



### RECOMMENDATIONS

- The institutions defining the labour rules of the game have to change. New amendments must be written in to the LRA to reduce the entrance threshold above which unions are admitted to participate in negotiations.
- Balloting should be non-negotiable. Union elites should be forbidden from dictating demands on behalf of members. Mining houses and unions should ensure a decent education for the workers they represent, to better equip them to make economically literate choices.
- NUM's conflation with ANC interests must be decoupled and the union's direct access to policy formation withdrawn.
- Mining firms and unions, through the Chamber of Mines, need to agree on a revenue-sharing model that limits wage increases and incentivises productivity. Wage increases should be linked to inflation, and approximately 20% of each company's profits should be made available for distribution, weighted in favour of low-skilled workers. A weighted smoothing arrangement could also be built in to prevent problems arising from differing levels of profitability across mining companies.

# Releasing the Prisoners from their Dilemma: How to Resolve Labour Tensions in South Africa's Mining Sector

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### EXECUTIVE SUMMARY

On 16 August 2012 South Africa was thrown into tumult as police opened fire with live ammunition on a crowd of striking mineworkers at Lonmin's Marikana platinum mine, killing 34 people. The policy briefing examines the institutional factors that contributed to this tragedy and that remain in urgent need of reform. It argues that current institutional arrangements – especially labour legislation – create strong incentives for rival unions to value violence over co-operation. An effective prisoners' dilemma (PD) exists. Mining companies simply cannot afford to offer the kind of wage increases that are being demanded. Competing unions refuse to temper their demands, as they cannot risk being seen as weaker than the other for credibility's sake. For mining firms and unions to revise their dominant strategies, a number of policy interventions are required to transform the PD into an assurance game (AG). The latter requires a focal point around which stakeholders can converge. The briefing proposes that a strengthening of the Council for Conciliation, Mediation and Arbitration (CCMA) to punish illegal or violent strikes by removing an offending union's bargaining rights may constitute such a focal point. It also offers a number of other key recommendations to prevent further labour unrest and consequent mining industry decline in South Africa.

### INTRODUCTION

Prior to the start of the platinum mine strikes in February 2012 in the North West province of South Africa, the town of Marikana was of little

significance to the outside world. On 16 August 2012 everything changed. A toxic cocktail of a brutal police force and grievance-mobilised workers resulted in the death of 34 striking mineworkers at Lonmin's Marikana mine. A number were shot in the back. Eighteen years into democracy, this tragic event elicited memories of the 1961 Sharpeville massacre, a pivotal event in the fight against apartheid South Africa.

Given labour–employer and inter-union labour tensions in the mining sector as one of the precipitating factors of the Marikana tragedy, the briefing provides practical policy recommendations through which these tensions could be optimally resolved.

### MINING INDUSTRY CONTEXT

Mining still constitutes approximately one-fifth of the South African economy (including indirect effects); contributes ZAR<sup>2</sup> 468 billion to the gross domestic product (GDP), more than half of all export earnings; and provides employment to more than 1.3 million people.<sup>3</sup> South Africa's mineral wealth is estimated at \$2.5 trillion by Citigroup.<sup>4</sup> Despite this impressive endowment, the industry stagnated in terms of its contribution to GDP during the longest sustained commodity boom in recent history. According to the National Development Plan (NDP), South Africa's mining industry contracted at a rate of roughly 1% per year between 2001 and 2008, whereas South Africa's top-20 competitors grew at an average rate of 5% per year.<sup>5</sup> Citigroup estimates too that South Africa's rate of new investment growth is the lowest of any significant mining jurisdiction in the world.

South Africa has declined markedly in the Fraser Institute Survey,<sup>6</sup> which ranks the attractiveness of mining exploration investment destinations. From being 14<sup>th</sup> in the world in 2002 (out of 45), the country is now ranked 63<sup>rd</sup> (out of 96) overall.

### LABOUR MARKET INEFFICIENCY AND MINING INVESTMENT ATTRACTIVENESS

The Fraser Institute Survey<sup>7</sup> ranks South Africa 93<sup>rd</sup> on labour regulation, ahead of only Venezuela, Egypt and Colombia. The latest Global Competitiveness Report,<sup>8</sup> which surveys 144 countries from across the world, ranks South Africa as the 52<sup>nd</sup> most competitive

economy, but notes that:<sup>9</sup>

South Africa ranks 113<sup>th</sup> in labour market efficiency (a drop of 18 places from last year), with rigid hiring and firing practices (143<sup>rd</sup>), a lack of flexibility in wage determination by companies (140<sup>th</sup>), and significant tensions in labour-employer relations (144<sup>th</sup>).

