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ILLICIT FINANCIAL FLOWS IN THE MINING INDUSTRY IN SOUTH AFRICA

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EXECUTIVE SUMMARY

This study analyses the Illicit Financial Flows (IFF) in the South African mining sector with specific reference to transfer pricing (TP). The mining industry is one of the country's key economic sectors with potential for substantial contribution to economic growth, job creation, transformation and infrastructure development, consistent with the government's objectives of higher and more balanced economic and inclusive growth.

In 2019, mining contributed R360.9 billion or 8.1 percent to gross domestic product. It is therefore critical that South Africa continues to reflect and review mining regulatory and fiscal regimes in order to ensure that while attracting Foreign Direct Investment (FDI), these regimes are also capable of being administratively enforced, they ensure safety in mining, that they are environmentally and socially responsible as well as that mining houses also pay a fair amount of taxes on the profits generated in South Africa.

The South African mining industry profited from colonialism and apartheid through their economic, social and legal manifestations. This industry ill-treated and economically exploited workers from the Southern African region and thus, perpetuated and strengthened the apartheid state. Its business model was premised on profits generated from cheap, black and often migrant labour. The inequalities perpetuated by the mining industry were orchestrated through land dispossession for mining operations and involuntary displacement from ancestral lands which resulted in the Bantustans that accelerated the current rural-urban migration in South Africa.

The legacy of mining is therefore one of inter-generational wealth for a white minority and that of dispossession, poverty and environmental degradation for the black majority. Transformation of the sector is, therefore, a vital rudiment to the founding constitutional value of equality. This structural equality is important in ensuring that all people have full benefit and enjoyment of socioeconomic rights as well as an environment that is conducive to their health and wellbeing.

Mining in South Africa is largely defined by a stark disparity between mine workers and communities on the one hand, and mining management, financiers and shareholders on the other. Amongst the legislative means to rectify this balance of power inequalities are the Social and Labour Plans (SLPs). The SLPs obligates mining right applicants to draw up a set of undertakings to benefit mine workers and communities. However, there is mounting evidence of a stark disjuncture between the rhetoric in SLPs and the lived realities of mine-affected communities who do not see the promised benefits of mining development materialising. At the most macro-level, the SLP system neither promotes long-term planning, nor incorporates sustainability considerations, preventing SLPs from serving their intended purpose.

Trade in primary commodities is a key driver of growth in many developing countries. However, for the commodity led growth to be sustainable and more generally for globalization to be more inclusive, it is important to ensure that producing countries are able to capture their legitimate share of the gains from international trade in terms of foreign exchange earnings and fiscal revenue collected from customs and other trade levies. At the same time, features of the regulatory environment, notably tariffs, customs, export subsidies, exchange controls, coupled with imperfect monitoring and poor enforcement of regulations, may create incentives for trade misinvoicing by agents seeking to maximize profits and other gains such as access to foreign exchange out of

control of the regulating authority, thus, undermining developing countries' gains from commodity trade.

Trade misinvoicing is a reality impacting the South African mining industry. Trade misinvoicing generates two sets of losses to the South African economy. The first set are losses of revenues available to government that would otherwise be received through customs duties, VAT taxes, income taxes, royalties, and other measures. The second set are losses related to the rest of the economic structure through transfers of income and wealth out of domestic earnings, usually into wealthier countries abroad. If this money remains in the South African economy it could be used for investment, consumption, or savings. However, if it is transferred out, it is permanently removed from the domestic economy.

The South African mining industry has, contrary to the persistent narrative that casts mining corporates as victims of high input costs and falling commodity prices, has accumulated and reported net profits of R221 billion, between 2010 and 2019. The declared profits do not include the undeclared IFFs in trade misinvoicing for the silver-platinum group and iron ore which amounted to **R296 billion** and **R108 billion** in 2014 respectively.

The practice of trade misinvoicing has become normalized in many categories of international trade. It is a major contributor to poverty, inequality, and insecurity in South Africa. The social cost attendant to trade misinvoicing undermines sustainable growth in living standards and exacerbates inequities and social divisions.

There are several policy implications emanating from this study. Firstly, policy efforts could focus on a limited number of products and partners to increase the effectiveness of reforms. It is possible to identify key products and export destinations need to be investigated for trade misinvoicing. Secondly, improvements are urgently needed in data gathering at the product and partner levels, notably to ensure clarity and consistency in the classification of products over time and across partners, and appropriate recording of the origin and destination of exports. Thirdly, there is a need for an investigation at the company and transaction levels to assess the magnitude

and identify the mechanisms of export and import misinvoicing. Enhanced transparency in global trade is indispensable, especially through coordinated enforcement of the rules on country-by-country reporting by TNCs at the global level.

