

**CRITICAL ANALYSIS OF THE LAW REGULATING STATE INTERVENTION IN THE  
MINERAL SECTOR AND NATIONALISATION OF SOUTH AFRICAN MINES**

**BY**

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## **ABSTRACT.**

This mini-dissertation relates to the mode of ownership of the country's natural, mineral and petroleum resources, their contribution to the economy, the Growth Domestic Income and the overall role played by these resources to better the lives of the ordinary citizens and their impact on the socio economic circumstances in general. In terms of the previous mining legislation in South Africa, mineral rights were held privately and in some instances by the state. Following the 1994 democratic breakthrough, the Mineral and Petroleum resources Development Act now vests the ownership of mineral rights in the state as the custodian and owner on behalf of the people of South Africa and the mineral resources are the common heritage of the people. The vesting of the mineral rights does not however interfere with the right to private ownership of property which is expressly guaranteed by the property clause in the constitution. The new Mining legislative regime with specific and particular reference to the Mineral and Petroleum Resources Development Act and National Environmental Management Act are precisely paced to ensure optimal exploitation of natural resources while promoting sustainable development.

**DECLARATION BY SUPERVISOR**

I, **Adv. Lufuno Tokyo Nevondwe**, hereby declare that this mini-dissertation by **Mmapau Justin Mafa** for the degree of Master of Laws (LLM) in Development Management Law be accepted for examination.

Signed-----

Date-----

**Adv. Lufuno Tokyo Nevondwe**

## DECLARATION BY STUDENT

I, **Mmapau Justin Mafa** declare that the mini-dissertation submitted to the University of Limpopo (Turfloop Campus) for the degree of Masters of Laws (LLM) in Development and Management Law has not been previously submitted by me for a degree at this university or any other university, that it is my own work and in design and execution all material contain herein has been dully acknowledged.

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**Mmapau Justin Mafa (mr)**

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**Date**

## **DEDICATION**

To my wife Lydia Makola for being such a wonderful wife and for her patience and understanding during difficult times on my academic journey. To my ancestors for guiding me throughout this process of doing this work. Thank you.



## **ACKNOWLEDGEMENTS**

First of all, I am grateful to God, the Almighty, for giving me life, protecting me and blessing me so far. I will like to thank him for his grace and wonderful love he gave to me in order to complete my Master's degree and this mini-dissertation.

I wish to express my indebtedness to Adv. Lufuno Tokyo Nevondwe, my supervisor who kindly accepted to supervise my work despite a lot of other commitments he had. My father and Mother Sinamela Abram Mafa and Kodi Belinda Ragophala for giving me support during my studies.

My wife to whom this work is dedicated due to all her sacrifices. I thank all my family as well for their support, encouragement and love. I also like to thank all comrades in the African National Congress Youth League (ANCYL) and African National Congress (ANC) who contributed to discussions throughout this work. I also wish convey a special thanks to Kgatla Itumeleng and Charles Mohwibidu as Comrades and friends in the academia who encouraged me to complete my mini dissertation.

I also wish to convey my gratitude to all my lecturers at the University of Limpopo that lectured me through my years of study at the University. Finally, I also benefited from my classmates and colleague and would like to thank each and every one of them.

## LIST OF ABBREVIATIONS

ANC	African National Congress
ANCYL	African National Congress Youth League
BEE	Black Economic Empowerment
COSATU	Congress of South African Trade Unions
DMR	Department of Mineral Resources
GDP	Gross Domestic products
JSE	Johannesburg Stocks Exchange
MDM	Mass Democratic Movements
MPRDA	Mineral and petroleum Resources Development Act
NEMA	National Environmental Management Act
NGC	National General Council
NUM	National Union of Mine Workers
SACP	South African Communist Party
PPP	Public Private Partnership
SANDF	South African National Defence Force
SAPS	South African Police Services

UK United Kingdom

USA United States of America

## **TABLE OF STATUTES**

1. Constitution of the republic of South Africa Act, 108 1996
2. Diamonds Act, 58 of 1986
3. Diamonds Amendment Act, 29 of 2005
4. Diamonds Second Amendment Act, 30 of 2005
5. Mineral and Petroleum Resources Amendment Act, 49 of 2008
6. Minerals and Petroleum Resources Development Act, 28 2002
7. National Environmental Management Act, 107 1998
8. Precious Metals Act, 37 of 2005
9. The Precious Metals Amendment Bill, 2011



## CHAPTER ONE: INTRODUCTION

### 1.1. Historical background to the study

Since the discovery of diamonds and gold in 1867, South African legislature has taken an active part in the development of this complex area of law.<sup>1</sup> The periods before and after the establishment of the Union of South Africa in 1910 were characterised by the adoption of a plethora of legislation on mining, minerals and mining safety matters. During the sixties four important consolidating statutes were passed which, together with subsequent amendments, comprised the legislative basis.<sup>2</sup>

The history of South African mining law has been to reward and protect the interest of private enterprise in the exploitation of minerals. However, this is not to say that the state had no control involvement in mining activities. Historically, the state has always retained control over mining operations, and under the Mining Rights Act.<sup>3</sup> The state even held the exclusive authority to confer mineral rights in respect of precious metals.<sup>4</sup> The minerals Act passed in 1991<sup>5</sup> reorganised the mineral law of South Africa and became the legal basis for any and all mineral and prospecting rights in existence prior to the coming in to operation of the current mining legislation.<sup>6</sup>

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<sup>1</sup> Davenport T *A modern history* (2000)192-3.

<sup>2</sup> *Ibid.*

<sup>3</sup> Act 20 of 1967

<sup>4</sup> *Ibid.*

<sup>5</sup> Minerals Act 50 Of 1991.

<sup>6</sup> Preamble provides that “The purpose of the act is to regulate the prospecting for and the optimal exploitation, processing and utilization of minerals; to regulate the orderly utilization and the rehabilitation of land surface during and after prospecting and mining operations.

Prior to the enactment of the Minerals Act<sup>7</sup>, mineral law was characterised by a series of statutes that were differentiated by both mineral type which they applied to and the area of mining law they regulated. The three primary effects of the Minerals Act<sup>8</sup> were that it consolidated the fragmented mineral law, caused all mineral and prospecting rights to conform to a common law basis and amended the balance between state and private interests in minerals firmly in favour of private enterprise.<sup>9</sup>

The Minerals Act<sup>10</sup> regulated the method and manner in which mineral rights were exercised through the use of a system of authorisations. These amounted to a system of common law rights.

In order to have a clear understanding on the significance and viability of the nationalization of mines in South Africa so as to achieve economic freedom as envisaged by the ANCYL discussion document<sup>11</sup> on nationalization, One has to note take into account the possible mode of nationalization, the impact of such an initiative on the economy of the country guided by international economic balance of forces and most importantly the primary beneficiaries of the nationalization program given their relation with the means of production.

The nationalization debate was raised for the first time and firmly in the popular 1955 congress of the people which adopted the freedom charter in Kliptown, the freedom charter which has been a beacon of hope for the ordinary masses of South Africa. The

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<sup>7</sup> Act, 50 of 1991.

<sup>8</sup> *ibid.*

<sup>9</sup> Narshai R, Expropriation under the Mineral Petroleum Resources Development Act , 28 of 2002, University of the Western Cape (UWC), LLM dissertation.

<sup>10</sup> Act, 50 of 1991.

<sup>11</sup> The ANC Youth League 24<sup>th</sup> Congress Resolution, Economic Transformation

African National Congress (ANC) and Mass Democratic Movements (MDM) structures have always been vocal about economic empowerment so as to ease the fight on socio economic rights and the well-being of the majority of the people of South Africa. The struggle was ultimately reduced in the race issue rather than class when the ANC led alliance entered into a peaceful transfer of political power which saw a lot of compromises giving birth to the Interim Constitution<sup>12</sup> advocating for peace and non-racialism but yet too protective on the private property owners, whether the decision for a negotiated settlement amount to the selling out of the revolution of the oppressed is a question which needs answer from young people through concrete analysis.

The mining sector in South Africa is majorly in the hands of the few non-black people from South Africa and abroad in terms of ownership and management. South Africa has got a total of 120 years conducting formal mining and has a total of 1800 mines operating<sup>13</sup>.

The two main categories of owners of mineral rights are the State and private holders. Unfortunately, the current deeds registry system does not provide reliable overall figures indicating what percentage of the mineral rights is owned by each of these categories of holders. Statistics kept by the Department of Minerals and Energy since 1993 indicate that with the exclusion of the coastal zone and sea areas, the mineral rights in respect of which prospecting permits and mining authorizations have been issued are divided in the proportion 1/3 state-owned and 2/3 privately owned. This does not necessarily imply that for the country as a whole, including the coastal zone and sea areas, mineral rights

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<sup>12</sup> This Constitution was adopted in 1993.

<sup>13</sup> Davenport Mining weekly, 13 October 2010, online



are held in these proportions, but illustrates that the private sector is a substantial holder of mineral rights<sup>14</sup>.

The ANC as a ruling party has over the years come up with policies seeking to transfer ownership of the land in the hands of the people through the controversial willing buyer willing seller policy which is not yielding any results but it has never taken a stand to nationalize the mines and other commanding heights of the economy<sup>15</sup>.

Since 2002, the mining charter as a major black empowerment force in the mining industry has concluded 131 BEE transactions at the cost of R25 Billion<sup>16</sup>. This is in itself a move in the right direction depending what is done by the empowered in terms of empowering other black people and re investing for sustainable development so as to allow the program to empower others to roll out to the fullest in line with the set target.

The JSE listed companies operating in the mining sector accounts for 398 directors, 64 of them are black and that is 16% since 2002 and the target set by the mining charter is 40% over a period of ten years<sup>17</sup>.

The position of the freedom charter has to be interpreted not literally but in line with the current economic and political conditions<sup>18</sup>. The question of who is leading the state also play a significant guidance on the interpretation of the freedom charter because obviously it will differ from the 1995 era in that during that time the call was made from an opposition mouth.

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<sup>14</sup> White Paper on Minerals and Mining Policy for South Africa, October 1998.

<sup>15</sup> The ANC instead, took a resolution at the 52<sup>nd</sup> Conference in Polokwane to establish a state owned mining company to increase its participation in the mining industry.

<sup>16</sup>The state of Black Economic Empowerment in the mining sector, July 2004

<sup>17</sup> Opcit

<sup>18</sup>Netshitenzhe J,politicweb,23 may 2010,online.

The ANC in a bid to tackle the economic challenge from another angle took a resolution in its polokwane conference<sup>19</sup> to actively participate in mining through a state owned mining company.