Somewhat surprisingly – given South Africa's severe electricity supply constraints in the short to medium term – the report ranks the overall quality of South Africa's infrastructure at 58<sup>th</sup> in the world, suggesting labour market efficiency as a comparatively more significant concern for improving productivity performance than infrastructure per se. Worsening labour market efficiency is strongly associated with worsening mining investment attractiveness. It is therefore imperative for the sake of the industry's survival and associated employment opportunities that a workable solution is found in the immediate future.

### INSTITUTIONAL CONTEXT

Labour unions, workers and firms operate under the ambit of the country's institutional context. Institutions are best understood as the rules of the game – 'the humanly devised constraints that structure political, economic, and social interactions'.<sup>10</sup> They are distinct from organisations (which are merely one type of player) and serve to reduce the transaction costs associated with economic exchange by providing credible commitment that contracts will be honoured. Political institutions are especially important for understanding development in a resource-wealthy context. As Robinson, Torvik and Verdier argue, 'the political incentives that resource endowments generate are the key to understanding whether or not they are a curse'.<sup>11</sup>

At present South Africa's mining industry bargaining structures are centralised at industry level except in platinum, where they operate at company level. Union recognition and bargaining arrangements have, in the absence of enterprise-level bargaining, become increasingly characterised by a practice of a de facto union majoritarianism in which the majority union bargains on behalf of all unionised employees. This effectively excludes other legitimate players by raising the recognition thresholds for minority unions to gain entry to collective bargaining forums. The monetary

and positional stake of such a prize is high, as even non-affiliated workers have to pay a pro rata fee to the officially recognised union to bargain on their behalf.

### A PRISONERS' DILEMMA

Prior to the platinum belt 'wildcat' (or legally unprotected) strikes of 2012, the National Union of Mineworkers (NUM) and mining firms played a typical ultimatum game (UG) when it came to wage negotiations. NUM elites, decreasingly concerned with representing shaft-level workers, negotiated annual wage increases with mining firms' management. By 2012 rival union, the Association of Mineworkers and Construction Union (AMCU), had effectively exploited the chasm between NUM elites and low-skilled workers in the platinum sector. The latter, frustrated by their alienation within NUM, crossed the floor to AMCU in large numbers after Marikana. On the three Lonmin mines alone, AMCU now represents 70% of the lower-skilled workforce. However, given the prize of holding the majority stake, AMCU elites have a strong incentive to maintain the status quo institution of majoritarian bargaining. Having upended the incumbent monopoly (in platinum and possibly soon in gold), they too have little rational interest in democratising the bargaining process. NUM, similarly, is prepared to fight to maintain its monopoly status across the other mining sectors. It evaluates the future stream of benefits to be sufficiently high to warrant the costs of violence against AMCU to deter it from entering the market in other sectors. NUM's evaluation is directly attributable to the fact that its elites have direct access to the crafting of national legislation through the alliance between the Congress of South African Trade Unions (COSATU) and the ANC, as it is one of COSATU's largest members. NUM is effectively both player and referee in the labour mining game – an untenable conflict of interest.

The institutional context – a majoritarian winner-takes-all bargaining system – has effectively produced a PD at the negotiating table between mining firms and the respective official union. NUM's recent demand to the Chamber of Mines for a 60% wage hike for entry-level workers, followed shortly thereafter by AMCU's 100% demand, provides an astute demonstration of the dilemma. Currently both unions are fighting for credibility among their low-skilled workers; NUM to

entice lost members back, and AMCU to retain those same workers. Mining firms cannot afford to acquiesce to these demands without shedding labour, lest they compromise shareholder value. Both players' hands are tied, resulting in a mutually suboptimal outcome – a perennial set of wildcat strikes undermining an already declining mining sector. In a difficult global economic context of a Chinese growth slowdown and decreased European demand for South African platinum, this is a bleak outlook. The obvious question is how to credibly incentivise union elites and mining houses to resolve this dilemma.

### FROM PRISONER'S DILEMMA TO ASSURANCE GAME

Economies characterised by both highly centralised and highly decentralised wage bargaining are likely to do better than intermediately centralised ones. At present South Africa's system is essentially intermediate. Wages are determined predominantly at industry level (platinum is an exception though bargaining is highly centralised at company level). Centralisation of wages at an economy level for all sectors is a highly unrealistic goal in a heterogeneous and structurally diverse economy. Moreover, 'there are always strong arguments in favour of decentralisation so as to let wages of individual groups respond better to their specific conditions. Therefore, wage bargaining at the level of individual firms or plants may be preferred'.<sup>12</sup> Empirically, industry-level bargaining is shown to be suboptimal for economic performance. In the South African context, then, and in mining in particular, further institutional decentralisation of wage bargaining is crucial to releasing the prisoners from their dilemma.

