
South Africa

State Resumes Control Of Mineral Rights

by Lydia Cherry

The South African National Assembly transferred ultimate control of all mineral rights from individuals and companies to the state, voting 243 to 35 to pass the Mineral and Petroleum Resources Development Bill into law on June 26. Since coming to power in 1994, the African National Congress (ANC) has been unwavering in its commitment to make this change. While awaiting the final vote, MPs of the ruling ANC party, including various Cabinet ministers, danced and sang in the House.

In spite of the rhetoric from Tony Leon, leader of the minority pro-British Democratic Alliance party, that the bill undermined the commitment to an “open economy in a globalized environment” by President Thabo Mbeki’s administration, the legislation actually brings South Africa into line with laws in most other countries. The private ownership of mineral rights flowed from South Africa’s history of Roman and Dutch law, and—because of British predominance in South African mining—it was one of the pillars of British power in the country during the apartheid period.

An Angry Cabinet

The mining giants, led by Anglo Platinum, went as far as they dared to gut the bill. Minerals and Energy Minister Phumzile Mlambo-Ngcuka, at a press conference on June 20, said the Cabinet was “very angered” by mining industry threats, which bordered on blackmail, that they would make the bill an issue at the June 26-27 Group of Eight, where Mbeki’s New Partnership for Africa’s Development (Nepad) was to be accepted by the G-8 industrial countries. The mining industrialists were claiming that the bill abrogated international agreements and undermined Nepad, by creating an environment unfavorable to development and sound governance. “I have never seen my Cabinet so militant!” Mlambo-Ngcuka said. “They are so angry. They feel [the mining giants] have pushed us too far.” She said the Cabinet’s orders were “to go, go, go,” and make no compromises, and that she planned to make none. The bill was passed before the G-8 summit began.

Under its terms, the minister of minerals is required to refuse prospecting rights to any applicant which owns “a concentration” of mineral resources, or if unfair competition would result. This portends a shift from the current pattern of intense concentration. According to testimony on the bill from the Congress of South African Trade Unions (Cosatu) and

the National Union of Mineworkers (NUM), Anglo Platinum holds more than 90% of all mineral rights to platinum and associated minerals; AngloGold, Goldfields, Harmony, and Durban Roodepoort Deep hold majority rights to gold reserves; De Beers has almost all rights to diamond fields; Samancor and Assmang have majority rights to manganese reserves; and so on. Anglo American Corporation, the testimony points out, “has holdings in almost all these conglomerates.”

Mining companies will now have to work with the government to contribute to the economic development of the mining areas, to which end the government’s royalties will be used. There will be a plan for mineworkers (apparently agreed at the time of licensure) to be provided with managed housing, health care, multiple-skill training, and unemployment compensation.

The minister of minerals can impose “corrective measures,” or even apply for judicial management, if the operator does not fulfill certain obligations. These provisions are in stark contrast to current, squalid conditions—unchanged since the end of white-only minority rule in 1994—that make family life impossible for miners. Most miners still live in single-sex hostels. In most cases, more than ten workers occupy a single open room, and are subject to prison-like regulation of their free time.

The bill provides security of tenure for licensees for 30 years, renewable for 30 years (above the world average). Under the “use it or lose it” maxim, there will be access to deposits which the former owners kept out of production. Applicants interested in beneficiation (processing of ore) will be given preference.

No Clear Role for the State

For the urgent need at hand—optimal use of South Africa’s mining industry for industrializing Africa in the face of the world financial collapse—the bill did not go far enough. Cosatu and NUM point out: “There does not seem to be a vision nor practical provision for a direct, productive role for the state in the industry. . . . Relying primarily on the market mechanism—even if combined with various discretionary and other powers of the state—would tend to preserve the *status quo*. We are concerned that the approach of the Bill explicitly prioritizes the objective of ‘black empowerment’ [for entrepreneurs] and not a clear role for the state.”

Nevertheless, Cosatu and NUM were prominent members of the broad coalition of black business associations, trade unions, and political parties that emerged in the week before the vote, to push the bill over the top.

Minister Mlambo-Ngcuka’s high-spirited speech on the bill on June 25, included citations from the ANC Freedom Charter of June 26, 1955: “The people shall share in the country’s wealth”; and “The doors of culture and learning shall be opened.” The next day, the 47th anniversary of the Charter, the bill was passed. The Charter’s principal architect, Lionel Bernstein, died the same day.