## **1.2. Statement of the research problem**

The South African constitution provides for protection of land owners and prohibits the arbitrary seizure of land<sup>20</sup>. The Freedom Charter provides that the land must be owned by all working on it and the wealth of the country must be shared equally by people of South Africa. The Constitution as the supreme law of the Republic must be respected and any law or conduct that is not consistent with the constitution is invalid<sup>21</sup>. The post-apartheid mining legislation have from the theoretical point of view vested the ownership of the mineral resources in the hands of the state on behalf of the people, this is in itself nationalization from another angle.<sup>22</sup>

The current and popular call for nationalization by the ANCYL is deriving its basis from the Freedom Charter interpreted literally by the leadership of the aforementioned structure turning a blind eye on the current economic and political situation.

The Freedom Charter was adopted under different and harsh economic and political situation. A line of dichotomy should therefore be drawn on the interpretation of that era and now<sup>23</sup>. The call is more radical and ideologically uninformed in that it calls for immediate nationalization of the mining sector wholly with or without compensation<sup>24</sup>.

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<sup>19</sup> ANC 52<sup>nd</sup> conference resolution, 20 December 2007.

<sup>20</sup> Section 25 of act 108 of 1996

<sup>21</sup> Section 2 of the Constitution.

<sup>22</sup> Section 3(1) of the MPRDA.

<sup>23</sup> Ibid

<sup>24</sup> Opcit

The one without compensation is against the Constitution and unconstitutional and renders the freedom charter invalid for it is undermining the highest law of the country if interpreted from that context. Secondly on the one hand, nationalization with compensation through the expropriation clause in the Constitution has the capacity to cripple the south Africa social obligation on the part of the state in that for the state to acquire all the mines legally without amending the Constitution, an estimated amount of 2, 5 Trillion US dollars is required<sup>25</sup> and the country does not have that kind of money.

The call for nationalization by the ANCYL is like Swaziland declaring war against South Africa using the Navy while it does not have the navy or the sea<sup>26</sup>. The threat by the ANCYL to disrupt the mining activities of the mines which are not willing to be nationalized is likely to cripple the whole sector which accounts for 70% of the country's GDP merely because NUM which has more 300 000-00 workers<sup>27</sup> and the biggest affiliate of the labour federation Cosatu is not intellectually convinced by the debate put on the table by the youth organization.

The nationalization of mines is not the policy position of the government or the ANC and needs thorough research and substantiation and has the propensity to scare potential investors currently behind the success of the South African mining sector through skills and capital to operate within the industry<sup>28</sup>. The state intervention in the mineral sector is the only solution and the enforcement of MPRDA and the implementation of corporate social responsibility by mining companies.

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<sup>25</sup> Leon Mail & Guardian,17 September 2010,online.

<sup>26</sup>Baleni F,miningweekly,13 may 2011,online.

<sup>27</sup>Opcit.

<sup>28</sup> It is for this reason that the ANC National General Council took a resolution to establish a task team to research on the desirability of nationalization of mines. The team has thus far concluded its task and has submitted a report not in favor of nationalization of the ANC National Executive Committee.

### **1.3. Literature review.**

The policies, laws, articles and discussion documents by relevant stakeholders indicate that there is enough literature to undertake the study and achieve the aims and objectives of the study. The experience of a country such as Zambia where the nationalization of mines has failed under certain condition is also going to be used in this mini dissertation. The nationalization experience of countries like Cuba, Venezuela, Zimbabwe, Bolivia and China<sup>29</sup> will also be used as part of reference sources in this study.

Mr. Joel Netshitenzhe has dismissed the ANCYL call for nationalization on the basis that, nationalization would undermine investor confidence in the mining sector and the companies taken over could be hurt by lack of skills or by corruption. He argued that nationalization would not assist the state to deal with issues of poverty and equality. He favoured state intervention in the mineral sector and strong regulation and reform of the taxation system in the mineral sector. In conclusion to his argument he alluded that the call for blanket nationalization is not supported by strong enough evidence which in my view make the debate more vulnerable to economic vampires using intellectual substantiation as a basis to object to the proposed nationalization.

The national Union of Mine workers supports nationalization debate from a different angle, it proposes for the review of the mining legislation with specific reference to the licensing mode. Presenting before parliament, they propose that by 2014, the state should prefer the granting of mining licenses to companies which are adhering to the

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<sup>29</sup> The Economic history of the People's Republic of China and the Energy policy of Venezuela are amongst the documents to be studied.

following empowerment criteria, 49% should be privately owned by any company irrespective of race or gender, the company should also compulsorily partner with a state owned company holding 31% of shares and the remaining 20% to be shared equally by the employee share ownership scheme and the community or the traditional authority<sup>30</sup>.

The former NUM president Dr James Motlatsi argues that expropriation without compensation would cause the JSE to collapse and set off a revolutionary backlash from the large number of ordinary citizens, mine workers and civil servants whose retirement benefits would be lost as a result.

According to businessman Cyril Ramaphosa<sup>31</sup> “anyone who wishes to see SA becoming a successful and prosperous country should welcome initiatives that are aimed at reducing poverty and inequality and making the economy more inclusive. The nationalization of mines is the most serious economic issue facing the country .The debate must be centered on how to ensure that the economy develops in a way that sustainably meets the needs of the poor and marginalized. Unemployment, inequality and low skills levels most adversely affect them. We need to effectively address the challenges the youth face as they are the ones who will carry that burden for decades to come”.

According to political analyst and economist, Moeletsi Mbeki<sup>32</sup> the nationalization debate has been there before across the world, it has failed in England. The

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<sup>30</sup> P 83,2<sup>nd</sup>& third quarter, African Communist,2010

<sup>31</sup> ANC National Executive Committee Member and businessman, this article appears on the Sunday Times, online.

<sup>32</sup> A political Economist and Deputy Chairman of the South African Institute for international affairs and has a rich background in the world of journalism

nationalized railways have now been sold to the private sector. The Zambian government had to eventually close the copper mines because of the unsustainable state of nationalization<sup>33</sup>. He further argues that the nationalization debate is an old fashioned thinking of the 19<sup>th</sup> century which has now lost relevance because of the changed societal set up.

The Chinese has realized recently that nationalization was not sustainable and opened the economy for private sector participation. The ANC and its government do not have capacity to run a mine, they don't have engineers, they can't run a mere sewage system and then what about a gold mine.

The point that he is driving home is that, the ANC has lost what it stands for and people occupying position of authority and influence in the ANC are doing everything to achieve personal economic goals through BEE transactions and any other means including any call threatening stability within the economy such as nationalization. It should not be forgotten that the ANC never created BEE but it was created by big companies who want an ally in government by making people instant billionaires. It is for this reason that everyone wants to use the opportunity to get space in the economy for self-enrichment.

The SACP reiterated its call of public ownership of the means of production through socialisation. It further submitted that nationalization is one way of achieving the overall objective of building a socialist society but nationalization is not inherently progressive as it depends on whose class interest it is advancing.<sup>34</sup>

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<sup>33</sup> Mbeki M, Daily maverick, April 2012, online.

<sup>34</sup> See [www.sacp.org/current](http://www.sacp.org/current) news.

The Congress of South African Trade Unions<sup>35</sup> has publicly and conditionally supported the call for the nationalization of mines. It has called for the nationalization of mines accommodative to all sectors of the society including, the workers, business, government and the society in general.

#### **1.4. Aims and objectives of the study**

This dissertation is aimed at conducting a concrete analysis of the current laws, policies, regulations and guidelines dealing with ownership and beneficiation in the mining sector. The failure and the progress registered so far on the question Black Economic Empowerment (BEE) and transfer of mineral rights ownership in the mining sector. The role played by relevant stakeholders inter alia: the Department of Mineral Resources in terms of passing laws that are in favour of nationalization, bringing skilled people on board especially black so as to position the government in a strategic position for an informed takeover. An analysis of the strategies put in place to tackle the ownership challenge in the sector, the national treasury's prioritization of the mineral beneficiation and ownership program in terms of the allocation of funds to finance BEE transactions.

It will also analyze the constitutional provisions and other complementary legislation which moves in favor of nationalization of mines, the manner in which the courts approach cases dealing with post mining rights and beneficiation will also be closely looked at.

This dissertation will through the critical analysis of the current legal situation determine if there is a need to develop new policies, laws and regulations dealing with mineral

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<sup>35</sup> The biggest COSATU affiliate.

beneficiation and other incidental activities connected to it or whether there is a need to strengthen the existing laws, strengthen them and develop measures that will make them to be practically applicable. The approach and impact of the previous and the current government on the question of accessing and granting of mineral rights will be analyzed from the context of political connection and economic influence.

This study will also come up with proposal and recommendation which the relevant stakeholders on ownership transfer and economic empowerment can employ to register progress on the program and also to make the mineral right granting fair and transparent.

This dissertation aims to assist the students from various fields of study with the focus being but not limited to Environmental and Mining Law, Economics, Environmental Conservation, Social Security Law, the government through the Department of Mineral Resources, Water and Environmental affairs, Municipalities, Civil Society organization and Communities affected negatively by the current set up in terms ownership in the mining sector and consequently the limited economic participation dictated by race and gender issues emanating from the apartheid government.

It also aims to create a better engagement program by political parties, business, government and the society on a nationalization mode beneficial to all the stakeholders irrespective of the origin or source of the debate. It aims to prevent a situation where institution would like to appear more radical and pro nationalization than the other while the common objective all to deliver better service to the people in a society that is economically balanced. It will also strongly recommend after assessment that the call



for nationalization be made mindful of the conditions prior to and after nationalization precisely on the issue of skills and the ability to be sustainable after nationalization. This is to caution and prevent the excitement that may accompany the eager to nationalize forgetting the inability to later manage the nationalized mines.

It will assist the stakeholders to avoid nationalizing but re-utilize the nationalized private sector personnel to come and manage the nationalized as they appear to be the only sector with the ability to do as such, drawing a practical example from our counterpart, Zambia<sup>36</sup> which had nationalize the mines during the time of former President, Kenneth Kaunda.

### **1.5. Research Methodology.**

Basically, the research methodology to be adopted in this study is qualitative. Consequently; a combination of legal comparatives and legal historical methods based on jurisprudential analysis is employed. Legal comparatives will be applied to find solutions, especially for the interpretation of economic consequences based on ownership structure in the mining sector.

