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Approches rivales de la transformation du secteur minier sud-africain : responsabilité sociale d'entreprise ou restructuration industrielle des mouvements syndicaux

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Résumé

Cet article compare les deux principaux modèles de transformation en lutte pour le contrôle de la façon donc le secteur minier s'intégrera au développement national de l'Afrique du Sud. Le premier, modèle de responsabilité sociale d'entreprise (RSE) préconisé par la Banque mondiale et la Société financière internationale, mise sur la réglementation volontaire et la durabilité par le biais de la participation des communautés vivant à proximité des mines. La seconde approche, moins familière, procède du rôle joué par les syndicats dans la lutte pour améliorer les conditions de vie et de travail, éléments clé dans l'organisation de la production minière. Selon l'auteur, la RSE est populaire auprès des sociétés minières comme outil leur permettant de cultiver une image positive, alors que les changements les plus significatifs sont le produit non de mécanismes volontaires mais de règlementation étatique, soit le produit de législations et de litiges. En comparaison, l'approche syndicale se concentre sur l'amélioration des salaires, des niveaux de compétence et la stabilisation de la main d'œuvre qui s'adresse aux structures même de l'industrie, et elle a donc un plus grand potentiel de transformation.

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Comparing Dueling Approaches to the Transformation of South African Mining: Corporate Social Responsibility or Labour Restructuring?

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Abstract

This article compares the two principle models of transformation currently joisting for supremacy in mining's contribution to South African national development. The first, the model of corporate social responsibility advocated by the World Bank and the International Finance Corporation with its emphasis on voluntary regulation and sustainability via community participation, has influenced both the South African state and mining company practices. The second is the less well known role played by labour as it struggles to improve working and living conditions, and key elements in the industry's organization of production. This article argues that CSR can often be seen by mining companies as a useful tool in the search for a good corporate image, while more significant changes have been the result not of voluntary measures but of state regulation, legislation and litigation. It has also been the result of labour struggles over wages, skill levels and the stabilization of the workforce that have a greater transformatory potential as they address fundamental structural issues.

Introduction

Mining and oil extraction have been a significant area of economic activity throughout Sub-Saharan Africa, growing dramatically in the last decade. While resource extraction might be a boondoggle for international capital, it often leaves behind conflict and environmental degradation, thereby branding the sector a curse rather than a contributor to national development. In the South African case, Moeletsi Mbeki (2008) claims South Africa's mining wealth is a curse, enriching a few while the lives of ordinary people deteriorate. Yet the South African government has claimed that it is taking measures to transform the industry's role in development, requiring it to change its relationship to the country as a whole, taking measures to bring about greater equity and bring in those previously disadvantaged. The companies themselves claim they have absorbed this message and are committed to becoming good corporate citizens.

Both companies and the South African state have framed these changes in the language of corporate social responsibility (CSR) promoted by the World Bank and the International Financial Corporation. The CSR model claims that a resource curse will be avoided if companies adopt voluntary practices and codes of conduct that will benefit local communities, protect the environment and contribute to state coffers. Since majority rule in 1994, South Africa has been engaged in reforming its legislative framework, including mining regulations, enacting the Mining Charter in 2004 as the principle tool aimed at transforming mining's contribution to the country and bringing equity to the sector.

Critics charge mining companies with doing little more than warding off the threat of nationalizations (Economist, 2010). Yet they also face labour demands for another form of transformation. The National Union of Mineworkers (NUM) uses a structural approach that is aimed at transforming the industry's organization of production as it works to increase wages, upgrade workers' skills and stabilize the workforce through improved living conditions.

The following article will contrast these approaches to transformation. It will do this first by examining legislative reforms and company response undertaken in the name of corporate social responsibility, followed by the examination of labour's efforts at changing the industry's organization of production. The article will demonstrate that South African legislative reforms have been undertaken in the spirit of CSR and that mining companies have undertaken a series of activities to improve equity and benefit communities. Yet it will also demonstrate that these activities have been the result not of voluntary actions but of responses to legislation, litigation and labour struggle. Not only does it demonstrate the importance of bringing about transformation by addressing the industry's organization of production but that transformation requires a state capable of enacting a legislative framework to which mining companies must comply and a labour movement capable of defending workers.

Mining Development and Corporate Social Responsibility

The notion of corporate social responsibility is the current model put forward by the World Bank and the IFC as a way of reducing harm and avoiding the resource curse. It is linked to the notions of development ushered in with structural adjustment – the concentration of economic activity on export promotion, and a reduced state role. It was further shaped by notions of deregulation defined within the governance framework and social sustainability.

In 1992, the World Bank indicated the need for African countries to reform their mineral policies in order to attract foreign investment as the sector was underperforming and needed to attract foreign investment in order to contribute to growth. Government policy needed to be reformed in order to reduce the role of the state to that of a regulator rather than an owner and direct producer. The sector should be developed with the objective of gaining tax revenue rather than "pursuing other economic or political objectives such as ownership of resources or enhancement of employment" *(*World Bank, 1992: X*).* Absent is the role mining plays in relation to the development of a broader industrial strategy and local mineral beneficiation. Instead the mineral sector would be developed by greater state spending on improved mine support services such as geological and technical surveys, improving the mining inspectorate and environmental protection all of which had suffered from declining resources under structural adjustment programs. State reforms were aimed at making the country more adaptable to changing market conditions so that it could take advantage of the 'renewed interest by international mining companies in African mining'. Government role was to focus on the 'primary objective' of maximizing tax revenues and obtaining 'a fair share of the economic rent' from mining (World Bank, 1992) while shifting operational risk to private investors. Fiscal reform and deregulation would shift policy away from high corporate taxes, revenue-based rather than profit-based taxes, with restrictions on foreign ownership, dividend remittances and profit repatriation (World Bank, 2002b).

Governance adapted to the extractive sector is described by the World Bank as:

> …(the need for) modern and transparent mineral licensing laws and enabling regulations, equitable and

> stable mineral fiscal regimes, fully adequate environmental protection laws and well designed and responsive social consultation and protection procedures – all combined together with capacity building for relevant organizations (World Bank, 2006: 9).