Further, a Framework Agreement for a Sustainable Mining Industry<sup>13</sup> was engineered by the deputy president, Kgalema Motlanthe, and ratified at the end of June 2013 by all key stakeholders. The agreement committed all players to non-violence and a consensual assurance that they will co-operate within the current rules of the game. It also promised a move towards abandoning majoritarianism, but has yet to be signed by AMCU. As it stands, the agreement is accurate in its assessment of the challenges confronting the industry and labour relations within the industry. However, it is not binding on actors in any credible way (a mere

signature unfortunately does not constitute credible commitment), creating cynicism that it is merely a pre-election palliative to NUM to maintain order until inevitable industry restructuring (job losses) occurs after the April 2014 general elections. The agreement lacks the kind of ingenuity embedded in the 1991 Gold Performance Agreements.

All players now need to recognise the destruction of playing their dominant strategy. If each union (regardless of whether it holds official status) was to be held legally responsible for violence and forced to compensate workers who lost their jobs from unprotected strikes, for instance, the dilemma would evolve into an AG, as the cost of defection (wildcat strikes) would rise significantly. A profit-sharing arrangement would similarly increase the benefits of co-operation. Mutual co-operation would still not be guaranteed, though, as one union might still justify the cost of defection today for the sake of attaining perceived greater market share in the future. In order for the mutually beneficial outcome to become a focal point that all players choose, each player must be assured that the other is rationally bound to play the co-operative strategy. This requires credible third-party intervention, agreed to by all parties, that punishes defection sufficiently to provide assurance.

## CONCLUSION

Given the clear existence of a PD in the labour-relations landscape within South Africa's mining industry, urgent intervention is required to avert the destructive effects of mutual defection. One possible means of attaining the focal point referred to above would be to mandate the CCMA to remove bargaining rights from any union guilty of propagating illegal or violent strike action. The NDP, however, unfortunately recommends only a vague strengthening of capacity for this independent institution it nonetheless promotes as vital. Combined with a profit-sharing arrangement, such a solution would be optimal; players would have higher-powered incentives in the new UG to transition away from a PD into an AG.

Tragic as Marikana was, the hope is that it may yet stand as the critical historical juncture that transforms

the labour landscape in the mining industry. This would undergird sustainable performance in the long run that maximises employment, the benefit of which cannot be overstated in the South African context of a 25.2% unemployment rate and a 10:1 dependency ratio on mining jobs. Mining is a critical transmission belt to manufacturing in South Africa. Unless the prisoners are released from their dilemma in this industry, the entire economy faces a serious risk from the continuing labour unrest.

## ENDNOTES

- 1 Ross Harvey is a visiting research fellow for the Governance of Africa's Resources programme at the South African Institute of International Affairs, Cape Town.
- 2 ZAR is the three-letter currency code for South African Rands.
- 3 Baxter R, 'Mining in Africa is not a "sunset industry"', *Business Day*, 9 May 2013, <http://www.bdlive.co.za/opinion/2013/05/09/mining-in-africa-is-not-a-sunset-industry>.
- 4 Knight Frank & Citi Private Bank, *The Wealth Report: A Global Perspective on Prime Property and Wealth*. London: Think, 2011.
- 5 South Africa, National Planning Commission, *National Development Plan: Vision 2030*, <http://www.npconline.co.za/MediaLib/Downloads/Downloads/NDP%202030%20-%20Our%20future%20-%20make%20it%20work.pdf>, p. 146.
- 6 Wilson A, McMahon F & K Green, *Survey of Mining Companies 2012/2013*. Vancouver: Fraser Institute, 2013.
- 7 *Ibid.*
- 8 World Economic Forum, *The Global Competitiveness Report 2012–2013*, [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2012-13.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf).
- 9 *Ibid.*
- 10 North D, *Institutions, Institutional Change and Economic Performance*. Cambridge: Harvard University Press, 1990.
- 11 Robinson JA, Torvik R & T Verdier, 'Political foundations of the resource curse', *Journal of Development Economics*, 79, 2, 2006, pp. 447–68.
- 12 Calmfors L & J Driffill, 'Bargaining structure, corporatism and macroeconomic performance', *Economic Policy*, 3, 6, 1988, pp. 13–61.
- 13 An electronic copy of the draft agreement is available at [http://cdn.bdlive.co.za/images/pdf/MiningDraft\\_140613.pdf](http://cdn.bdlive.co.za/images/pdf/MiningDraft_140613.pdf).

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