The purpose of the historical research method on the other hand, will be to establish the development of legal rules, the interaction between law and economic justice, and also to propose solutions or amendments to the existing law, policies, regulations or the constitutional arrangements, based on practical and historical facts. Concepts will be analyzed and arguments will be developed. A literature survey of the constitutional provisions and interpretation of statutes will be made.

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<sup>36</sup>The nationalization of the *Zambian Copper Mines* under the Mulungushu economic reform policies.

This research is library based and reliance is made of library materials like textbooks, reports, regulations, case laws, articles and papers presented on the subject in conferences. Members of the academia with specialized knowledge in mining law and its relation to the economy will be interviewed. Hard and electronic sources will be accessed.

#### **1.6. Scope and limitations of the Study.**

This mini dissertation consists of but not limited to five interdependent and interrelated chapters. Chapter one is the introductory chapter lays down the foundation. Chapter two deals with legislative and policy framework. Chapter three deals with state intervention in the mineral sector and nationalisation of mines while chapter four deals with lessons to be learned from other countries. Chapter five deals with conclusion and recommendations.

## **CHAPTER TWO: LEGISLATIVE FRAMEWORK AND POLICY FRAMEWORK**

### **2.1. Introduction**

This chapter looks at the legislative and policy position of the ANC and government on the economy and transformation of ownership and beneficiation with specific focus to the mining industry. The focus is informed by the recent call by the ANCYL<sup>37</sup> of the radical nationalization of mines. From the historical context, the ruling party had at some point in the struggle called for the total nationalization of the commanding heights of the economy<sup>38</sup> but the tune was dramatically affected by the mode of transition to power<sup>39</sup>.

### **2.2. The ANC policy position on nationalization**

The African national congress once advocated for the nationalization of the commanding heights of the economy including and more in particular the land and the minerals beneath the soil. This call was made prior to and following the adoption of the Freedom Charter<sup>40</sup>. As the struggle changed faces and forms, the ruling party became more radical and abandoned its peaceful demonstrations<sup>41</sup> and adopted an approach of armed struggle<sup>42</sup> more radically demanding freedom both politically and economically. It is at this stage that the call for the total takeover of the economy and beneficiation modes to the people as a whole was more relevant ever.

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<sup>37</sup> The African National Congress Youth League is the youth wing of the South African National liberation movement, now the ruling party (ANC), its primary role is to mobilize young people behind the banner of the ANC and acquaint them with the policies, ethos and principles thereof.

<sup>38,38</sup> These are Banks, land, Monopoly industries, the Agricultural Sector, etc.

<sup>39</sup> This speaks to the decision by the ANC and its allies to abandon the armed struggle and go for a negotiated transition to power.

<sup>40</sup> This is a document adopted by the Congress of the people in 1955 in Kliptown. It has been since used as a guiding document for the South African Struggle and a beacon of hope for the South African Masses.

<sup>41</sup> This speaks to the fact that the ANC was formed by the noble people, academics and people from the royal family and was not formed to be radical, its radicalism came as a result of the formation of the ANCYL in 1944.

<sup>42</sup> This saw the formation of a military wing of the ANC called Umkondo we siswe in 1961 with Nelson Mandela as its first Commander in Chief

But as the faces of the struggle went by, a debate within the ANC structures erupted advocating for a smooth transition to power<sup>43</sup>, the so called negotiated power transfer and abandonment of the armed struggle. The debate gained momentum notably on the basis that, the radical seizure of power or armed confrontation of the apartheid regime was an unachievable dream on the part of the ANC. This was on the basis that the regime was armed to the toe and if militarily confronted, there will be more death and less fruitful results.

The path to negotiations inevitably constituted qualitative compromises in the form of departure from major policy position<sup>44</sup> of the ANC and its alliance partners. These compromises were termed as the sunset clauses<sup>45</sup>, they included power in the form of the government of national unity, subtle restructuring of the civil organizations the SAPS<sup>46</sup> and the SANDF<sup>47</sup>, transitional power sharing, general amnesty and property relations just to note a few. The basis of this approach, as Joe Slovo argues was that, the ANC had to acknowledge that though the regime was experiencing difficulty in sustaining the unjust system, it was not a defeated enemy and the propensity of violence eruption was high in this regard.

It is against this background that ANC policies tacitly took a more less radically approach given the compromises that came with the peaceful transition to power and the quest to create a united, on racial and democratic South Africa based on the rule of

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<sup>43</sup> This approach was vigorously opposed by the SACP congress which was chaired by Thabo Mbeki in the late 1980's leading to the SACP adopting the path to power which advocated for the continuation of the armed struggle.

<sup>44</sup> Negotiations: What room for compromises. Joe Slovo?

<sup>45</sup> They were aimed at allowing political and social stability during the negotiations

<sup>46</sup> South African Police Service.

<sup>47</sup> South African National Defense Force

law<sup>48</sup>. The ANC as the leader of the government which is a constitutional product abandoned in a way the provisions of the Freedom Charter or rather say the approach of implementing the contents of the charter.

This is of course intellectually clarified given the dichotomy of eras in which the Charter was drafted and adopted, the era of apartheid with the ANC being liberation movement in opposition and has to now be implemented in the democratic era where the ANC is now the liberation movement leading a democratic state in the modern world where the economy cannot be localized and achieve, the world economy is internationalized and partnership and trade relations are essential.

To confirm the tacit shift of the ANC economic policy and thus partially implementing the freedom charter from a different angle, Nelson Mandela<sup>49</sup> emphasized the need to establish and strengthen economic relations at an international level to maintain and expand the mining sector as an important contributor to the national economy by increasing the investment base.

The former President confirmed shift from radically policy when he advocated for an approach that is the interest of growth and stability when he said:

*"A forum consisting of relevant stakeholders should be established to make critical contribution to the shaping of an effective industrial policy, a policy which will help*

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<sup>48</sup> Section 1 of act 108 of 1996, The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- (b) Non-racialism and non-sexism.
- (c) Supremacy of the constitution and the rule of law.

<sup>49</sup> The first Democratically elected president of South Africa, speaking at the 104<sup>th</sup> Annual General Meeting of the Chamber of commerce in 1994

*develop and expand the mining industry to the benefit of the country as a whole. It is in the interest of stability and investor confidence that the healthy and necessary debate on such a policy should find its way to consensus”.*

He further argued that mining industry has a responsibility to assure the society that, resources of the country in the mining industry irrespective of who is the owner, will be channeled to address the social needs of the people to reverse the imbalances of the past. It is my understanding that, the former president drove home the point that, what is central is the upliftment of the people’s lives and not ownership per se.

The policy position of the ANC following the recommendations of the policy conference guiding the elective conference in December 2007<sup>50</sup> does not suggest or support the nationalization of the commanding heights of the economy including the mines but rather encourages, the approach towards a mixed economy where the state, co-operatives and other forms of social ownership exist together with private capital in a constructive relationship and where democracy and participation lead to growing economic empowerment.

It is on this background that the conference resolved to increase state participation in the mining industry by establishing a state owned mining company<sup>51</sup> to compete with private mining companies.

The ANC has however widened the nationalization debate and appointed a research team<sup>52</sup> to look into the viability of mines nationalization. The ANC research team on

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<sup>50</sup> The ANC 52<sup>nd</sup> conference held in Polokwane in 2007

<sup>51</sup> The company called, African Exploration Mining and Finance Corporation was launched on 25 February 2011, See Bryson D, 25 February 2011, Mail & Guardian, online.

nationalization has resubmitted its report to the party, and while it is confidential, it is reliably understood to discourage "asset grabs" and buying stakes in mines<sup>53</sup>.

The report discourages asset grabbing as it is unconstitutional, and the purchase of stakes because the government could not afford it. However, it apparently recommends an upwards revision of royalties and tax regimes. It is said to recommend more beneficiation of raw materials and the introduction of higher taxes on exporters of unbeneficiated materials.

### **2.3. The government policy position and legislative framework on nationalization**

Since ANC does not recognize the nationalization of mines as its official policy, it therefore goes without saying that even the government is not currently supporting nationalisation. South African Mineral Resources Minister Mrs. Susan Shabangu has reiterated that the nationalization of the country's mining sector was not a government policy<sup>54</sup> and would not be adopted as such in the foreseeable future. Shabangu declared that, "in her lifetime, there will be no nationalisation of the mines". The possibility of nationalization however, cannot be ruled out as the ruling party has appointed researchers to investigate whether nationalization is a viable option or not.

### **2.4. The government plan on Mineral and Petroleum Beneficiation.**

The government has however put in place some policies with the sole aim of drawing and implementing a beneficiation strategy for black people. The policies primarily deal

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<sup>52</sup> This is the decision of the ANC National General Council held in Durban, September 2010. The decision was prompted by the ANCYL call for the NGC to adopt the nationalization as a policy.

<sup>53</sup> ANC research team rejects nationalization, Mkokeli M, Businessday, online.

<sup>54</sup> Davenport J., Mining weekly, 02 February 2010, online, this declaration comes as a response to an assurance by the ANC youth league president that the mines will be under the state control in the near future.

with access to managerial positions and ownership of black people in the mining sector. Even though the nationalization of mines is not a policy position of government currently, the state is determined to participate in the mining industry and to ensure downstream beneficiation of the people in the country's minerals.

The government through the New Growth Path also seeks to accelerate the exploitation of mineral reserves by reviewing the holding of mineral rights structure, lowering costs related to logistics and skills development to encourage private investment in the mining sector. The plan also seeks to set up a state owned mining company that would co exist with a strong private Mining sector to promote greater beneficiation<sup>55</sup>.

The strategy presents an intervention the advances a developmental agenda of government, based on a range of policies and legislations<sup>56</sup>.

## **2.5. The Broad Based Socio Economic Empowerment Charter.**

The main aim of the charter is to give effect to the objectives and or elements of the mining charter which include but not limited to ownership, procurement and enterprise development, beneficiation, employment equity, human resource development, mine community development, housing and living conditions, sustainable development and growth of the mining industry<sup>57</sup>.

The development of this policy is motivated by the systematic marginalization of the majority of South Africans through draconian laws and policies of the apartheid regime

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<sup>55</sup> E Patel, New Growth Path, the framework.

<sup>56</sup> These policies are just to note a few, Minerals and mining policies for South Africa of 1998, which is aimed at advancing the objectives of the Mineral and Petroleum Resources Development Act, The Broad Based Socio Economic Empowerment Charter (BBSEE), The energy Growth Plan as well as Compliance with Environmental Protocols.

<sup>57</sup> Ibid



which precluded historically disadvantaged South Africans from playing a meaningful role in the means of production including ownership.