A shift took place at the turn of the century in which notions of sustainability and corporate social responsibility (CSR) further modified the role of the state, emphasizing the adoption of voluntary forms of regulation in which corporations would voluntarily modify their conduct in exchange for further deregulation. Key to this was the engagement of community groups who are supposed to provide enhanced local level regulation. This approach is heavily promoted by the World Business Council for Sustainable Development (WBCSD) (Walker and Howard 2003). The United Nations Development Programme (UNDP) adopted a similar notion of business in development by encouraging a 'triple bottom line' in which corporations were expected to reconcile environmental and social considerations with financial profitability. This required that they obtain not only an operating license from government but a 'social licence' from the community (UNDP, 2004). The Organisation of Economic Cooperation and Development (OECD) adopted similar measures to encourage multinational corporations to adopt CSR and governance measures (OECD, 2004).

The concept of sustainability, popular among multilateral agencies, has been further added. To achieve sustainability, the World Bank included requirements for greater stakeholder consultation, the development of partnership, and the establishment of public-private partnerships from which both state and industry would benefit (World Bank, 2002a). The Bank's director of mining, James Bond, indicated that sustainability will accrue when there is community participation, done via a partnership that includes local community groups along with the central state (J. Bond in McMahon and Remy, 2001).

In mining, local community involvement will ensure a reduction in the harm done to those in closest proximity to a mine while the mining company will contribute to the development of local business activities through the creation of small scale income-generating activities and micro-enterprises run by local community organizations and supported by the social development arm of the mining company, or via procurement contracts with entrepreneurial groups within the local community. The mining company will support greater training, public services such as education and health, and the creation of public goods such as clean water, transport, energy and infrastructure. It is also aimed at reforming small-scale mining, subjecting it to state regulation that will improve its environmental, health and safety records, and provide documented and taxable employment (World Bank, 2007).

This approach would also contribute to improved community and employee relations, the development of supply linkages, reduced dependence on the mine for local economic wellbeing over time as well as bring substantial benefits in terms of reputation, and good corporate citizenship (World Bank, 2007). The state would also benefit from increased revenues through enhanced mineral rent which it will direct to development now defined as activities directed towards poverty reduction directed towards achieving its Millennium Development Goals.

Legislation: South Africa's Mineral Policy Reform

Soon after the first majority rule election, the government moved away from adopted the 1994 Reconstruction and Development Programme (RDP) aimed at overcoming problems of poverty, violence and shortfalls in social services inherited from the Apartheid period, to the adoption of the Growth, Employment and Redistribution strategy (GEAR) in 1996. The new emphasis was on economic growth, production for export and trade liberalization aimed at attracting foreign investment (Bond, 2004). It also included reform of the country's corporate governance regulations, adopting codes of good governance with increased requirements for company reporting and accounting, reforms in the responsibilities of directors along with the adoption of codes of ethical conduct. The notion of the 'triple bottom line' was adopted with the aim of balancing investor needs with the need to minimize the economic, social and environmental impact of company activity. It also included measures aimed at Black Economic Empowerment to enable the participation of 'formerly disadvantaged groups', referring to the highly disadvantaged South Africans or HDSA, to participate in the private economic sector. Amendments to the Company Act and changes to the requirements for listing on the Johannesburg Stock Exchange encouraged practices aimed at transparency and fairness (Baboo et al., 2005).

Legislative reform in mining began in 1998, as the Department of Minerals and Energy sought to encourage mineral development by creating a good investment climate (RSA, DME, 2000a: 3). It also based the reform process on consultation and participation, bringing in major stakeholders including industry and labour, as well as investment analysts, foreign-owned mining companies and environmental interest groups into public workshops, bilateral meetings with different levels of government, and carrying out public hearings to consult over the drafting of new pieces of legislation. Several hundred individuals and institutions made written submissions (RSA, DME, 1998). Participatory measures also sought to include formerly disadvantaged groups into the mining sector. Other reforms modified ownership of mineral rights, increased services to industry, regional cooperation, strengthened health and safety regulations, improved environmental management and industrial relations and pledged to improve mining housing, especially the abolition of single-cell hostels.

The first major reform was for the state to assert its sovereignty over minerals rights, giving it significant leverage over the implementation of all mining legislation. Arguing that minerals rights were part of the country's national patrimony, the government transferred the control of mineral rights away from landowners, mostly large mining companies. These would now be used to promote broader access to mineral resources and contribute to economic growth, mineral and petroleum development, and increased employment. In the administration of these new rights, the government maintained a policy of use-it or lose-it to prevent the hoarding of mining rights and tightened policies on retention permits to reduce the previous problem of speculation in mineral rights (Cawood, 2007). The Chamber of Mines, the lobbying arm of powerful mining companies operating in South Africa, opposed the move, arguing that government had effectively undertaken an uncompensated expropriation. The government responded that it merely brought South African mineral rights in line with other mining countries such as Canada and Australia. Prior to this, South Africa had been one of the few countries in the world that had private ownership of minerals (Beech, 2006: 12). In effect, mining companies now had to re-apply to government to acquire new mining rights and a license to mine.

The first major change was the 1996 Mine Health and Safety Act aimed at improving the sector's poor health and safety record. The state increased the power and capacity of the mining inspectorate (RSA, DME, 2003) which now could and did order the temporary closures of mines found to contravene safety regulations. In 1998, the National Small-scale Mining Development Framework was passed to encourage broader participation by assisting artisanal and junior companies and bring them within the realm of government regulation (RSA, DME, 1998). In 2004, the government made its first attempt to pass the Mineral and Petroleum Royalty Bill. It took until 2008 to pass it and until 2010 to implement it due to company resistance.

The most wide-reaching element of the new legislation was Gazetted in October 2002, and passed in 2004 after significant consultation with stakeholders. This was the wide-ranging Mineral and Petroleum Resources Development Act, (MPRDA) and its attached Broad Based Socio-economic Empowerment Charter (BBEEE) for the Mining Industry (RSA, DME, 2002), known as the Mining Charter. The Act was imbedded in the language of environmental protection and participation. It linked mineral development to local economic development and regional development planning including the involvement of communities who were expected to establish their own mining companies. The Mining Charter sought to overcome past prohibitions to black entrepreneurship in the mining industry by requiring a transfer of ownership to formerly disadvantaged groups (HDSA) of 15% ownership in 5 years, with a 26% ownership transfer in 10 years (Davison, 2003). Local mineral beneficiation was also enhanced and was aimed at generating activities in local processing and marketing. This would include encouraging the emergence of a local jewelry industry, particularly in gold, diamonds and platinum. It also charged Mintex, a parastatal, with the development of greater backward and forward linkages between mining and local industry. The most successful linkage to date of course is the use of coal to fuel a large percentage of the country's electricity supply. In 2009, it drafted a more complete Mineral Beneficiation Strategy (See RSA, DME, 2009b).

