinking About Developmental States in Africa," United Nations University, http://archive.unu.edu/hq/academic/Pg_area4/Mkandawire.html.

⁶⁹ "ANC 1992: Ready to Govern," <http://www.anc.org.za/docs/pol/1992/readyto.html>.

of a world-class mining and mineral processing capital goods industry.” At policy conferences in 2007 and 2012, the ANC party acknowledged that progress on these objectives had not been satisfactory.⁷⁰

Second, implementation of Broad-Based Black Economic Empowerment (BB-BEE) policies set out in the Mining Charter aimed at ensuring fair participation of the black population in employment, management and ownership of the sector, has come under debate. A 2010 report commissioned by the South African Mining Development Association states: “There has been too much emphasis on transformational rents and too little on developmental rents,”⁷¹ pointing out that affirmative action especially regarding ownership had drawn attention away from the developmental impacts of the sector, which could be better achieved through state rather than private quota ownership. The report further showed that black ownership in the mining industry was concentrated in a few companies controlled by a limited number of persons and had not created broad benefits for the wider population. The ANC’s Tripartite Alliance partners⁷² and others increasingly criticized this concentration of wealth, and ANC membership divided along these lines. Indeed, one reason why the nationalization debate in South Africa became so powerful was that thus far much debate had focused on empowering the black population through ownership rather than debating an optimal “government take system,” including taxation and government participation in the sector.

Finally, Tripartite Alliance partners have contested the ANC’s interpretation of the Freedom Charter on the ownership of mineral resources, accusing it of conceding to industry demands. Specifically, they have advocated for a more literal interpretation of the Freedom Charter by which the state should control not only subsoil assets and licencing decisions, but also mining operations.⁷³ From 2010, the ANC’s Youth League became increasingly vocal in its criticism of the ANC leadership, attacking it over lack of progress in delivering promised development.⁷⁴ Thus, by the end of the first decade of the 2000s, a “national debate about the need for more aggressive transformation of the economy after 16 years of democracy” had emerged.⁷⁵

⁷⁰ ANC policy discussion document on SIMS report (2012).

⁷¹ “Harnessing South Africa’s Mineral Resources for Economic Growth and Development” (2009), http://us-cdn.creamermedia.co.za/assets/articles/attachments/29809_harnessing_sas_mineral_resources-executive_summary.pdf.

⁷² COSATU policy document (2012).

⁷³ COSATU’s responses to the ANC discussion papers for its National Policy Conference (2012), <http://www.anc.org.za/docs/discus/2012/consolidatedr.pdf>.

⁷⁴ “ANCYL policy document 2012: Towards the transfer of Mineral wealth to the ownership of the people as a whole: A Perspective on Nationalization of Mines,” <http://www.ancyl.org.za/show.php?id=5502>.

⁷⁵ *Harnessing South Africa’s Mineral Resources for Economic Growth and Development* (2009), 1.

The ANC's rejection of nationalization of mines divides the ruling alliance

As a response to the intense debate, in 2010 the ANC's National General Council mandated its Economic Transformation Committee to conduct further "research, study tours and discussions, and to report to the policy conference for a decision" on increased state control of strategic sectors of the economy, including mining.⁷⁶ In the following ANC policy conference, recommendations of the commissioned *State Intervention in the Mining Sector (SIMS)* report were presented to the ANC membership, including regional and provincial branches and all the alliance partners. The report did not recommend nationalization, arguing that "nationalization would be a disaster for the South African economy" due to associated costs, investor responses and constitutional limits. Instead, it recommended targeted state interventions with more focus on the developmental state aspects of mineral policy, thus aligning itself with the developmental approach of early ANC policy.⁷⁷

Subsequently, the national congress debated the matter and voted against the proposal to further increase the state's control over the sector in its elective conference in 2012.⁷⁸ However, from the submissions given during the consultations on the SIMS report, it is clear that although the ANC party majority rejected broader state ownership, groups within the party and the alliance remained dissatisfied with the outcome. Julius Malema, then leader of the ANC Youth League, continued to criticize the ANC on the topic, which led the party to expel him. Malema responded by founding a new party, the Economic Freedom Fighters, which continues to assert that the state should control mineral wealth. The ANCYL/EFF campaign coincided with the escalation of labor disputes such as the Marikana tragedy in 2012. Calls for increased state control and recovery of lost jobs resonated particularly well with rural miners who lost their jobs as mines were shut down in the commodity slump.⁷⁹ The vote by these constituencies in the 2014 general elections shook South Africa's electoral landscape, with the EFF emerging as the third largest party.

While the nationalization debate has lost its prominence, as South Africa's political landscape shifts and support for the ruling party falls, the emerged policy positions and lessons for dialogue from this debate continue to impact mineral policy.