The government has identified factors hampering downstream beneficiation in the mining sector and possible interventions. The factors include but not limited to limited to, access to raw material for beneficiation, shortage of critical infrastructure, limited exposure to research and development, inadequate skills, access to international markets or investor confidence if so to say. Consequent to the predicaments, the government has also summed up some possible interventions to deal with these challenges in a long term plan<sup>58</sup>. The government has to do the following: increase state custodianship on the country's minerals to effect beneficiation, amend the MPRDA to strengthen beneficiation provisions, identify critical infrastructure needs over the next 20 years, align the beneficiation requirements with the ten year plan for science and technology.

### **2.5.1. Mining & Mineral Policy Development 1998<sup>59</sup>**

Mining and Mineral Policy Development is responsible for developing mineral policies, norms and standards as well as draft and amend mineral and related legislation. This directorate has quite a number of legislations put under review for possible amendment to effect the goals of the MPRDA and section 9 of the constitution.

The legislations currently under review include:

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<sup>58</sup>The beneficiation strategy for the minerals industry of South Africa, June 2011.

<sup>59</sup> This directorate is located in the Department of Mineral Resources and Development

### **2.5.2. The Mineral and Petroleum Resources Laws General Amendment Bill 2011.**

This Bill amends both the Mineral and Petroleum Resources Development Act 28 of 2002 and the Mineral and Petroleum Resources Amendment Act 49 of 2008. The objects of the Mineral and Petroleum Resources Amendment Act are to strengthen the current construct of the legislation, fortify the penalty provisions, to streamline the administrative process and to provide for a single regulatory system.

### **2.5.3. The Diamonds General Laws Amendment Bill 2011.**

Amend the Diamonds Act 58 of 1986, the Diamonds Amendment Act 29 of 2005 and the Diamonds Second Amendment act 30 of 2005 facilitate access to funding and markets by diamond cutters and polishers, improve on the composition of the Board, align the legislation with other related pieces of legislation, define and refine concepts to remove ambiguities, make provision for offences and penalties and for an arbitration process, to improve the regulatory system and provide for matters connected therewith.

### **2.5.4. The Precious Metals Amendment Bill 2011.**

This Bill amends the Precious Metals Act, 37 of 2005, so as provide and improve on definition of words and expressions to remove ambiguities, streamline administrative processes, improve the regulatory framework and provide for matters connected therewith.



## CHAPTER THREE: STATE INTERVENTION IN THE MINERAL SECTOR AND NATIONALISATION OF MINES

Since the mid-19<sup>th</sup> century to now, South Africa discovered many mineral resources and it is home to vital and most diversified mineral reserves in the world and this includes platinum group metals, manganese, chromium and 54 other minerals. South Africa's economy has been based on the production and export of minerals, which, in turn, have contributed significantly to the country's industrial development.<sup>60</sup>

In 1952 the Trade Union organiser, Solly Sachs noted that, "it is abundantly clear to anyone who has the welfare of South Africa at heart that the future of the people and the whole country depends on extensive and intensive industrial development, and that the mining of precious minerals can serve the interest of the country only as a stimulus for the development of other branches of the national economy".<sup>61</sup>

The debates on the nationalisation of mines have the roots from the Freedom Charter,<sup>62</sup> Ready to govern document,<sup>63</sup> the Reconstruction and Development Programme,<sup>64</sup> the 52<sup>nd</sup> African National Congress ("ANC") Polokwane Conference (2007) Economic Transformation resolution. The ANC commissioned a team of researchers last year to investigate state involvement in the mining industry. Their report was tabled at a meeting of the party's national executive committee which was held in the first week of

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<sup>60</sup> Nevondwe L.T and Ramatji K, Nationalisation of mines in South Africa not a viable option for economic growth, *The Thinker*, vol. 38, April 2012, p36.

<sup>61</sup> Sachs, S (1952), *The Choice Before South Africa*, London: Turnstile Press.

<sup>62</sup> The Freedom Charter has been adopted in 1955 by the Congress of the People.

<sup>63</sup> This document has been adopted by the ANC in 1992.

<sup>64</sup> This is the policy of the government which was adopted in 1994.

February 2012 and the report is now available in the ANC website. The debate about nationalisation of mines scares the investors and brought too much uncertainty on the policy direction of the government. Influential people from politics, business and mining sector reject nationalisation of mines and suggest that if it became a government policy, it will cripple the economy.<sup>65</sup>

Uncertainty over the ANC position after calls by the ANC Youth League (“ANCYL”) was clarified early this year when an ANC-commissioned report on state intervention in the minerals sector ruled out nationalisation.<sup>66</sup>

Nationalisation would be unaffordable. According to the report there would be a cost of R1 trillion for total nationalisation or around R500 billion for majority ownership based on just compensation as the government would need to raise R1 trillion to buy out listed mining companies. This exceeds the entire government budget, which exceed R1 trillion rand for the first time in 2012/3 national budget.<sup>67</sup> The report does not go out of its way to console the sector either. Although the main conclusion is that the nationalization of mines will not be good for the country as the suspended President of ANCYL, Julius Malema insisted, it goes on to suggest other methods that can be implemented to achieve the same share of the national wealth by everyone equitably. These include a 50% tax on the sale of mining rights to prevent speculation; another 50% tax on any

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<sup>65</sup> Tito Mboweni, former Reserve Bank Governor, Patrice Motsepe, Mining Magnate and business man, Cyril Ramaphosa, a Member of the African National Congress National Executive Committee and a business man, Joel Netshitenzhe, a Member of the National Planning Commission, Moeletsi Mbeki, an independent political analyst and business man, Suzan Shabangu, Minister of Minerals have criticised the nationalisation of mines and suggest that it is not a viable option.

<sup>66</sup> ANC Policy Discussion Document, maximising the development impact of the people’s mineral assets: state intervention in the minerals sector (March 2012), accessed on 6<sup>th</sup> March 2012 at [www.anc.org.za](http://www.anc.org.za).

<sup>67</sup> ANC Policy Discussion Document, maximising the development impact of the people’s mineral assets: state intervention in the minerals sector (March 2012) at page 28, accessed on 6<sup>th</sup> March 2012 at [www.anc.org.za](http://www.anc.org.za).

super profits. At least these solutions are more sensible options that protect private property and ensure our mining industry does not fall to pieces, while at the same time increase tax on these activities which benefits South Africans.<sup>68</sup>

What is heartening is that the report acknowledges the country's limitations in terms of the success of its education policies and the limits on its delivery of infrastructure. And, it notes the crucial role the sector plays as an employer and a builder of infrastructure. For this reason the document says, the sector needs to be placed at the heart of the country's development framework.<sup>69</sup> Given the current climate of macroeconomic uncertainty, high, if volatile, commodity prices and a large unemployment problem, many governments are turning again to the mining sector as a way to help solve some of these problems. This move is especially evident in Africa where there is not only the possibility of a financial and employment benefit to be gained from the mining sector but, also a longer-term infrastructural one as well. However, the main focus of the report is a number of very specific policy recommendations. Put simply, these address how to utilise SA's US\$2.5 trillion mineral wealth for the benefit of the population rather than mining companies.<sup>70</sup> The greater extraction of wealth for the population is understandable and desirable but can only work in a sustainable fashion (promoting the safeguarding and continued productive use of the remaining mineral wealth of the country over the long run) if competitiveness is addressed.<sup>71</sup>

The South African mining sector is the fifth-biggest in the world by value and has long been in the government's sights. Under the current fiscal regime the state is clearly not

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<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

getting a fair share of the resource rents generated from its mineral assets. The report says total nationalisation of the industry would cost R1 trillion and nationalisation without compensation, as proposed by the ANCYL, 'would require a constitutional change and would result in the near collapse of foreign investment as well as widespread litigation by foreign investors domiciled in states that we have trade and investment (protection) agreements with'.<sup>72</sup> The report, due to be considered by the ANC at a policy conference at the end of June, calls for the creation of a State Minerals Company by transferring capacity and holdings from the state.<sup>73</sup> Once legislation was in place the company should fall under the control of a super ministry, the Ministry of the Economy, encompassing the current Departments of Trade and Industry; Mineral Resources; Energy; Public Enterprises; Economic Development; and Science and Technology.<sup>74</sup>

The positioning of the state's claim over profits and the push for greater beneficiation, such as jewellery making and other finished products, is about locking in mining capital for the long haul. Nevertheless, nationalization is not necessarily immune from the same problem as mining capital: short-term predatory rents for self-accumulation.<sup>75</sup> It is for this reason that the ANCYL call for nationalization only reinforces the perception that it is predatory rent seeking of the worst kind.<sup>76</sup> South Africa's resource-based comparative advantage can be transformed into a national competitive advantage. The report warns against "asset grabs" by the state because such a policy would be

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<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> See Ramatji KS, A legal analysis of the Mineral and Petroleum Resources Development Act, 28 of 2002 and its impact in the mining operations in the Limpopo Province, LLM mini-dissertation, University of Limpopo, 2012. See also Nevondwe LT and Chidi I, State intervention in the mineral sector, conference presentation, Law Teachers Conference, 10 July 2012, Nelson Mandela Metropolitan University, Port Elizabeth.

<sup>76</sup> Ibid.

unconstitutional and inconsistent with section 25 of the Constitution, property clause and because the government could also not afford to buy mining stakes.<sup>77</sup>

While South Africa has been drifting down the international competitiveness rankings, many of our competitor nations are becoming very attractive to investors, thanks to their fast growth and their clear, consistent and socially sensitive market-oriented economic policies<sup>78</sup>. Potential investors will just go elsewhere if they think that there is a real risk that they could lose their assets to nationalisation in South Africa. This effect is perhaps not immediate, but it is pervasive and long-lasting. The real issue remains the growth of the mining sector so that it can prosper, employ more people, earn more foreign exchange and achieve its beneficiation ambitions<sup>79</sup>. The challenge is for government to work with the private sector to facilitate the creation of a conducive investment environment that enjoys the appeal and the lustre of foreign capital the work that will lead to an expanded contribution by mining is complex and requires the very close cooperation of government, the mining sector and other interest groups that play a pivotal role in socioeconomic development.<sup>80</sup>

It will be important to begin by outlining the meaning of nationalisation in the context of this perspective. Nationalisation of mines means the democratic government's ownership and control of mining activities, including exploration, extraction, production, processing, trading and beneficiation of mineral resources in South Africa. It is against the background of the Freedom Charter upon which a concrete position on the nationalisation of mines is formulated which states:

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<sup>77</sup> Nevondwe L.T and Ramatji K, opcit at page 37-38.