The study makes a number of recommendations:



Inter-Agency Co-operation

- Reviewing of models for sharing information among different agencies.



Legislation and Policy

- Establishment of specific IFFs and trade misinvoicing legislative and policy framework that will enable SARS and all other law enforcing and financial regulation agencies to detect and determine the tax value of intra-company transactions in a rigorous and consistent manner. This includes spelling out the operational procedures by which the entire financial, taxation and legal systems are to be administered.
- Establishment of specific tax legislative and policy framework that will limit the reliance on arm's length principle and the difficulty of finding comparable transactions.



Capacity Building

- Establishment of administrative structure at SARS that will solely be responsible for producing a pool of well trained, highly skilled officials that are adequately empowered to execute IFFs and trade misinvoicing laws, procedures and policies.
- Equipment of SARS with IFFs, trade misinvoicing expertise and technical sector knowledge to detect and quantify IFFs and trade misinvoicing risks in the mining sector.
- Establishment of measurable plans to narrow the gap, obtain more regular and precise information from mining houses and develop automatic exchange of information with other jurisdictions.



Leveraging Technology

- According to the International Telecommunication Union (ITU), measuring digital development facts and figures report in 2019, 61 countries had a fixed-broadband subscription including 5 GB of data costs less than 2 per cent of Gross National Income per capita. A mobile-broadband subscription with a 1.5 GB data package costs less than 2 per cent of GNI per capita in 89 countries, including four Least Developed Countries

(LDCs). The findings signalled a considerable progress made in broadband prices as a percentage of GNI in recent years. Against this background, the utilisation of new technologies such as data analytics and blockchain to prevent and detect any fraudulent manipulation of trade transactions by sharing and analysing relevant information in a trusted and secure manner is recommended.



INTRODUCTION

There are less than half of all countries globally that have abundant natural resources such as oil, minerals, forests or precious stones. The economic development models for these countries are premised on the exportation of these resources because they generate enormous revenues for these economies.

The extraction of natural resources, in essence, translates into extraordinary profits. If they are well managed, these financial resources could fast-track the socio-economic development of these resource-rich countries. However, most often than not, natural resources are found in countries that are characterised by a low human development index, a high-level of corruption, and weak legal frameworks as well as law enforcement¹. Consequently, the revenues generated from the extraction of these natural resources are only profitable to the mining companies to the exclusion of the indigenous people and local communities². Most importantly, the exploitation of natural resources is intertwined with IFFs (IFFs)³.

The nature of the mining industry and its appetite for development capital, the general scarcity of indigenous capital and specialised expertise result in most mining projects being owned and operated by mining subsidiaries of vertically integrated

multinational enterprises (MNEs). These span the full range of the mining value chain operating in many countries often through different group entities. Their mining subsidiaries typically export the majority of their mineral products, import capital as well as other goods and services. More often than not, this takes place through cross-border transactions with associated companies, part of the same MNE group, frequently residing in jurisdictions which are either low taxing or which allow the establishment of Special Purpose Entities (SPEs). UNCTAD estimates that around 30 percent of global cross-border investment is channelled through such offshore hubs which create tax avoidance opportunities on subsequent investment income⁴.

Transfer pricing (TP) is the process of determining the price for goods, services, or property sold between related parties within an MNE. For example, if a mining subsidiary sells mineral products to a parent company, the price paid for those goods to the subsidiary is called the transfer price. TP is a normal business accounting practice. However, some MNEs may use TP as an opportunity to shift profit to low tax jurisdictions to minimise their tax bill in the country hosting the mining operations. This is considered abusive and therefore referred to as “transfer mispricing.” In the mining sector transfer mispricing is generally due to under-pricing of outbound transfer of mineral products to related parties, and overpricing of inbound (and under-pricing of outbound) transfer of goods and services from related parties. These include marketing and financial services, corporate and support services,

¹ See UNDP. (2015). *Human development report 2015 ‘work for human development’*. New York: UNDP.

² See Oxfam International. (2009). *Lifting the resource curse how poor people can and should benefit from the revenues of extractive industries*. London: Oxfam.

³ Williams, A., & Le Billon, P. (2017). *Corruption. Natural resources and development: From resource curse to political ecology*. Cheltenham and Northampton: Edward Elgar Publishing.

⁴ See United Nations Conference on Trade and Development (UNCTAD), World Investment Report, 2015, Reforming International Investment Governance.

tangible and intangible assets, especially proprietary know-how, intellectual property (IP) and research and development (R&D).