The Mining Charter now required each company to produce an acceptable social plan and an environmental assessment before acquiring new mining rights and a license to mine. The social plan had to be sufficiently detailed with targets, timelines, and resources to be committed to meet each of the principal Charter empowerment objectives. It touched on the following topics: human resource development including the government stipulated Adult Basic Education and Training (ABET) program aimed to teach literacy and numeracy, as well as skills improvement, employment equity, non-discrimination against foreign labour from surrounding countries who had worked in the sector for many years. It also required the development of plans for mining communities and surrounding rural areas, and improvements to housing and living conditions, local beneficiation, commitment to local procurement and involvement of HDSA, including joint venture ownership schemes. Companies were also expected to include in this application detailed environmental protection strategies both for the life of the mine and after its closure. Once the mining license is acquired, companies are required to produce an annual 'scorecard' of activities meeting Charter requirements.

Company Response

In practice, mining companies have benefited from the overall move to greater financial liberalization, as it eliminated some of the regulations on capital movement, making it possible to transfer their headquarters and stock market listings to London at the end of the 1990s. The older mining houses that dominate the South African industry unbundled their holdings, shed their non-core and industrial interests, and globalized their reach through international mergers or acquisitions of foreign companies (Cawood et al., 2001). Companies such as Anglo-American, De Beers and BHP Billiton transferred their primary listings and corporate head offices out of South Africa resulting in a surplus outflow of R5 billion between 1994 and 2001 (COSATU, 2002). South African assets were being purchased at the same time by foreign resource companies, resulting in a globalized ownership structure of South African mining assets, resulting in a drop in local ownership from 22% in 1975 to 5% by 1999 (Cawood et al., 2001). Carmody (2002) argues that mining houses were interested in globalizing, first by using investment in Africa as a springboard to broader investment, and then by moving to London. This allowed them to unlock 'shareholder value' as it led to an increase in share value price in relation to assets, and to maintain assets in hard currency while gaining access to cheaper capital and becoming more mobile. Anglo-American increased its profit by 24%, the year it moved to London, 1999/2000.

Companies have also succeeded in significantly delaying the implementation of new mining royalties and watering down some of its provisions in spite of World Bank recommendations that in exchange for the adoption of voluntary regulations as part of the CSR model, the state would obtain a 'fair mining rent'. Companies argued the rates were too high and stalled the bill for several years. Their objections eventually resulted in reducing royalty rates and winning a major concession over the stipulation that they pay royalties on net earnings, after production costs, and only if they made a profit. Companies sought further reductions in royalty payments for mature gold mines, and exemptions on ore extracted from reworked mine dumps and mineral-rich tailings. They finally reached an agreement in 2008 but companies were given a further delay in the implementation of the bill because of the economic downturn after October 2008 (Chamber of Mines, 2007; *Business Report*, March 20, 2008; *Business Day*, March 18, 2008; February 26, 2010). What companies did not succeed in changing was to obtain credit for royalties paid to communities, accusing the national government of effectively imposing a form of double-taxation (Van der Zwan, 2010).

Companies also succeeded in reducing their requirements as regards the involvement of disadvantaged groups (HDSA). The government's initial ownership transfer announcement was to be 51 % of ownership to previously disadvantaged groups (HDSA), over a 10 year phase-in period. Company opposition resulted in its reduction to 15 percent ownership over 5 years, to be increased to 26% within 10 years. Most significantly though, companies reduced the effect of this transfer when government agreed that it be done by bringing in new entrants via equity purchase, and not by 'asset grabbing' (*Business Report*, June 27, 2002). As a result, many BEE companies were taken on as junior partners to mining companies with access to new sources of funding, thus minimizing the economic impact on mining companies but also the perceived threat posed by a set of new entrants, many of whom, were close to the ruling party.

Many BEE transactions have been aimed at facilitating the emergence of a new elite. They involve a small group of the same people, sometimes referred to as the 'BEE Gentlemen', all of whom have close connections to the ANC including Saki Macazoma, Cyril Ramaphosa, Tokyo Sexwale, and Patric Motsepe. The fear is that this concentration of empowerment transactions allows established companies involved in partnership with the new BEE companies to achieve a 'comfort level', but with little significant transformation. Roger Southall comments that the mutual interaction and investment connections between black ventures and established firms suggest that large-scale corporate capital is adapting to BEE recognizing its economic and political imperative (Southall, 2008).

By contrast there have been less mass empowerment deals as called for in the Broad-based Black Economic Empowerment or BBBEE measures aimed at different collectivities including workers' groups and traditional communities. A few have brought in company staff such as Impala Platinum's employee share plan involving 28,000 lower-grade workers, and another by Anglo Platinum involving 43,000 workers (*Business Report,* March 16, 2008). These deals are often complex and lack in transparency but they do provide small returns to workers though without any control over company operations. For example, Lonmin, another platinum mine entered into an agreement with a long series of partners under the company name of Incwala. Incwala acquired 18% share of Lonmin Platinum Limpopo (one of the Lonmin mines in Limpopo province). Considered a BEE transaction, Incwala's ownership structure is made up of a series of different consortia including Thelo Consortium, Dema Consortium,Vantage Consortium, Bapo Ba Mogale a traditional community with 30,000 members and the South African Women in Mining Organisation. Longplat's 20,000 employees in turn will own 13.3% of Incwala through these consortia. Other owners include Lonmin itself with 23.6% and the International Development Corporation another 23.6% (Lonmin, 2007).

Anglo Coal, a subsidiary of Anglo American, established Anglo Inyosi Coal with BEE partners, and broad-based partners that included the Women's Development Bank (WDB), a charitable trust set up to operate development programs aimed at poor rural women in Mpumalanga and Limpopo provinces. The company was expected to establish a community trust to benefit those who lived in the vicinity of the coal operations and an employee share ownership was also expected to be established. The company value was estimated to be R7 billion and project financing was expected to come from Anglo Coal. Yet HDSA equity participation in the newly created company was only 27% (Mbendi, February 8, 2007; *Mining Weekl*y, February 8, 2007).