<sup>78</sup> Tshabalala S, Nationalisation, accessed on 08<sup>th</sup> march 2012. See [www.standardbank.co.za](http://www.standardbank.co.za) for more information.

<sup>79</sup> Mbeki M, Nationalisation: what's to debate, Mining Weekly, available online.

<sup>80</sup> Ibid.



*“The national wealth of our country, the heritage of all South Africans, shall be restored to the people; the mineral wealth beneath the soil, the banks and monopoly industry shall be transferred to the ownership of the people as a whole; all other industry and trade shall be controlled to assist the wellbeing of the people; all people shall have equal rights to trade where they choose, to manufacture and enter all trades.”<sup>81</sup>*

The Freedom Charter is regarded as a guiding framework for the transfer of mineral wealth and the actual process of extraction, processing, beneficiation and trade of mineral resources. Again in 1956, a leader of the ANC, Nelson Mandela said, “it is true that in demanding the nationalisation of the banks, the gold mines and the land the charter strikes a fatal blow at the financial and gold-mining monopolies and farming interest that have for centuries plundered the country and condemned its people to servitude. But such a step is absolutely imperative and necessary because the realisation of the charter is inconceivable, in fact impossible, unless and until these monopolies are first smashed up and the national wealth of the country turned over to the people.”<sup>82</sup>

The abovementioned view of Nelson Mandela is supported by the Congress of South African Trade Unions (COSATU) which entered the nationalisation debate in its discussion paper. Their position is similar to that of the ANCYL except to the extent that, in their view, nationalisation of mines on its own will not be enough to achieve economic transformation in South Africa, COSATU argues that there is an inextricable link between mineral wealth and monopoly industry. To achieve economic transformation

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<sup>81</sup> Freedom Charter, 1955 which was adopted by the Congress of the People in Kliptown.

<sup>82</sup> Mandela N, “In our life time”, Liberation (1956). See also for more information Bunting B and Kotane M, The Freedom Charter, <http://www.marxists.org/subject/africa/bunting-brain/kotane/ch12.htm>.

nationalisation would have to be implemented in conjunction with the dismantling of monopoly domination. COSATU view on nationalisation of all sectors will only become relevant when the state has achieved its immediate challenges of unemployment, poverty, education, health, land reform and other challenges which are not listed here (our own emphasis).

After considering thirteen countries case studies and models for extracting greater revenue from the natural resources sector, some models were found to be inappropriate to the South African context, and a few, including the Chilean model. This model had been examined so was the Venezuelan model which leans towards wholesale nationalisation.<sup>83</sup> The Chilean model advocates co-existence of the private and the public sectors in the mining sector. The Chilean model is attractive because it has similar challenges to South African especially its inability to create jobs in downstream industries.<sup>84</sup> Key features of the Chilean models are a focus on strategic minerals especially its copper, in which it is the world's leading producer.

If South Africa was to follow Chile's model, minerals such as platinum, chrome and iron ore may be targeted by the state for partial ownership. Another characteristic of the Chilean model is a multiple ownership structure, with the state playing a significant role in the ownership of resources assets.<sup>85</sup> Research indicates that nationalisation can be a solid move in some countries but it has a limited life cycle and is depended upon the

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<sup>83</sup>ANC Policy Discussion Document, maximising the development impact of the people's mineral assets: state intervention in the minerals sector (March 2012), accessed on 6<sup>th</sup> March 2012 at [www.anc.org.za](http://www.anc.org.za).

<sup>83</sup> Ibid.

<sup>84</sup> ibid

<sup>85</sup> Ibid.

choice of commodity such as the Venezuelan experience in the Orinoco oil fields. This has not addressed poverty on the ground but it has enabled the state to balance its books, buy armaments and create a number of jobs.<sup>86</sup>

Nationalisation would not solve South Africa's problems of low growth and high unemployment. Nationalisation had taken place in thirteen countries, after looking at all the data available for these countries, it was established that the only success stories are those of public private partnerships (PPP) such as the one in Botswana in the diamond mining industry and the case of China, which nationalised and liberalised significant parts of the economy. In most European countries such as France, Sweden, the United Kingdom and Norway, the practice of nationalisation had always been followed by privatisation.<sup>87</sup> This has also been the case in countries in other parts of the world such as Zambia. Zambia has gone down that route before and it didn't work very well. But the government of Zambia has intended to increase participation in the mining industry and encourage new operations. The Zambian government has since warned South Africa that nationalisation of mines is not a viable option

Against the backdrop of recent uncertainty around the security of mineral rights, the nationalisation debate had raised anxiety levels among domestic and international mining groups operating in South Africa. If mines are nationalised there would be a big outflow of capital out of the country, which would lead to a rapid depreciation of the rand. The weak rand would benefit some manufactures in the short term. This would

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<sup>86</sup>Netshitenzhe J, Nationalisation of mines, Mining Weekly, accessed on 28 April 2010, see also [www.miningweekly.co.za](http://www.miningweekly.co.za).

<sup>87</sup> ANC Policy Discussion Document, maximising the development impact of the people's mineral assets: state intervention in the minerals sector (March 2012), accessed on 6<sup>th</sup> March 2012 at [www.anc.org.za](http://www.anc.org.za).

then cause high interest rates and inflation in the mid- to long term. This would not immediately affect the poor since they do not have debt with the banks. It will affect the middle-class because they have loans and investments. A higher interest rate would lead to slower economic growth and a loss of jobs.

The other potential challenge to the nationalisation of mines will come from those who have private interest in mining. These include the established mining corporations and recent past beneficiaries of mining activities. Several challenges do point to the need to attend to macro-economic issues in the sector, including declining fixed investments and low growth in mining production, in the midst of a commodities boom. This stands out even more starkly when compared with Australia, where gross fixed investment in mining far exceeds South African investment<sup>88</sup>. The biggest challenge the government will face in nationalisation is the powerful unions in the country. The government could either choose to focus on labour-intensive processes and use the mines to hire as many peoples as possible or it could try to maximise capital and use the profits to fund the welfare state projects.<sup>89</sup>

The nationalisation of South Africa's mines is not supported by strong enough evidence and it appears that it is based on an emotional perception that since 1994, South Africans, particularly, the blacks are still poor and the wealth is still in the hands of the minority. Netshitenzhe says that the ANC has adopted an approach to State ownership,

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<sup>88</sup> J Netshitenzhe Mining Weekly Online accessed on 28/04/2010 [www.miningweekly.co.za](http://www.miningweekly.co.za).

<sup>89</sup> Nevondwe L.T and Ramatji K, opcit at page 39.

which is different from an earlier interpretation of the Freedom Charter, in which nationalisation was a given.<sup>90</sup>

While the ANCYL may be factually correct in its interpretation of the Freedom Charter in years gone by, Netshitenzhe says that the ANC's current approach to State ownership is to "weigh the balance of evidence" - a process that is informed by the impact that State ownership has on the ability of the economy to address poverty and inequality and to encourage growth and competitiveness.<sup>91</sup>

While the ANCYL is correct to want the mining industry to play a larger role in improving the country's fiscal capacity; creating more jobs; improving working conditions; enhancing South Africa's sovereignty; and transforming the country's accumulation path, it appears that some of the mining industry's most significant growth constraints are bottlenecks within State-owned infrastructure.

In the early days of the implementation of the new Mineral and Petroleum Resources Development Act (MPRDA)<sup>92</sup> insufficient capacity within the then Department of Minerals and Energy and the slow processing of environmental-impact assessments were also growth constraints.

The challenges which South Africa faced is that little progress has been made in developing the much-vaunted mining sector strategy as part of the country's industrial policy and action plans. South Africa can hardly claim to be exploiting the opportunities for mining-related backward and forward linkages optimally. With regard to

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<sup>90</sup> Creamer M, ANC heavyweight weighs in against mine nationalisation, accessed on 6 March. 2012. See also [www. Mining-weekly.com](http://www.Mining-weekly.com), online.

<sup>91</sup> Ibid.

<sup>92</sup> Act, 28 of 2002.

beneficiation, for instance, the impression among many in government is that there is a dogged resistance to a comprehensive approach to beneficiation within the private sector. Besides weaknesses of demographics in management, professional, skilled and semiskilled categories, the industry is "not producing sufficient skills to replace the ageing engineering and artisan population, let alone gear the industry for growth".<sup>93</sup>

Much as we understand that poverty and unemployment are rooted in decades of economic injustices, so too must we accept that the frustration being witnessed today arises in part from our collective inability to sufficiently transform the economy. This inability has certainly sparked the call for the nationalisation of mines.<sup>94</sup> The country should continue the discussion, in a mature and constructive fashion. Amid the sharp and sometimes shrill public commentary on nationalisation, the greatest mistake we can make is to ignore the concerns the ANCYL is raising, because they go to the heart of the issue that we need to be grappling with.

It is premature to formulate an official position while the debate is on-going. There should be a national convention on the mining sector which should be held in an open, honest, transparent and inclusive engagement. The agenda should be discussed and agreed by all stakeholders. There should be no predetermined outcomes. The objective should be an agreement on a model that will deliver a strong and durable mining sector empowerment to take its rightful place in ensuring that the wealth of South Africa benefits all who live in it. The mining charter which supports social investment by mining

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<sup>93</sup> Ibid.

<sup>94</sup> Ramaphosa C, Mines 'not transforming as agreed, Mail & Guardian newspaper, 8 August 2011, online.

companies needs to be implemented without any compromise. The government must always ensure that there is compliance with the MPRDA.<sup>95</sup>

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<sup>95</sup> Nevondwe L.T and Ramatji K, opcit at page 40.

## CHAPTER FOUR: LESSONS TO BE LEARNED FROM OTHER COUNTRIES

This in a nutshell is the nationalization experience of countries around the world, the focus of this chapter will be on the modes of nationalization practiced by countries around the world, their experiences, that is to check whether their nationalization programs have succeeded if failed, wholly or in part. Upon the conclusion of the chapter, the dissertation will be in an informed position at least to advice on recommendation whether the nationalization of mines in South Africa is a viable option for revenue collection so as to accelerate social programs and speed up the service delivery pace.

The service delivery aspect is deliberately invoked because the call for nationalization is substantiated by the quest to capacitate the fiscas and accelerate service delivery to the poor masses of our people on the country.<sup>96</sup>The countries' experiences on nationalization of mines and other strategic sectors of the economy are amongst others our neighbouring country Botswana, the socialist state of the People's Republic of China, Zambia, Venezuela of Hugo Chavez, Chile and Namibia. The modes of nationalization to be analyzed include strategic equity which encapsulate State owned mining company, indirect or theoretical nationalization which is in the context the sate having the power at regulation level by centralizing the power to grant, refuse and regulate mining permits and all activities connected to mining, the public private ownership where the state is an effective e and fully fledged partner with private companies in the mining industry and lastly the nationalization coupled with socialization mode.