⁷⁶ National Union of Mineworkers (NUM), *Nationalization Of Mines- Final Document* (2011), <http://www.num.org.za/News-Reports-Speeches/Reports/token/download/ItemId/2>.

⁷⁷ *State Intervention in the Mining Sector* (2012).

⁷⁸ Anine Kilian. "State takeover of mines would be beneficial to South Africans – panellists," *Mining Weekly*, 28 March 2014, http://www.miningweekly.com/article/nationalisation-debate-2014-03-28/rep_id:3650.

⁷⁹ Noor Nieftagodien. "New Political Directions? Reconstituting and re-imagining the left after Marikana," *New South African review* 5, ed. Gilbert M. Khadiagala (Johannesburg: Wits University Press, 2015).

Policy-making process highlights ruling party's established position

The policy development process on nationalization highlights the dynamics of both power and dialogue within the ANC. While the ANC frequently conducts policy dialogue with alliance partners, and this dialogue occurs at least partly in the public arena in the form of policy statements and consultations, ultimately the ANC's view as the party with a parliamentary majority prevails. Over the years, a degree of fusing between the party and the executive has created opposition to the ANC leadership within the alliance.

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MP Faith Bikani

Although there are fault lines between camps inside the ANC related to the party leadership, MPs are careful to be seen as following the leadership's command. Party discipline controls the extent of public discussion of differing views after a formal party position has been adopted. Against this background, the dissenting Youth League leader Julius Malema offers a stark contrast.

While debate has been heated, political dialogue on mineral policy between the ruling alliance and opposition parties has been limited. The primary opposing stakeholder in mining questions seems to be the industry association, the Chamber of Mines, which has been the counterpart in negotiating the Mining Charter and in general is vocal about economic and policy development of the sector. The chamber has vast analytical and advocacy resources, which provide much of the research behind the debate on the mining sector's role in South Africa. The chamber has unsurprisingly rejected proposals on further nationalization and has equally opposed developmental interventions to foster value chain linkages.⁸⁰

With regard to responses from other parties, the ANC has found its mineral policies simultaneously being accused of socialism by the DA and neoliberalism by the EFF. For example, the DA's deputy shadow minister for mineral resources, Henrik Schmidt, called the ideas put forward in the SIMS report “socialist, if not communist.”⁸¹ However, the DA itself does not have a clearly stated mineral policy and often echoes the communiqués and positions of the Chamber of Mines. Its challenge to the ruling party has focused on governance issues of the ANC government.⁸² Meanwhile, the EFF has criticized the ANC for shifting to the right in following the recommendations not to nationalize mines and has accused the South African Communist Party of being “compromised

⁸⁰ Ben Turok. “Problems in the mining industry in South Africa,” *Great Insights*, February 2013, <http://ecdpm.org/great-insights/growth-to-transformation-role-extractive-sector/problems-mining-industry-south-africa>.

⁸¹ See DA response to SIMS report, “State intervention in the mining sector is doomed to fail,” *DA*, 7 May 2015, <https://www.da.org.za/2015/05/state-intervention-in-the-mining-sector-is-doomed-to-fail>.

⁸² See, for example, “New Mining Charter is the ANC's suicide note for the industry,” *DA*, 19 April 2016, <https://www.da.org.za/2016/04/new-mining-charter-is-the-ancs-suicide-note-for-the-industry>.

by their collaboration with the ANC in government.”⁸³ The ANC itself has responded by firmly painting the DA’s following as representatives of white capital and the EFF’s views as populist.

This reflects the identity-based politics and historical injustices still present in South African politics. Inter-party dialogue on mineral resources policies between opposition parties and the ruling party and its alliance structures has not thus far taken place in South Africa. According to Faith Bikani, MP and former portfolio chairperson of the Parliamentary Committee on Mineral Resources, informal negotiation and discussion channels do not exist between parties. “In a way [policy dialogue] is a no-go area unless it’s electioneering time in the country. What we debate, we bring publicly into the multiparty portfolio committee meetings or in plenary. I otherwise prefer to stick to what we have as an agreement and what my party would have concluded in preparation for the multiparty engagements,” she says.

The nationalization of mines debate reveals ideological and policy position differences within the ruling alliance and a lack of dialogue across the parliamentary spectrum at a time when the ANC’s rule is being challenged on multiple fronts. The nationalization debate has been ideological but is also informed by research. Policy options have been thoroughly debated within the ruling alliance, in parliament and in public, and have significantly contributed to reshaping the political landscape. Although the debate has been heated, mechanisms of policy-making, consultation and responding to voters’ demands have been strongly present in the process of forming the position on nationalization. Given the shifting political landscape, the dire economic situation in the mining sector and resulting turmoil in the labor unions, deeper dialogue between opposing views might emerge going forward.

⁸³ *South Africa’s Opposition – Meeting Summary* (Chatham House, 2015).