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The new mining bill could send South Africa tumbling even further down the 'Fraser' index

South Africa has recently dropped to 64th out of 96 on the 2012-2013 Fraser Institute's international policy potential index, which measures the attractiveness to investors of different mining countries. "If the draft Mineral and Petroleum Resources Development Bill of 2012 (the Bill) is made law, the country's score is sure to tumble further," says the South African Institute of Race Relations. "For the Bill ignores economic reality, while giving the mining minister many more discretionary powers."

The Bill jettisons the current requirement in the Mineral and Petroleum Resources Development Act (MPRDA) of 2002 that minerals beneficiation must take place 'economically'. Instead, the Bill states that the minister 'must initiate or promote the beneficiation of mineral resources' in South Africa, and leaves aside the question of whether this can be done on an economic basis.

Says Anthea Jeffery, the Institute's head of special research in a submission on the Bill to the Department of Mineral Resources (DMR): "The Bill also gives the minister an unfettered discretion to make other key decisions regarding beneficiation, including the percentage of minerals to be beneficiated, the levels of beneficiation required, and (it seems) the prices that mineral producers may charge to local beneficiators.

"This approach overlooks a host of obstacles to successful beneficiation: among them, electricity shortages, skills deficits, infrastructural backlogs, and high labour and other input costs. In combination, such factors make it very difficult for South Africa to compete on price against other developing nations, especially India and China. In these circumstances, the Bill's insistence on local beneficiation overlooks economic realities and could have severe consequences."

Under the Bill, mining companies that fail to promote beneficiation – irrespective of how uneconomic this might be – will face fines of up to 5% of annual turnover. They could also see key managers and directors sent to prison for periods of up to ten years. These proposed penalties are extraordinary and could deter mining investment still more.

In the words of Cynthia Carroll, outgoing chief executive of Anglo American plc, at the Mining Indaba last month: 'There are glaring shortcomings in the Bill that could hamper South Africa's ability to attract and retain investment in mining... None of us can defy economic reality [and] no country is an economic island. Like any other nation, South Africa will succeed only if it fosters an environment that is conducive to business and attractive to international investors.'

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Since the MPRDA took effect in 2004, South Africa's ranking on the Fraser Institute index has generally been in decline (apart from a brief uptick in 2011/12). Uncertainty about the interpretation and enforcement of regulations has also increased. In 2008/09, 47% of respondents saw this as a mild to absolute deterrent to investment. By 2012/13, that proportion had risen to 70%.

A key part of South Africa's problem lies in the vague terms of the MPRDA, which encourages its arbitrary and unequal enforcement by the minister and her officials. The DMR has been promising since 2007 to cure these ambiguities and limit the minister's discretionary powers. "However," says Dr Jeffery, "on beneficiation – and in many other spheres – the Bill goes in precisely the opposite direction."

In doing this, the Bill also ignores the National Development Plan (NDP) and its call for the MPRDA to be amended in a way that ensures a 'predictable...and stable minerals regulatory framework'.

Says Dr Jeffery: "The NDP has been endorsed by the Cabinet and approved by the ruling African National Congress (ANC) at its recent national conference at Mangaung. ANC and government leaders have repeatedly said the NDP must have 'overriding effect' on policy choices. This alone provides sufficient reason for the DMR to withdraw the Bill and recast it completely."

(The full text of the Institute's submission on the Bill to the Department of Mineral Resources is available on the Institute's website.)

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