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<sup>96</sup>ANCYL perspective on the nationalization of mines in South Africa, page 3



#### **4.1. The model of nationalization in Botswana.**

Botswana which is held by the ANCYL<sup>97</sup> as one of the successful countries under nationalization is a typical example of Public Private Partnership (PPP) and not of nationalization as the argument may appear.<sup>98</sup>

The government of Botswana is an equal partner of De Beers in the mining sector; they jointly and equally own and invest in Debswana Diamond Mining Company. As a consequence of their partnership, the Botswana government does not charge tax from its equal partners which make it an effective 50% shareholder with obligations and responsibilities exposing the government to investment risks given the nature of the mining business.<sup>99</sup>

The line of dichotomy that can be drawn from the Botswana's mode of nationalization in contrast with the South African beneficiation system is that, with South Africa, the government is an effective 50% shareholder in the mining industry through tax and is only involved at the level of harvesting without having to invest a single cent in the industry.<sup>100</sup> Currently<sup>101</sup> as we speak, the Botswana government as an equal partner

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<sup>97</sup>African National Congress . This is a youth wing of the ruling African National Congress which is in the forefront of the renewed and energetic call for the nationalization of mines

<sup>98</sup> Cremer M. miningweekly, 27 June 2011, online. This was said to illustrate the fact that the South African taxing system beats Botswana's Mining ownership as it enables it to collect more revenue without having to take any risk relate to investment.

<sup>99</sup>Low L, Mining weekly, 27 June 2011, online.

<sup>100</sup> With this arrangement, South Africa is better off as compared to Botswana given its level of involvement and non obligated partnership status

<sup>101</sup>opcit.

with De Beers has to invest a chagrin sum of R12, 5 Billion in the Jwaneng Diamond in the R25 Billion diamond cut project.

It is Leon's submission that the government of South Africa cannot get more revenue in the mining industry than it is already getting.<sup>102</sup>In conclusion, it is evident that the Botswana mode of beneficiation or participation in the mining industry is a successful project of PPP which is not advisable for South Africa given the status quo for it would be equivalent to an uninsured gambling for the South African government if applied and practiced.

#### **4.2. The South African mode of nationalization presently.**

Legally and in principle the South African mines are at the present moment nationalized in the context of regulation and granting of permits for mines and all other activities connected to mining. In terms of the Minerals and Petroleum Resources Development legislation<sup>103</sup>, the mineral and petroleum resources are the common heritage of the people of South Africa and the State is the custodian thereof for the benefit of all South Africans. The state as the custodian acting through the minister of the DMR<sup>104</sup> has the power to grant issue or refuse amongst other things any permission or license connected to nay mining operation.

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<sup>102</sup> Personally concurring with the writer as quoted, South Africa is by far having the best taxation system from the government gets money from the mining industry and other strategic sectors and if the mines were to be nationalised, the government would cease to receive the 50% revenue from the mines like Botswana and would in turn have to come back and subsidise the very same mines it should be taxing like it is already doing with the parastatals due to mismanagement and corruption. See also, Trollip A, DA officialnewsleter, 29 march 2010. It is indicated that the government has unnecessarily spent money on parastal Bosses, since 2001 at least R262.1 million has been spent on parastatal bosses who delivered very little and left the parastatals in critical financial conditions.

<sup>103</sup> Section 3(1) of act 28 of 2002

<sup>104</sup> The Department of Mineral resources responsible for the issuing of mining permits and regulation of mining related activities

This provision is in line with the clause in the freedom charter<sup>105</sup> upon which the ANCYL call for the nationalization of mines and other commanding heights of the economy derives its full substantiation and existence.

This form of nationalization puts the South African government in an advantageous position to deal with the mining industry with specific reference to the mining companies which may be problematic in terms of paying the levy which the government is entitled to get from the exploitation of the country's mineral resources. This point is deliberately alluded given the reality south Africa is a constitutional state and cannot provide from a radical form of beneficiation such as wholesale nationalization of expropriating land without compensation.

Given the south African history and the manner of transition to power, this mode of nationalization is suitable by far, with the power given by the state through the MPRDA as referred to above, this mode of nationalization can work to the delight of the masses of our people and in line with the freedom charter if carefully and bona fide managed going forward.

#### **4.3. Nationalization coupled with socialization.**

This mode of nationalization purports to transfer more control and beneficiation to the people as a whole and not to the state which has got the capacity to behave like private companies which are currently viewed as a major predicament to social progress and poverty alleviation programs. Any progressive call for nationalization needs to be

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<sup>105</sup> The national wealth of our country is the heritage of all south Africans, shall be restored to the people, the mineral wealth beneath the soil shall be transferred to the ownership of the people as a whole.

coherent and do-able part of an overhaul democratic program, the discussion around the transformation of the mining sector needs to account for the broader challenge of putting south Africa<sup>106</sup> in a new job creation path.

Nationalisation of the commanding heights of the economy is not inherently progressive, the apartheid regime and various fascist states had extensive state ownership. Suffice to say, key financial institutions in the US and the UK are currently and effectively nationalized but in all these cases state ownership has not been to the benefit of the people by meeting their social needs but rather beurocratic interventions to bail out capitalism in crisis<sup>107</sup> and it's a hard hitting reality that capitalism has never been to the benefit of the masses of our people but private accumulation of wealth for the powerful clique in the state.

Hitting the last nail in the coffin of the call for nationalization of mines that seeks to bail out capitalism in crisis or pursue state capitalism, Dr Blade Nzimande<sup>108</sup> has come out with guns blazing debating against the call for nationalization that is not coupled with socialisation. The call for nationalization is not genuine for it is to bail out some people who ventured into the mining business through BEE transactions. The SACP reiterated its call of public ownership of the means of production through socialization. It further submitted that nationalization is one way of achieving the overall objective of building a

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<sup>106</sup> Cronin J, Umsebenzi Vol.9, no 3,3 february, online. This submission was following the ANCYL call that the state should be a 60% partner with the private companies in the mining sector. The call for nationalisation should be coupled with the full grasp of economics. See also Cronin J, 4 February 2010, financial institutional structure, online.

<sup>107</sup> *ibid.*

<sup>108</sup> Also the General secretary of the South African Communist Party

socialist society but nationalization is not inherently progressive as it depends on whose class interest is it advancing<sup>109</sup>. This mode of nationalization is also supported by NUM<sup>110</sup> which has been publicly vocal on its support for the nationalization of mines called for by the ANCYL subject to certain conditions and submissions.<sup>111</sup> The union does not support wholesale or blanket nationalization of mines. It preferred a strategic equity mode in terms of which a state mining company is operationalized and used as a government vehicle to invest only in strategic minerals such as platinum, coal, uranium, iron ore and manganese amongst others. Presenting in the parliamentary mining sector through its parliamentary officer Madoda Sambata, the union proposed that by 2014, the licensing process should be restructured and mining rights be awarded on the basis that a company making an application must be having the following structure of ownership<sup>112</sup>:

- 49% private shareholding irrespective of race or gender
- 31% shareholding to a new State owned mining company
- 10% shareholding for employees share ownership schemes
- 10% shareholding to the community/Traditional authority/ worker co-ops.

This submission by the union is the one that is fully supported by the SACP given the afore submissions by its Deputy Secretary and its General secretary respectively given its quests for socialization of the state based on the fact that, given the Union submission, the community would automatically be 10% shareholders of any mine operating on their soil through the traditional authority. Also it would be a victorious

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<sup>109</sup>Nzimande B, 28 June 2011, mail & Guardian, online, see also [www.SACP.org.za/latest](http://www.SACP.org.za/latest) news.

<sup>110</sup> The national Union of mine Workers, the biggest affiliate of the Congress of South African Trade Unions(COSATU)

<sup>111</sup>Baleni F, Miningweekly, 25 august 2010, online.

<sup>112</sup>Ibid

incentive to the workers to be entitled to a 10% state by virtue of being employees of the mine as opposed to the substitute of a private exploiter by the state in the form of blanket nationalization.

#### **4.4. The Chinese experience on nationalization.**

The nationalization of the People's Republic of China was dominated and made success by industrialization which created jobs and directly empowered people through worker cooperatives so as to alleviate poverty. When the Communist Party of china took power in 1949, its long term goal was to build a socialist country and that meant industrialization.<sup>113</sup>It is important to note that the motive behind the Chinese industrialization or nationalization was to empower the people of the country as a whole and the nationalization was as a result coupled with socialization. Of second importance, it should be borne in mind that by virtue of China being under the leadership of the Communist party politically and economically, socialization is inevitable and nationalization as a way of achieving socialism would go without heavy criticism and ideological confusion as is the case in South Africa.<sup>114</sup>In the south African case, the call for the nationalization of mines is undoubtedly mala fide given the fact that it is made within the womb of capitalism where the ruling party has got the character of multi class and of concern, dominated by the anti and non-communist who would without doubt call for nationalization that seeks to pursue State capitalism and not for the benefit of the people as a whole.<sup>115</sup> This immediately explains why the Chinese

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<sup>113</sup>Wikipedia.org, The Economic History of the People's Republic of China

<sup>114</sup> The call for the nationalization of mines is vocally led by a proud enemy of the communist Party.

<sup>115</sup> Ibid

nationalization was bound to be successful; it was made in the interest of the working class and the poor<sup>116</sup> by the leader organization of the working class and the poor.

The clear economic vision that the country had contributed to the success of their nationalization program, to show soberness and careful consideration of the material facts. They first stabilized the economy by nationalizing the banking system and centralizing it under the people's Bank of China so as to bring inflation under control and unifying the monetary system. The land was directly transferred to the people and they were encouraged to form mutual aid schemes and deposit a certain percentage of their agricultural products to the state as a form of tax. They also established state owned firms to compete with private firms while partnering with them and slowly negotiating for a subtle and total takeover.