Anglo Platinum reported a series of joint ventures with some of the largest BEE companies, Mvelaphand Resources, another with Lebowa Platinum Mine (p.41), as well as a 2006 transaction with Bakgatla-Ba-Kgafela traditional community (p.41). It also reported the establishment of an employee share ownership plan that transferred ownership of 1.5% of Anglo Platinum to all permanent employees not benefiting from any other Company share scheme. Ninety percent of these were HDSAs. This is an ESOP trust controlled and managed by union representatives which distributed its first Kotula shares to 51,000 employees in 2009 (Anglo Platinum, 2010: 41).

More recently government is expressing dissatisfaction with the extent of broad-based economic empowerment and is threatening to tighten BEE rules, as indicated by Deputy President Kgalema Motlanthe in February 2010 who claimed that the 'story is dominated by a few individuals benefiting again and again' (*Mail and Guardian*, February 4, 2010). In July, the Minister of Mineral Resources, voiced her dissatisfaction at the poor achievements as it was clear the 2014 Mining Charter deadline of 26% HDSA ownership would not be met as only 9% of shareholders in mining were HDSA, concluding that the 'racial pattern of mining ownership had not changed fundamentally since the end of apartheid'. Problems with access to funding because of the economic downturn were noted as were the problems with making ownership meaningful (*Business Day*, July 1, 2010). This builds on critiques that have come from a variety of sources, the most vociferous being Moeletsi Mbeki, Deputy Chairman of the South African Institute of International Affairs and the brother of Thabo Mbeki former South African president, who claims that BEE represents little more than crony capitalism that has entrenched the rich and poor divide and serves to encourage corruption (Mbeki, 2009).

Companies and Communities

Companies now report their activities around social development and environmental protection in extensive annual social reports that use CSR and governance language of the World Bank and the IFC. Anglo Platinum for example spoke of the need to make sure 'benefits and skills created by mining will outlast the mining activities and ensure sustainable communities beyond the life of the mine' (Anglo Platinum, 2010: 17). The bigger companies such as Anglo Platinum, Implats, Lonmin and Xstrata produce the most extensive reports while BEE companies such as African Rainbow Minerals, Nkwe Platinum and others produce fewer reports (Bench Marks, 2008: 31).

Companies report on activities required by the Mining Charter to maintain their mining license included in their social, labour and environmental plans and commitments to improve health and safety. Anglo Platinum's report for 2009 candidly admitted its concerns for relations with the community are driven by the 'impact on our social license to operate' (Anglo Platinum, 2010:4 5). Thus we see reports organized in the form of a 'scorecard' of items required by the Mining Charter.

In 2005, Impala Platinum reported spending R10 million on poverty alleviation, education and healthcare projects at the community level. In 2006, the plan was to increase spending and add home-based care visits. They have also engaged in enterprise development by modifying their procurement practices to buy more from local suppliers that are also HDSA compliant. They have introduced a system of rating suppliers according to Mining Charter requirements (Impala Platinum, 2005: 26).

In 2006, Anglo American PLC reported spending R52.2 million on community projects including contributing to building roads, schools, houses and clinics and to assist rural development activity. Activities were concentrated in 6 main areas: charity, education, infrastructure, health and welfare, community capacity building, small, medium and micro-enterprise development. Projects are generally small. In education for example the objective is to set up bridging programs to support the quality of existing education activities undertaken by government (Anglo American PLC, 2007).

In 2009, Anglo Platinum's reporting became increasingly sophisticated, using independent auditors such as the Environmental Resources Management, and an external review panel to produce its sustainability report for which it won awards and commendations (Anglo Platinum, 2010: 26). It reported spending R245 million (p. 90) with investment in job creation, skills development, education and health, local business development, procurement opportunities and infrastructural provision (pp. 9; 16). Forty-three percent of spending was on infrastructural projects around the mine's operations including building classrooms, roads, rehabilitating schools and building a community centre for the tribal community (p. 88). Another 27% was spent on Adult Basic Education (ABET) (p. 76), another Charter requirement. Among other education activities, the company established a bursary program which allowed 614 students access to mining related programs and which had over the years made it possible for an increased number of jobs in the company to the HDSA, reaching 48% of management staff in 2009, as 76.4% of bursars were HDSA (pp.76; 82). The company also reports on its spending on the relocation of communities adjacent to the mines, to be explained below.

A significant portion of the infrastructure spending was used to build access roads in the area of Rustenburg in a joint project with the Rustenburg local municipality. This was aimed at assisting in public transport but also as part of the company's activities around its home ownership scheme in which it encouraged its workers from single accommodation villages (hostels), and some from informal settlements to buy a permanent home (pp. 86-87). Yet in 2009, its reports no spending on direct housing issues (p. 90). More on this below.

Companies indicate they undertake their community work in conjunction with municipal governments through the municipalities' Integrated Development Plan (IDP) as required by government in order to link company activity with longer term local economic development goals in communities and municipalities adjacent to the mines as well as in labour-sending areas, inside and outside of South Africa. The government sees these as jumping off points, along the lines of growth points which could catalyze further municipal and regional development

(Interview Zikalal, 2007; Anglo American, 2007). The 2009 Anglo Platinum reports some instances of cooperation between the municipality of Rustenburg and the company (Anglo Platinum, 2010). Yet there is a recognition that the IDP process remains a weak organ of community and regional development. A 2005 study demonstrates that social development projects are poorly integrated into the IDPs and the projects also have a high failure rate as large amounts of money are spent without ongoing advice and attention to sustainability or adequate monitoring and evaluation and communities have a lack of skills in this area (Limpitlaw, 2005).

Litigation

The transformation of relations between company and communities using voluntary measures is clearly limited. We will demonstrate below the extent to which communities have had to resort to litigation to gain recognition of their land and mineral rights. The most glaring examples of this have been in the new rich platinum areas in Limpopo and North West provinces where vast new platinum deposits are being developed and have resulted in significant tension between mining companies and communities.

The most striking is between the Royal Bafokeng Nation (RBN) and Implats Platinum Holdings near Rustenburg in North West Province. The 300,000 member Bafokeng nation had been buying back their seized land from the different white governments over the years but they had to fight a 10 year legal battle against Implats to win back royalty rights for platinum mined on their land since the 1960s. RBN won a R827 million settlement, with a continued share of royalty earnings, later raised to 22% in 1998. Implats then took the RBN on as an empowerment partner, giving them a seat on the Implats board and enabling them to buy further shares in the company at a discounted price. The Bafokeng formed the Royal Bafokeng Resources Holdings to manage their now significant mining interests and diversify into other sectors. The Bafokeng's intention was to foster sustainable development and diversify the economy away from its resource base and to improve schools, roads and clinics (*Business Report*, December 15, 2005).