IFFs generally detract financial resources for critical public services such as education or health which severely undermine social and economic development. The extractive industries are not peculiar to other industries in this regard. In fact, the literature does not only provide evidence that the mining sector is the one most prone to foreign bribery⁵; it also establishes an association between corruption and the extractive sector. There are various channels through which the association manifests itself. For instance, mining producing countries are consistently and predominantly ranked very low in the Transparency International's Corruption Perception Index. Corruption in the form of bribes, extortion, undue-influence, or embezzlement in order to obtain favours, taking profit from unclear rules, manipulating the law, or turning a blind eye on illegal activities are all prominent in the extractive sector. Moreover, the corruption is widespread across the entire mining value chain: from allocation of licences, negotiation of contracts or procurement of goods and services to revenue collection and monitoring of operations⁶. Furthermore, the mining sector is plagued with tax evasion and tax avoidance schemes such as manipulation of transfer pricing, inflated costs of goods and services, under-reporting of production volumes, underestimation of the value, or treaty and law shopping⁷. Tax havens, secrecy jurisdictions and legal or regulatory havens, the international financial systems, or corporate vehicles permit the hiding of proceeds from corruption and tax avoidance. The proliferation of IFFs within the extractive sector is aided by various factors: the participation of multiple actors, the extraordinary

profits generated, abstruseness and clandestineness, and weak governance.

In South Africa, trade misinvoicing is the primary measurable means for shifting funds out of the country. Trade misinvoicing is the movement of capital abroad by misreporting or mispricing the value of international trade. Mispricing in international trade results to either trade misinvoicing inflows, when exports are over-invoiced and imports are under-invoiced, or trade misinvoicing outflows, when exports are under-invoiced, and imports are over-invoiced⁸. Research reveals that with regards to South Africa's trade misinvoicing outflows by sector, the vast majority of trade misinvoicing outflows occur in and around the mining sector⁹. As the IFFs continue unabated, South Africa is missing an ample opportunity to reinvest the illicit outflows from the South Africa mining in further beneficiation of raw materials into intermediate and finished products and in the development of productive capacities in manufacturing to the benefit of all. The purpose of this study is to examine the causes, nature and extent of IFFs in the mining sector in South Africa. The paper is structured as follows: Section 1 is the introduction, Section 2 deals with the definition and measurement issues, Section 3 introduces the South African mining industry and analyses the extent of IFFs in the South African mining industry, Section 4 looks at the regulatory and legal frameworks, Section 5 focuses on the mining industry and communities and Section 6 concludes with recommendations.

⁵ See OECD. (2014). *OECD foreign bribery report*. Paris: OECD.

⁶ See Beevers, M. (2015). *Large-scale mining in protected areas made possible through corruption: Options for donors*. U4 Brief, 7, 1–4; Le Billon, P. (2011). *Extractive sectors and IFFs: What role for revenue governance initiatives?* U4 Issue(13), 1–45.; OECD. (2015). *Corruption in the extractive value chain – Typology of risks, mitigation measures and incentives*. Paris: OECD

⁷ Publish What You Pay Canada. (2017). *Many ways to lose a billion – How governments fail to secure a fair share of natural resource wealth*. Ottawa: Publish What You Pay Canada.

⁸ See Nitsch, V. 2012. *Trade Mispricing and Illicit Flows*. In Reuter (ed). *Draining Development?*

⁹ See Fotoyi, A. 2016. *IFFs in the mining sector in South Africa: Implications for industrialisation*

ILLICIT FINANCIAL FLOWS: DEFINITION AND MEASUREMENT

2.1. Definition

There are various definitions of IFFs, but essentially, they are generated by methods, practices and crimes aiming to transfer financial capital out of a country in contravention of national or international laws.

The most common working definitions of IFFs converge around the core concept of *financial transfers across borders* that are in some way *related to illegal activity* as captured in *Table 1*.