The second factor which contributed to this success was the deployment of educated and skilled personnel in strategic position of government and the economy. China as it aspired to be like the established Soviet Union, it sought assistance from the Union and as a result, a considerable number of skilled personnel relevant for industrialization were deployed to assist china economically and otherwise. This goes without saying that as South Africa, seeking to pursue nationalization, we should dramatically change the status quo of skills shortage if we ever dream of succeeding in a wholesale nationalization. The importance of educated personnel in economic development was

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<sup>116</sup> The Chinese nationalization was aimed at improving living standards, narrowing of the income difference and production of modern military equipment to guard against the capitalist countries

stressed out by the President<sup>117</sup> of China in 1968 after the cultural revolution when he said “to revive the efficiency in the industry, the Communist Party of China Committees should be returned to positions of leadership and a campaign should be carried out to return skilled and highly educated personnel to jobs from which they had been displaced during the cultural revolution”<sup>118</sup>

The mode of nationalization employed by the Chinese government was that the state nationalized private firms in 1957 by buying them or establishing Public Private Ownership with them and by 1967, 67.5% of the industrial enterprises were state owned and 32.5% under the Public Private ownership and absolutely no privately owned firms. The program was eventually a full success and a progressive example of nationalization but as time went by challenges emerged and the economy of China faced difficulties<sup>119</sup> owing to the Asian financial crisis and huge amount of bad loans.

Due to non profit making in some of the state institutions, the ruling party in 1997<sup>120</sup> announced plans to sell, merge or close down State owned Enterprises calling “non public ownership” which in a nutshell can be termed as privatization. In 1998, the 9<sup>th</sup> National People’s assembly endorsed the plans relating to the state owned Enterprises and in the year 2000, China claimed success in making the afore mention institutions profitable by privatization of partnering with the private sector<sup>121</sup>. The Chinese experience on nationalization seeks to suggest that, no matter how the economy

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<sup>117</sup> Zhou Enlai

<sup>118</sup> Ibid.

<sup>119</sup> Opcit.

<sup>120</sup> Under president Jiang Zemin at the 15<sup>th</sup> Congress of the Communist Party of China

<sup>121</sup> Opcit.



prosper under the ownership of the state. Inevitably re privatization and public private ownership or absolute private ownership with a better taxation model leads to a sustainable economy. That is why other politicians and academics are arguing that the people who are calling for nationalization now will be calling for privatization in ten years' time.<sup>122</sup>

#### **4.5. The Chilean nationalization experience**

The nationalization of mines in Chile was mainly on copper mines and the process was commonly described as the “Chileanisation of Copper”<sup>123</sup>.the government acquired control of the major foreign owned section of the copper mining industry in the country. This process was started by Carlos Ebarnez Campo<sup>124</sup> and was completed by Salvador Allende<sup>125</sup> following the negotiated nationalization which was deemed as too slow and expensive process under the president of the United Democratic Christian party<sup>126</sup> in 1969.This act of sovereignty by the Chilean government was a socialist move and as a result inevitably angered the imperialist countries such as the United States of America which pressed for international Economic embargos against the Chilean government and isolated it from the world economy. This worsened the state of politics in the country and created a space for a *coup de tat* and the assassination of the president in 1973.

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<sup>122</sup>Opcit

<sup>123</sup> The in a nutshell means the transfer of Copper to the people of Chile from foreign Investors or people.

<sup>124</sup> The Constitutional president of Chile from 1952-1958.It is also important to note that he was also sympathetic to the socialist cause of the Communist party in the Country.

<sup>125</sup> The first democratically elected socialist president of Chille, 1970-1973.

<sup>126</sup>Eduardo Freimontalva

The second stage of nationalization preceded the afore discussed and was in 1969 under president Eduardo Frei Montalva. In this process the government acquired 51% of the two major mines which were American owned<sup>127</sup>. This process was described as a negotiated nationalisation designed to avoid conflict with the international states with specific reference to the United States of America. Also the move for negotiated process was to enable the state to acquire the assistance from the multinationals in terms of technical, financial and marketing skills who have long been in the mining industry. This process was heavily criticized by the leftist political organization and even sections within the president's Christian Democratic Party and singing to the tune of the imperialist America and the process was deemed too slow and expensive.

The outright nationalization as already hinted above was implemented after a victory of a socialist candidate president Salvador Allende. In 1971 after the constitutional amendment which led to the immediate affection of law 17.450<sup>128</sup>. the expropriation without compensation was justified by the assertion that the multinationals had already made enough profit which exceed the book value of their property during their time of copper mining in Chile.

According to Article 1 of the Chilean Mining code, the state has absolute, exclusive, inalienable and imprescriptible ownership of all mines in the country. It goes on however to state that everyone may prospect for and search for mining substance and this

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<sup>127</sup>Chiquicamata and EI Salvador

<sup>128</sup> This law empowered the government to expropriate mines without Compensation

include foreign investors who must in addition observe the decree law 600<sup>129</sup> which deals with foreign investment and investment contracts.

Owing to international economic pressures by the imperial countries, the Chilean nationalization of the copper industry was not a success. This point is deliberately alluded to on the basis that the ownership of the mines is in the hands of government but the mining activities are carried out by multinationals<sup>130</sup> liable to an overall tax of 42%. This mode of nationalization is comparable with the South African mode which is far better because South Africa is collecting 50% of the mining profits through tax<sup>131</sup> with no track record of wholesale nationalization which may attract economic embargos at an international level.

#### **4.6. The nationalization experience in Venezuela.**

The energy policy of Venezuela gave rise to the nationalization of the oil industry in 1976, creating a state owned company, Petros de Venezuela which controlled oil and natural gas. It is also important to note that Venezuela has the largest oil reserves in the western Hemisphere. The state owned Company of Venezuela accounts for about a third of the country's GDP<sup>132</sup>, 50% of government revenue and 80% of the country's export earnings.<sup>133</sup>

The nationalization policy was altered in 1990 when the country introduced a new policy which allowed for private companies to invest in the upstream oil sector of the country

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<sup>129</sup> In terms of this law, foreign investors are liable for a combined tax of 42%.

<sup>130</sup> Article 1 of the mining code of Chile

<sup>131</sup> Ibid.

<sup>132</sup> Gross Domestic Products

<sup>133</sup> [http://en.\\_wikipedia.org/wiki/energy\\_policy\\_of\\_Venezuela](http://en._wikipedia.org/wiki/energy_policy_of_Venezuela)

which led to 22 foreign oil companies investing<sup>134</sup>. In 1999 Venezuela adopted a new Hydrocarbon Law which opened all aspects of the sector to private investment. In 2007, Hugo Chavez<sup>135</sup> announced the nationalization of the oil industry in which foreign companies were obliged to sign agreements to the effect that, the state owned Oil Company, Pdvsa was given majority control of the oil industry.

Since Chavez took over and implemented nationalization policies, the oil production fell by a quarter and the government budget was affected severely. But since 2009 due to high need of energy, many countries turned to Venezuela<sup>136</sup>. Currently the state owned company of Venezuela produces 3.3 million barrels per day, putting Venezuela as the world's eight oil exporter and the fifth largest net exporter meeting around 15% of the US's oil consumption.<sup>137</sup>

The Venezuelan nationalization of its strategic resources has beyond reasonable doubt proven to be a success and is recommendable as a case study for South Africa. However, what must be borne in mind is the political leadership and policy position of the Venezuelan leading structures. It is a pure socialist country<sup>138</sup> like China which puts it a position to raise an unquestionable nationalization debate.

#### **4.7. Nationalization mode of Namibia.**

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<sup>134</sup> This included international oil majors like Chevron, Bp, Total and Repso YPF of Italy.

<sup>135</sup> The leader of the United Socialist Party of Venezuela

<sup>136</sup> This includes Italy's EniSPA, Petrovietnam and Japan's Itouch Corporation, with the China National Corporation signing a 16.3 Billion Us dollars joint venture.

<sup>137</sup> The energy policy of Venezuela, Wikipedia.org

<sup>138</sup> Venezuela is led by a coalition of Marxist Leninist organisations, the Communist party of Venezuela and the United Socialist party of Venezuela which is led by Hugo Chavez.

The Namibian subtle move for the nationalization of strategic minerals find expression in the south African mode proposed by the National Union of Mine workers<sup>139</sup>. The Namibian government has announced plans for exclusive exploration and mining of Uranium, Copper, Gold, Zinc and coal by a State owned Mining company. The Office of the Minister<sup>140</sup>. This was echoed by the Office of the President, Hifikepunye Pohamba that the government wanted to increase its participation<sup>141</sup> in the mining of the aforementioned mineral. This move is in my view matching the current economic situations at an international level and put the Namibian government in a position to negotiate for a better stake with companies having an investment interest entering into a partnership with the state owned mining company. This is a path which South Africa has taken from a different angle by centralizing the power to grant permission from mining and other activities connected to mining.

#### **4.8. The Zambian nationalization failure.**

The Zambian decision to nationalize the copper was inspired by the Chilean process in 1967 under Eduardo Frei. It has been a risky action from the onset as Zambia had no capital nor skills to insure that the industry remain operational by itself which meant that meant that the government under the leadership of Kenneth Kaunda had to rely heavily on private companies and white mine operators from which the mines have been taken. The decline of the copper price owing to the end of war in Vietnam, the discovery of new sources and the increase in the use of other minerals instead of copper hit Zambia hard. In 1964, Zambia was the third producer of copper in the world and accounted from

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<sup>139</sup> Opcit

<sup>140</sup> Minister of Mines and Energy, Isak, Katali

<sup>141</sup> Devon. M, Business Journal, may 04 2011, online

95% of the country's exports.<sup>142</sup>for 30 years, copper production declined from 700,600 metric tons to a low of 26,192 metric tons in 2000 owing to poor management of the state owned mines by the Zambian Consolidated Copper Mines<sup>143</sup>.The other factor was the lack investments to lack of confidence in the country's economic policies. The major problem began in 1982 when the Zambian government acquired the majority control in the country's operations of the two major foreign owned mining cooperation<sup>144</sup>.The other factors which contributed to the failure of the Zambian nationalisation include the lack of backup for Mulungushu Economic Reforms<sup>145</sup>, the scarcity of skills and corruption in the parastatals.Given the identical challenges of skills shortage, mismanagement of parastatals and corruption to note just a few. South Africa should by whole means go for a policy shift that will avoid the Zambian situation.

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<sup>142</sup>Nationalisation in Zambia,22 august 1969,Mining,Online

<sup>143</sup> <http://own:eu/file/2011/04/Zambia>

<sup>144</sup> Anglo American and Rhodesia selection Trust, this enabled the state to control 80% of the economy through parastatals in strategic sector including mining, writes Lebohang pheko, a policy and advocacy director at the trade collective.