Other smaller deals have also required litigation as a result of previous dispossessions and relocations with settlements achieved either through a lands claim process or other measures. These involved the Bakwena Ba Mogopa traditional community, the Bapo Ba Mogale traditional community, and the Ga Mawela traditional community, in Limpopo province. In the platinum rich Bushveld area in Limpopo province, and in Rustenburg, mining company relations with traditional communities have been conflictual resulting in protests and court actions by the communities involved. Communities have sought compensation for damages to their homes from mine blasting, water contamination, the loss of land for subsistence agriculture and the removal of farmers to inhospitable land with little access to water resulting in the loss of livelihood and their traditional way of life. Community protests have often been met with brutality by the police, followed by legal action taken by the company. Further displacements are anticipated as mining is moving into densely populated rural areas (Curtis, 2008: 5-6). The relocation process has been made worse as the mining companies do not consult directly with community members but rely instead on inputs from non-elected Section 21 companies (Mines and Communities, 2007). These are non-governmental organizations, known as Section 21 companies because of their non-profit status under the Companies Act, who speak for the community and act as go-betweens with mining companies. They also sign documents and receive community claims.

One example is between Anglo Platinum (owned by Anglo-American plc) and the black farming communities at Maandagshoek. The mining company instructed tribal people to be removed as they were objecting to company encroachment over land they considered their own. The police fired rubber bullets and live ammunition, injuring many. Well known labour and community lawyer, Richard Spoor, has taken on the case in court while Angloplat retaliated with attempts to gag him (Mines and Communities, 2006). In another, 7000 residents of the Ga-Pila village, located near the town of Mokopane on the northern limb of the Bushveld complex in Limpopo, were 'resettled' in 2003 because of the expansion of Anglo Platinum's Potgietersrus Platinums Ltd (PPL) and the need for more space to store waste rock. The company entered into an agreement with a Section 21 company and gave each family R5000 plus a replacement home in a new village built by Anglo Platinum. Villagers claim this relocation was in fact a forced removal as they were not given a choice to move or not. They were not informed of their rights nor were they able to negotiate the terms of the relocation. Anglo Platinum spoke only to a Section 21 company, and refused to talk directly to the broader community in spite of the existence of an active community committee with hundreds of members (Curtis, 2008:14). Actionaid South Africa reported that 25 families (250 people in all) of the Ga-Pila community refused to be relocated because the compensation was insufficient to balance their lost livelihoods and their farming life could not be sustained in the new area, in Sterkwater. They are now surrounded by encroaching mining dumps that are fencing off their grazing and ploughing land. The families that did move to Sterkwater report difficulties with maintaining their subsistence livelihoods. Community members report Anglo Platinum's appointment of community members to the paid direction of a mine-established committee (ActionAid, 2010). Curtis (2008) goes on to document similar problems faced by Ga Puka, Ga Molekane and Ga Chaba communities all facing the strength of Anglo Platinum. Jubilee South Africa reports problems for other communities, including the Ga Machikiri and Ga Molekane over problems with air, water and damaged houses caused by mining activity especially the expansion of the mine dump (Jubilee South Africa, 2009).

Other companies have drawn similar criticism according to Jubilee South Africa, Lonmin is also exploring for platinum in Ga-Chaba, Hans and Noordkoppie (near Mokopane) again without community consent and is refusing to talk to community structures while it tries to enter into what Jubilee considers to be a dubious agreement with the tribal authority. In the Wild Coast area of Eastern Cape Province, which to date has not been a province with any significant mining, 5 villages are resisting mining attempts to engage in titanium strip mining. The land had previously been declared a protected area because of its environmental importance and significant tourism earnings. The DME has given the go ahead to prospect in spite of opposition from communities and others, and the South African Human Rights Commission is also examining this case as they have received a petition put to it by the communities (Jubilee, 2007).

The South African Human Rights Commission followed up on community claims in 2008 by investigating the Anglo Platinum relations with the communities around the PPL Mine in Limpopo arguing that business and extractive industries can exacerbate the vulnerabilities of some communities if these vulnerabilities have not been adequately addressed. It therefore undertook to evaluate not only the impact of the physical resettlement process itself but the ongoing vulnerabilities that companies must continue to assess and address. It found high degrees of mistrust in the community aimed at the company. The feeling was that the company had abandoned its responsibility to consult with the community, delegating it instead to Chapter 21 companies and as a consequence community grievances were not addressed nor their interests protected by the company. It also found that communities in proximity to the mine, but who had not been relocated, may be facing even more problems and suffering due to the ongoing impact of living in proximity to the mine (SAHRC, 2008: iv).

In its 2009 report, Anglo Platinum indicated it recognized the harm caused by some resettlements and sought to improve these relationships with communities. In 2008, it appointed Environmental Resources Management Ltd (ERM), a private body, to review the resettlement processes and help the company assess these relationships. Initially the report was meant to be confidential to Anglo Platinum which the mining company then chose to make public (See ERM 2010). The Anglo Platinum 2009 reports that ERM noted that 'the overall resettlement was undermined by inadequate management of the less tangible and ultimately more complex social and community relations aspects of resettlement'. In the Ga Pila case particularly, ERM found that practices used at the time of the resettlement did not meet International Finance Corporation (IFC) best practice standards but notes that these standards were not yet in place when the resettlements were undertaken. ERM notes the company did better in the Motlhotlo case, having learned from the Ga Pila experience (Anglo Platinum, 2010: 54). Bench Marks reports attempts in 2010 to improve relations with the relocated Magobading Community in Limpopo, developing agreements to repair houses but the process collapsed, according to Bench Marks because of the manipulation of Anglo Platinum personnel (Bench Marks, 2010).

In the areas surrounding the Mogalakwena Mine where the Ga Pila are situated, Anglo Platinum reports spending, by 2009, R770 million including lawyers fees, Section 21 fees, infrastructural development, the development of 956 houses that meet minimum Department of Housing standards, paying a financial compensation of R20,000, settling in allowances, the establishment of additional trust accounts with additional funds in exchange for being given a vacant occupation of the land (Anglo Platinum, 2010: 53). I undertook an independent visit to the area in 2009 and saw ongoing problems with resettlement as a committee demanding improvements for those still staying behind remained active. A tour revealed the remnants of many houses of displaced villagers destroyed by the company in order to make room for waste rock extracted from the open pit. Several houses visited remained in poor conditions, one in particular had been severally damaged and remained unrepaired, without bathroom facilities for a large family. The mineworker who lived there has been waiting for the company to repair it for several years.

