

CAN SOUTH AFRICA AFFORD TO HAVE A MALLEABLE MINING REGULATORY FRAMEWORK?

DOES THAT NOT AMOUNT TO SELF-REGULATION?

Mining remains one of the major contributors to the South African economy. It accounts for nine (9) percent of Gross Domestic Product (GDP) and its Gross Fixed Capital Formation (GFCF) accounts for 10 percent of total investment in the country. While these figures declined slightly in 2004 and 2005, largely driven by uncertainty resulting from the promulgation of the Mineral Petroleum Resources Development Act (MPRDA), available information indicates that the contribution of mining to both GDP and GFCF have grown significantly thereafter, which growth was only punctuated by the onset of the recessionary market conditions from the last quarter of 2008. The magnitude of this growth relative to the country's economic growth is a subject for intense debate.

While there is a popular view that the industry could have achieved faster growth rates, agreement on the causes of the anemic growth rate appears elusive. On the other hand, reasons provided by those who have attempted to analyse the industry's performance seem varied from currency strength / volatility, monetary and fiscal policy, infrastructural constraints as well as the **regulatory framework**. The most vociferous complaints seemed to be levelled against the latter.

The question to grapple with is whether there is evidence to support the aforementioned assertion that perceives the regulatory framework as a hindrance to economic growth and if so in what way and to what extent does it affect the growth of the industry. A plethora of questions come to mind as to whether such a concern is a real or perceived problem and what can be done to correct the situation? It cannot be overemphasized that when government is searching for solutions it has to balance the interests of investors with those of

its shareholders i.e. the downtrodden majority who have become increasingly restless, agitated by the lack of progress towards their economic emancipation.

Furthermore, the masses are apoplectic that the commanding heights of the economy are still in the hands of a minority. It is our carefully considered view that government cannot afford to engage in a perennial consultation exercise while the country is on a slippery slope accentuated by the frustration of the masses resulting from the odious counter-majoritarian tendencies of the mining industry, which in fact should neither be allowed to distract from nor eviscerate arguments for meaningful transformation. Ruminations of this nature have always surfaced from both the industry leadership and political circles bent on pushing back the tide of economic and political transformation.

While it is commonly understood that an African National Congress led government has been and continues to accommodate minority concerns in policy formulation, majority aspirations cannot be sacrificed by narcissistic considerations of minority fears. As such the regulatory framework cannot be left at the behest of only idiosyncratic responses by those that have continued describing it as the definitive end-state of dystopia. In fact, it remains course for prying as to where in the world a regulatory framework enjoys a thorough unique status for being benign without any hanging impression to those it is meant to regulate?

South Africa's mining regulatory framework remains susceptible to what amounts to undue revulsion by its critics, for the reason that it is instrumental in harnessing transformation objectives for the mining industry in the 21st century. It would seem then that the challenge for the South African government is the untenable expectation that it should develop a regulatory framework that is akin to managing an unsustainably perfect electrolyte balance. Arguably there is no other enviable parallel of regulatory framework without flaws that can be drawn elsewhere in the world for South Africa.

In other words, there is a sense that whenever there are assertions or comments against the South African mining regulatory framework, some cannot help but feel that such acerbic rhetoric, which is less favourable, borders on the cry of desperation for a special type of exclusive mixed economy aligned to the nostalgia of the perceived glorious past, which can be based on the hangover from apartheid machinations.

Having said that, it is also apparent that the State's mining regulatory framework is not subject to or in blind stupor to fail to appreciate with indebtedness the welcome contribution by the private sector towards sustainable development of South African economy. It is for this reason that Department of Mineral Resources (DMR) has on countless occasions discharged calls for nationalization of mines in South Africa with reference that such was not policy of the current government.

Furthermore, the DMR allowed for the toast to roast in which the business sector and other independent analysts at the coalface of the mining industry were offered the platform to criticise the South Africa's mining regulatory framework, in particular when mining stakeholders had established the MIGDETT process, leading to the Drakensberg Summit in March 2010.

On the whole, such is the positive symbolic spirit of the South African government whose value system is ingrained in democratic principles that allows for other dissenting perspectives to be entertained with the main objective of growing and transforming the mining industry. It would seem that the collaborative efforts as facilitated by the Department of Mineral Resources between the relevant mining stakeholders – resonate with the illustrious words of JF Kennedy “...ask not *what my country can do for me, but what I can do for my country*”.

In other words, there is an emphatic urgency to interrogate the question as to how best can South Africa's mining regulatory framework remain resilient and favourable for the greater good of its society, while resisting the temptation to capitulate to vagaries of market economy and the realistic fear - appeals of jobs losses? In addition, where in the world has a bendable regulatory framework been the example to set in motion for thriving economic returns of any country.

In conclusion, in the light of a lack of empirical evidence to suggest that the new regulatory framework has negatively impacted on investment in the industry, the mining sector's contribution to the economy and its contribution to job creation seems to render such claims to fame baseless. While opponents of transformation tend to argue that the regulatory framework constrains mining sector performance, the poor majority is likely to unleash a fusillade questioning the industry's pernicious attitude towards an inclusionary end-state.

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