<sup>145</sup> This is a 1968 Zambian government declaration to acquire equity in a number of key foreign owned firms, usually 51%

## **CHAPTER 5: CONCLUSION, PROPOSALS AND RECOMMENDATION**

### **5.1. Conclusion.**

The call for the nationalization of the south African mining industry by the ANCYL is unguided, radical, anarchic and achaic. It lacks proper ideology and the class content, it is advocated by the institution or organization led by the people who clearly do not have a full grasp of the economy. It is tarnishing the trade image of the country in the international community and has the propensity to scare potential investors and cripple the economy of the country.

The radical approach is not relevant in the current political and economic conjuncture. It is held in an intimidatory manner and has direct impact in the decline of direct foreign investment and ultimately the slow pace of job creation. Potential investment deals have been put on ice by multinational companies awaiting clarity by the ruling party and its government on the nationalization policy for they want to invest in the socially and politically stable economy.

According to the United Nations Report of the 2010, world conference and Trade and Development held in China, direct investment in the South African mining industry has declined by 70% owing to the uncertainty caused by the call for the nationalization of the mining industry.

The call lacks substantiation and undermines the gains of the 1994 democratic breakthrough, the advocates for nationalization confuse the class struggle with racism, they want to be racist in order to address and class issue by seeking to create a new apartheid order where the privileged few and connected black Africans will benefit from the economy more in particular the mining industry at the expense and name of the poor black masses.

The call is characterized by populism, demagoguery and intimidation of those who are differing ideologically with the debate. Arguably, the debate seeks to rescue the emergent black capitalist strata catapulted to the mining industry through the BEE transactions and now in crisis.

The balance of evidence suggest that, the balance of forces based on the existing law, policies, legislation, institutions such as the mining charter, strategy and commitments made by the chambers of mining and commerce are in favor of change and downstream beneficiation.

The mining charter which is a broad based socio economic vehicle has set a framework and timeframe to effect entry of the historically disadvantaged South Africans in the mining industry. The targets of the charter just to note a few are human Resource development, employment equity, on discrimination against foreign migrant labour, mine community and rural development, upliftment of the housing and living conditions.



Currently more than 70% of the mining industry's labour force is black while less than 20% of the managerial positions are held by black people. Targets have been set by the government that by 2014, all mining companies will be expected to have 40% of managerial positions held by the previously disadvantaged and 15% ownership.

## **5.2. Recommendations.**

This desertation recommends the following:

- Modern policy approach-the government of the ruling party must adopt a policy that will accepted at an international level, taking into account the fact that we are in a mixed economy where the economy that is localized faces isolation by the international community.
- Conditional beneficiation-the section 26 beneficiation must be accompanied by conditions through a policy or guideline making re-investment a core requirement to the beneficiaries. It must be directed to the relevant people directly through trust or co operatives.
- Diversification of the charter-The targets and framework outlined by the charter needs to co-exist with a strict monitoring and evaluation committee consisting of academics trained in the field of mining, members of different political parties, tribal authority and ordinary members of the civic organizations to ensure transparency and proper accountability.
- Industrialization policy-South Africa must adopt an industrialization policy similar to the Chinese in the 1940's to process our minerals locally and create jobs and in the same time making our economy more competitive and profitable.

- Skills Development-the government must launch massive programs to equip our people with core skills for employability in the mining industry for it will not assist suppose we decide to industrialize the mining sector only to find out that our people will only be employable at the level of unskilled labourers.The country must be combat ready to take charge of the mining industry not only at the level of equity ownership but also the actual day to day running of the mine, we need mining geologists, boiler makers,artisans,engineers,mining and environmental legal personnel just to note a few.Labourers also needs to be taught on underground survival skills more in particular first aid skills and precautionary measures to prevent minor accidents underground.
- Research Fund-there must be a research institute specifically established to train people and acquire more knowledge about mining related areas such as the above mentioned. We need people to compete world standard, people who will study up to doctorate level in the field of Environmental Science and mining law for instance to ensure compliance with the country's environmental laws so as to promote sustainable development and a healthy environment as constitutionally envisaged.
- Review and development of the existing legislation and policy-laws and policies of the country on mining must be tightened in favor of skillful and optimal mining of any discovered mineral. The laws must ensure that any person who expresses interest in mining must be fully acclimatized on the importance of optimal mining, educated in one of the fields connected to mining or having substantial interest to pursue mining related education to prevent outright outsourcing of human

resource by the owners and management of the mine. This will limit or entirely deal with the Aurora scenarios to avoid instances where people own mines through BEE transactions with the purpose of looting mine resources for negative private spending, clearly with no intention mine.

- Implementation of the Labour and Social Plan-The existing requirement for the submission of a social and labour plan must be extended to implementation, the Department of Mineral Resources must establish a committee that will monitor and evaluate progress made in terms taking social and labour plan provisions by mining companies for future reference that in case a mining company neglects the afore plans, the mining permit must be reviewed and retracted.

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## **Appendix II: Preparation of media and reagents**

### **Malt Extract agar**

Malt extract	20g
Agar	15g
Distilled water	make up to 1000 ml

Mix and autoclave for 15 min. Add 0.02g/l chloramphenicol. Pour out on plates or universal bottles for slants.

### **Preparation of 0.05 M Sodium Acetate buffer pH 5**

Prepare 0.1M Sodium Acetate Buffer pH 5

Solution A: 0. 2M Acetic acid (11.55ml/l)

Solution B (16.4g/l) Sodium Acetate

Mix 14.8 ml Sol A

35.2 ml Sol B

Dilute to 100ml in water.

Dilute 1:1 in water to give 0.05M Sodium acetate buffer.

## DNS reagent

Dinitrosalicylic acid	40g
Phenol	8g
Sodium sulfate	2g
Potassium sodium tartarate	800g

Dissolve in 2 liters of 2% (w/v) NaOH and then make up to 4 liters with distilled water.

## Preparation of SDS-page gels for electrophoresis

	<b>10% resolving gel</b>	<b>Stacking gel</b>	<b>Sealing gel</b>
Water	4.05 ml	2ml	0ml
1.5M Tris pH 8.8	2.5ml	0 ml	0.5ml
0.5M Tris pH 6.8	0ml	1.25ml	0ml
Acrylamide/bis (30% T, 2.7% C)	3.3ml	0.65ml	1ml
10% SDS	0.1ml	50 $\mu$ l	50 $\mu$ l
10% Ammonium persulphate	50 $\mu$ l	50 $\mu$ l	50 $\mu$ l
TEMED	5 $\mu$ l	5 $\mu$ l	5 $\mu$ l

## **Preparation of Coomassie stains for SDS page gels**

### Reagent A

Dissolve 0.5 g CBR-250 in 250 ml isopropanol, 100 ml acetic acid and 650 ml distilled water

### Reagent B

Dissolve 0.05 g CBR-250 in 100 ml isopropanol, 100 ml acetic acid and 800 ml water

### Reagent C

Dissolve 0.02 g CBR-250 in 100 ml acetic acid and 900 ml water

### Reagent D

Mix 100 ml acetic acid with 900 ml water

## **Preparation of acrylamide concentrate (30% T, 2.7% C)**

Dissolve 29.2 g acrylamide and 0.8 g bis-acrylamide in 70 ml deionized water. Add to 100ml when finally dissolved. Filter the solution under vacuum through a 0.45  $\mu\text{m}$  membrane. Store in a dark bottle at 4 °C.



### **Preparation of 1.5 M Tris HCl pH 8.8**

Dissolve 18.2 g Tris base in 80 ml water. Adjust pH to 8.8 with HCl and add water to a final volume of 100 ml

### **Preparation of 0.5 M Tris HCl pH 6.8**

Dissolve 6.1 g in 80 ml water and adjust pH to 6.8 with HCl. Add water to a final volume of 100 ml. Store at 4 °C.

### **Preparation of 10% SDS**

Dissolve 10 g sodium dodecyl phosphate in 60 ml of water. When dissolved add to water to a final volume of 100 ml.

### **Stock Sample buffer**

Water	4.8 ml
0.5 M Tris-HCl	1.2 ml
10% SDS	2.0 ml
Glycerol	1.0 ml
0.5% bromophenol Blue (w/v) water	0.5 ml

(0.06 M Tris-HCl, pH 6.8, 2% SDS, 10% glycerol, 0.025% Bromophenol blue).

Store at room temperature.

### Electrode buffer (5 times concentrated)

15 g Tris base, 72 g glycine, 5 g SDS/1 ml electrode buffer. Mix the reagents and confirm that the pH is near 8.3.

(0.025 M Tris, 0.192 M glycine, 0.1% (w/v) SDS, pH 8.3).

To use 5x concentrate, dilute with four parts water.

### Zymogram Gel

	<b>10% resolving gel</b>	<b>Stacking gel</b>	<b>Sealing gel</b>
Water	3.05 ml	2 ml	0ml
1.5M Tris pH 8.8	2.5 ml	0 ml	0.5ml
0.5M Tris pH 6.8	0ml	1.25 ml	0ml
Acrylamide/bis (30% T, 2.7% C)	3.3 ml	0.65 ml	1ml
10% SDS	0.1 ml	50 µl	50 µl
10% Ammonium persulphate	50 µl	50 µl	50 µl
TEMED	5 µl	5 µl	5 µl
Substrate	1 ml	0	0

For a different concentration of the gel you calculate from the volume of Acrylamide used and add the difference to water

e.g. for a 15% gel

$$15/10 \times 5\text{ml} = 4.95 \text{ (approx 5ml)}$$

Total volume of acrylamide and water = 6.3ml

Volume of water = 2.35

### **Preparation of substrate for zymograms**

Add 1g in 10 ml distilled water (0.1% xylan solution). Boil the suspension. Bring back to volume by adding distilled water. Store at -20 °C and thaw before use.

### **Preparation of reagents for processing zymograms**

#### 20% isopropanol

Add 200 ml of isopropanol to 800 ml distilled water.

#### 0.1% Congo red

Weigh out 0.1 g Congo red in 100 ml of distilled water.

### 1 M NaCl

### 0.5% (v/v) acetic acid

Measure 0.5 ml acetic acid into 100 ml of distilled water.

### **DNS Reagent for Filter Paper Assay**

Distilled Water	1416 ml
3,5-Dinitrosalicylic acid	10.6 g
NaOH	19.8 g

Dissolve the above above, then add:

Rochelle salts (Na-K tartarate)	306 g
Phenol (melt at 50°C)	7.6 ml
Sodium metabisulfite	8.3 g

Titrate 3 ml sample with phenolphthalém with 0.1 N HCl. Should take 5-6 ml HCl. Add NaOH if required.