It seems that some money is trickling down to communities yet displaced communities say they are seeing little of it and it has been inadequate to replace their farms and way of life. Consultation with communities has been unsatisfactory, riddled with distrust, with little chance of developing into partnerships and in many cases has required litigation in order to gain recognition for their rights. Any spending that has taken place in a community has been controlled by companies. Much of the spending that has taken place has been required by government legislation, especially the Mining Charter.

Much of the social spending announced by companies has been absorbed by infrastructure development and training. Infrastructure spending tends to be high in mines, especially in a new mine. Training costs are often high in mining and in the case of South Africa where the shortage of science and engineering skills is particularly glaring, training costs are even higher. The key is the Mining Charter requirement to hire South Africans, including HDSA to fill engineering and management positions thus required the training of South Africans to fill those positions, as well as mid-level technicians. Another large part of Mining Charter required social spending is payment for basic literacy and numeracy programs (ABET) and improvements in health and safety measures.

Though mining companies state their willingness to comply with the requirements of the Mining Charter publicly, clearly a part of this is attributed to a core element of CSR – the value of appearing to be a good corporate citizen. Yet, The Economist indicated that ‘the original idea for BEE actually came from white business leaders. Though some genuinely wanted to make the system a bit fairer, most saw it as a good way to ward off any attempt at nationalization by the new black government’ (The Economist*,* 2010: 9). On the other hand, South Africa has 88% of the known world deposits of platinum, and together with the Soviet Union and to a lesser extent Zimbabwe, are the only countries with important platinum deposits. Other sources are a by-product of other mineral mining, including nickel – in the Sudbury basin in Ontario and in the Absaroka range in Montana. Its value is derived from its scarcity combined with its many industrial uses including in vehicle emission control devises and growing popularity in jewellery as well as a valuable investment instrument (Gold Eagle, 1997). Platinum is surpassing South Africa’s other traditional important mining sectors of gold and coal both of which have reduced their output and the size of their workforce while platinum’s has increased significantly (RSA, Statistics SA, 2010).

Thus we have seen little transformation in the industry and especially very little that is the product of a ‘transformed’ corporate citizen willing to act voluntarily and in partnership with communities, without the requirements of legislation and litigation. The following will compare this approach with labour’s struggle to transform the industry and its role in South Africa.

Labour Struggle and the Reorganization of Production

In spite of its participation in consultations around the formulation of the Mining Charter, labour through the National Union of Mineworkers (NUM) has criticized the limits of transformation it has brought about, arguing the focus on black economic empowerment only leads to the emergence of a black capitalist class and the Africanization of skilled and management level employment (SALB, 2002). Labour struggles focus instead on improving workers living and working conditions. During apartheid, these struggles were directed at overcoming low wages, high injury and death rates, racially defined skills categories and the hardship of migrant labour. Today, the concerns are to ensure decent work, decent pay and a decent quality of life and protecting workers from the effects of restructuring that has led to job losses and the emergence of a two-tiered mining sector resulting from the increased use of sub-contracting companies and the outsourcing of services thus making increasing numbers of workers more vulnerable, with poorer wages and conditions of employment (NUM, 2003b: 39; 43). Labour's focus therefore is on activities aimed at reducing injury and death rates, increasing wages, skill recognition and improvements in housing that are linked to many of the key elements around mining's organization of production.

Wages

NUM continues the fight for increased wages, resulting in regular walk-outs and threats of production disruption. The objective is to correct a historical wrong and to improve real wages. Wages have increased in real terms between 1988 and 2007 from R59, 567 per year to R101, 097. Yet they have fallen as a share of total mining revenue from 27% to 22.4% during the same time (RSA, 2009a:10). Figures from the Reserve Bank of South Africa show that at constant 2000 prices, monthly median wages in mining increased from R1798 to R2344 between 2001 and 2005, and compared to other sectors, unionized workers have a 'premium' as they have the best improvements over non-unionized workers (Hlekiso and Mahlo, 2006: 7; 8). NALEDI reports that in the period between 2006 and 2008, negotiated wage increases were little more than 1% to 1.7% above the Consumer Price Index (NALEDI, 2008:7). In the 2007 gold wage agreement, entry ground level workers earned a minimum basic wage of R3000 per month (Chamber of Mines, 2010). In coal, only four companies signed the same clause – Anglo Coal, Xstrata Coal, Optimum and Eyesizwe Collieries (Agreement between National Union of Mineworkers and Solidarity and UASA, 2007). By 2010, this would increase to R4000 a month as a basic minimum wage (Agreement Gold, 2009: 3).

Yet mining companies are turning to the increased use of contract workers as a wider array of mining activity is being sub-contracted out to companies that are not bound by collective agreements. Crush (2001) documents the rapid growth of sub-contract activity since 1990. The Mining Weekly (South Africa) estimated that it would grow further as contracting companies are going beyond the usual practices that required the use of professionals and special skills to taking on the "bread and butter work such as stopping and development" (Mining Weekly, 1999).

Gold Fields Limited reports 17% of its workforce in its 4 South African operations to be contract workers (Gold Fields, 2010). As sub-contracting companies are getting bigger and more diversified, they will often operate a mine totally on behalf of another company. By 2004, Dias calculates the total number of contract workers to be between one fifth to one fourth of the entire mining workforce (Dias, 2004: 29).

NUM has worked extensively to reduce inequalities between permanent and contract workers by gradually succeeding in introducing the relevant language into the agreements to increase the equality of wages and conditions. In the 2003 Agreement, they introduced a clause that stipulated ‘the main employer shall take responsibility for the actions of the contractor in the area of health and safety standards, training and enforcement’ (Agreement Collieries, 2003: 8). The 2007 coal agreement and the 2009 gold agreement included a clause in which companies introduced a general guiding principle that stated conditions of employment for contractors should be in line with those of the main company (Agreement Collieries, 2007: 6; Agreement Gold, 2009: 6). Other clauses addressed the union monitoring and audits of work done by contractors in order to identify with greater transparency the jobs done by contract workers as it is often difficult for the union at branch levels to distinguish between groups of workers.

Union struggles also address improvements in allowances, employee share ownership programs (ESOPs) that are part of the BBEEE program, company subsidies for medical schemes (insurance), improving pension programs, access to anti-retrovirals as well as protecting trade union rights. NUM has long been involved in support to rural labour recruiting communities to which retired or retrenched workers return. One of the ways they do this is to make sure companies observe the requirements to develop social plans for labour-sending communities. NUM also developed the Mineworkers Investment Company (MIC) in 1995 to generate the funding needed to contribute to social programs and the development of these communities undertaken through the Mineworkers Investment Trust (MIT). The focus is on income generating activities aimed at creating new sources of income for workers to compensate for inadequate pensions. The MIC is considered a BEE partner and works with other investment companies (NUM, MIC, 2003).

Skills

The issue of skills is central to the industry's organization of production and historic reliance on unskilled, temporary workers and goes hand in hand with increasing wages and improving health and safety standards. It is also linked to the issue of mining mechanization favoured by companies, but a source of job looses for the unions, given the lack of employment alternatives in the South African economy, especially for older workers.

For industry, meeting the Mining Charter requirements to achieve greater equity among its workforce is to concentrate on improving skills among the skilled, technical and managerial job categories with a good deal of its education and training budget concentrating on scholarships and the acquisition of the mine blasting license, certificates and degrees in areas such as trade apprenticeships, engineering learnerships which provide the skills needed to become a mine overseer or junior engineer. Companies now have to pay a training levy administered by the state run Mining Qualification Authority geared to upgrading in those areas. The union has labeled this the Africanization of the sector which had previously been dominated by non-Africans. The union puts its efforts instead into having the skill levels of workers in unskilled and semi-skilled categories recognized and upgraded. Part of the difficulty in mining is that the skills needed to obtain key production jobs such as operators (i.e. drill operators), often categorized as semi-skilled, are not acquired through education but through on-the-job experience with many mineworkers enter the industry with no mining skills. The struggle occurs as a result over the recognition of those acquired skills.

In South Africa, as in Zimbabwe, mines were organized along a steep hierarchy of tasks and multiple job titles, intrinsically linked to the job colour bar. Jobs were divided and categorized according to the Patterson grading scheme whose divisions are based on decision-making alone, with all mine jobs grouped into 6 decision-making bands. The most significant is band A – unskilled; band B – semi-skilled; band C – skilled, bands D to F are different management bands. The difficulty for workers is to move up from one band to another, but somewhat easier to move up skill levels or grades within a band (See Dansereau 2006 & 2002). NUM's historical struggles have been over the elimination of racism at the workplace, it also argues for a flatter structure by eliminating the Paterson scheme and replacing it with another grading scheme that includes levels of skills, responsibilities, effort and working conditions, as well as workplace hazards. A valid grading system should also be able to facilitate clear career paths and recognize and remunerate prior learning and relevant additional acquired skills (NUM, 2004).

The parties agreed in 1997 to begin discussing a reform of the grading scheme (Agreement 1997, Annexure D) but the process has been difficult. The union has made some headway in bringing about negotiated changes but there has not been agreement over the use of single model. Instead different models are now being applied by individual companies. So there is a mixture – some mines use a different model that retains some Paterson elements while others continue using Paterson. Struggles over finding a new grading scheme have on occasion been displaced by workers' concerns over wages, ongoing problems with mining fatalities, injuries and retrenchments. Grading issues also require training union branch personnel to make sure they can oversee company implementation of these reforms (Majadibodu, 2008).

The union has been more effective in improving the conditions of workers in the lower grades by resorting to up-rolling. The objective is to eliminate the lowest graded jobs, by moving them into higher grades which has the effect of increasing wages of the least paid and bringing up the minimum wage in the industry, at least to the point where they meet the living wage line (NUM, 2004: 7). This has applied mostly to the A band unskilled categories. In the 1996 Review of Wages, the wage increment list included grade A2 employees in many mines, but absent in several, with grade A3 present in all of them. Wages for Grade A2 underground employees ranged, after increases for that year, between R684 to R1079. Wages for surface workers at equivalent grade rank were a little lower, as they usually are. (Agreement 1996) In the 2003-5 Review of Wages (Gold), there are no Grade A2's mentioned, the minimum being A3 and a clause indicates Grade A3 wages for surface workers will be rolled-up to the wage level of grade A4 starting in July 2004 (Agreement Gold, 2003: 4). In the 2003 coal agreement, the Review of Wages indicates no grade A2s, and several mines reported no grade A3s (Agreement Coal, 2003: Annexure E). In the 2007 Collieries Agreement, some individual mines were negotiating up-rolling from grades B1 to B2 (this is in the semi-skilled band). In the most recent gold agreement, 2009 to 2011, clauses covered category A3 and above, without mention of A2, with a minimum wage of R3647 for underground workers increasing to R4000/month in July 2010 (Agreement Gold, 2009: 3).

The industry response to this union pressure to upgrade has been to introduce multi-skilling or broad-banding. The objective is to increase workforce flexible and to allow for some labour-shedding as it introduced in conjunction with some new technology. Multi-skilling requires broadening the training of workers so that each can do a wider set of tasks, often within blended self-directed work teams which have the advantage of functioning even in the absence of missing team members. NUM explains this as a collapse of job categories as all jobs are paid the same within the broader band and since some companies have introduced the work teams without using job evaluations, some workers have been cheated (NUM, 2004: 6). NUM has responded by demanding greater training and education for its members so there is an actual increase in skills, not only the assignment of a broader set of tasks and greater movement of workers from one job to another as these result only in multi-tasking and greater work intensity as workers are required to do more tasks within their blended job titles. The acquisition of skills by permanent workers is also hindered by the introduction of contractors to do specialized and skilled jobs, especially as they are now brought in to do core jobs.

Housing

Another significant area of worker struggle, and a key to industry transformation, is the issue of housing at the mines. Companies have indicated their commitment to family housing and the elimination of single-sex hostels as required by the Mining Charter by 2013. Transforming mine housing has several outcomes. It addresses issues of migrancy and control at the mines as single-sex hostels were used to house single male workers whose families remained in the rural areas, and in compounds divided according to sending regions or ethnicity. Several men were housed in a single room with few facilities. Eliminating the compounds in favour of off-mine housing reduces this control and makes it possible for workers to live with their families. Establishing family housing at the mines could result in the creation of permanent communities brought into undeveloped areas as the presence of waged workers and their families could act as a local market. The downside of course is that, if not done properly, the result could be the creation of an encampment of sub-standard informal housing that has a detrimental impact on workers, communities and the environment and the disruption of traditional communities. The issue of housing therefore addresses the stabilization of the workforce, the elimination of the migrant labour system and regional development issues.

NUM's objective is also the elimination of the hostel system, arguing that workers should be paid a living-out allowance instead. Yet it has also argued that it is necessary to eliminate the discrimination in housing allocation that saw heavily subsidized, comfortable housing for workers in senior grades, while black migrant junior (semi-skilled or unskilled) workers lived in crowded, single-sex hostels. Companies are now de-concentrating the hostels, providing a living-out allowance for off-mine housing and some mines have instituted home ownership schemes. The union does not see home ownership as a solution as many workers, especially the still large number of migrant workers, are not interested in buying or renting a house near the mine as it would cost R1030 or more when they could find accommodation in a shack for R300 a month. This is not only because of low wages but because for many their long term strategy is to return to their home area and build for their retirement, whether in South Africa or in surrounding countries as they would not be able to maintain an urban livelihood after losing their job at the mine. The increased cost of these purchased or rented houses is accompanied by higher service and transport costs. NUM's solution then is to push for increases in housing allowances. It made it an issue in 2007 collective bargaining, seeking increases from R1039 a month to R1500 (Interview Diamond, 2007). Mines covered by the 2009 Gold Agreement will increase the living out allowance to R1400/month by September 2010. The Coal agreement for the same period does not include specific amounts but rate increases (Agreement Gold, 2009: 4; Agreement Collieries, 2009: 10).

Mining housing is changing however. In a 2004 study, Dias indicated 66% of mines reported still using single sex hostels, and 45% have family houses. Most hostels are old as the study found as all but 7% of hostels were built before 1978. Sixty-five percent of these living in hostel rooms accommodated an average of 8 people (Dias, 2004, pp. 8; 71). In 2005, NUM stated that 70% of workers were still lodged in hostels even though companies claim they had made significant strides in switching to family housing (Montashe, 2005). Companies, including Lonmin, Anglo Platinum, Gold Fields and Anglogold, have been undertaking reforms to their hostels – reducing occupation to one person or small families, or moving away from hostel arrangements completely. Many of the hostels are now occupied by the growing number of contract workers while permanent workers increasingly live in informal housing. There is a growing complexity in communities surrounding mining. There is an appearance of favouritism in access to housing that has created some confusion and even conflict that adds to the already existing confusion over jurisdiction between the structures of local government and traditional authorities that exist in the areas surrounding the mines (Bench Marks, 2008).

The greater diversity in housing is compounded by a greater diversity in the workforce. The industry continues to rely on migrant workers though the pattern has changed somewhat. Initially workers migrated on a yearly contract from Lesotho, Swaziland, Malawi, Mozambique and Zimbabwe but by the late 1970s, prompted by changes in policy from their now independent neighbours, mineworkers increasingly came from South Africa's rural areas (Republic of South Africa, Department of Labour, 1996:7).

The percentage of foreign workers varies significantly from one mineral to another as gold workers are just under half of all mineworkers in South Africa, and 71% of these are foreign workers, with lower numbers in coal and platinum (Dias, 2004: 29). The 2001 Population Census reports only 21% of the mineworkers born outside the country with ongoing retrenchments in the sector, the numbers have fallen further. Add to this the growing number of contract workers which will increase the complexity of labour organizing on the mines (Crush, 2001). Union organizing has also changed with the dismantling of the compound system, formerly important centers of labour solidarity and NUM support (Buhlungu and Bezendenhout, 2008).

Conclusion

Thus union efforts have been geared to transforming the industry by addressing the three pillars that historically structured its organization of production – low wages, low skill levels and the migrant workforce. This approach has far more transformational capacity than the corporate social responsibility model which includes a series of voluntary measures in which the state will increase its mining rent while voluntarily minimizing its impact on communities and the environment.

The union's structural approach addresses key elements that have the potential to contribute to industry transformation as they address issues of wealth redistribution (wages), levels of productivity (skills), the creation of a stable workforce (housing). Transforming the industry by transforming its organization of production has the potential to change the industry's role South Africa and given the importance of mining to South Africa, bring important changes to the country as a whole as it addresses many fundamental pillars of social organization such as the nature of the working class and linking it to the generation of a domestic market as well as the creation of permanent well established communities. Indirectly, the creation of a domestic market will make it possible to develop an industrial strategy based on local beneficiation of minerals and their transformation into end-use products thus moving away from a reliance on the export of raw materials.

Not only is the labour approach more significant in scope, it is clear that the voluntary measures on which CSR hinges do not work. Company resistance to labour measures as reflected in the increased use of contract labour and multi-tasking reflect company unwillingness to transform and remind us that their main interest is to maximize profit and control the direction of transformation. This is also evident in relations with communities as section 21 companies are used instead of direct negotiations with communities and in company reports that make obligations under the Mining Charter seem like voluntary largesse. The need for communities to rely on litigation and other forms of struggle to gain the recognition of their rights belies the extent to which voluntary measures can be considered adequate.

The weakness of voluntary measures aimed at transforming the industry's role within the country underlines the importance of a state with regulatory capacity.

The articulation of company transformation objectives within the language of corporate social responsibility obscures the real objective of capital accumulation and is used in the attempt to maintain control over the process of change that is demanded of the industry in South Africa's post-apartheid period. Branding oneself as good corporate citizens provides companies with useful tools that facilitate the real objective in this new dispensation. The winds of change make it imperative to develop partnerships with those who really count - the emerging new class of capitalists close to the ruling party, their BEE partners while complying with government regulations at the same time. This task is facilitated by the CSR emphasis on volunteer regulations and the requirements to consult especially if these will act as a countervailing force to possible threats of nationalization. Furthermore, company claims of good corporate citizenship gain for them significant resonance and support from the World Bank and the International Finance Corporation – key players in the broader economic direction South Africa might decide to undertake.

Endnotes

1. Professor, Saint Mary's University, journallcs.tcs@smu.ca. Thanks are extended to the external reviewers for their insightful comments. The value of the South African Rand has fluctuated since 1994, hovering now around SA Rands7.10 to the Canadian dollar. For more precise calculations, please consult www.xe.com.

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