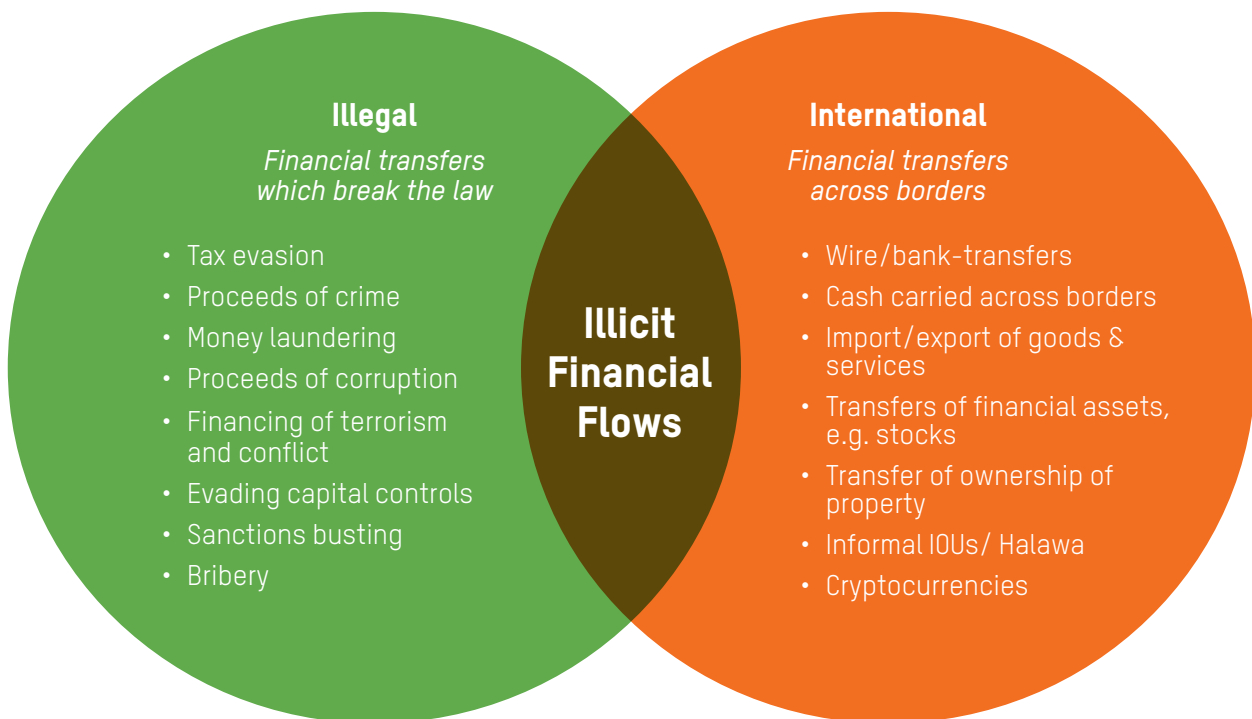
Table 1: Converging Definitions of Illicit Financial Flows

Source	Working definition
African Tax Administrators Forum (2015), IFFs and Trade Misinvoicing	"IFF is defined as any money that is illegally earned, transferred or utilised"
Global Financial Integrity (2015), "IFFs from Developing Countries: 2004-2013"	"Funds crossing borders [that] are illegally earned, transferred, and/or utilized."
High Level Panel on Illicit Financial Flows from Africa (2015)	"Money illegally earned, transferred or used"
Inter-Agency Task Force on Financing for Development (2017)	"There are some parameters that members of the Task Force agreed on, namely: i) IFFs constitute money that is illegally earned, transferred or used and; ii) that crosses borders."
OECD (2014), Illicit Financial Flows from Developing Countries	"There are various definitions of illicit financial flows, but essentially they are generated by methods, practices and crimes aiming to transfer financial capital out of a country in contravention of national or international laws."
United Nations (2016), Coherent Policies for Combatting Illicit Financial Flows	"IFFs are defined broadly as all cross-border financial transfers, which contravene national or international laws."
United Nations (2016), World Economic Situation and Prospects 2016	"There is no agreed definition of the concept of IFFs, but it is generally used to convey three different sources of IFFs: the proceeds of commercial tax evasion, revenues from criminal activities, and public corruption."
World Bank (2016), The World Bank Group's response to illicit financial flows: a stocktaking	"Generally refers to cross-border movement of capital associated with illegal activity or more explicitly, money that is illegally earned, transferred or used that crosses borders."

Source: Center for Global Development, 2018

This “narrow” definition of IFFs covers a range of activities including hiding the proceeds of crime, drug trafficking, embezzlement, channelling funds towards criminal destinations such as bribery or terrorism, misreporting transactions in order to evade tariffs or taxes and, capital flight in disobedience with currency control as shown in *Figure 1*.

Figure 1: Conceptual map for core definition of illicit financial flows



Source: Forstater, M (2016) *Illicit Flows and Trade Misinvoicing: Are we looking under the wrong lamppost?*

While there is a reasonable degree of convergence between these definitions, there remains some indistinct lines. By way of example, the OECD definition seems to emphasise the illegality of the transfer, rather than the source or use of funds. Whereas the GFI definition mentions *funds*, the OECD defines movement of *financial capital* which could cover loans, equity, financial instruments, or possibly even physical

assets if used in the pursuit of future revenue.

There are some authors that proposition a much wider definition, which is not limited to financial or capital flows with a connection to illegality, but includes activities which are deemed to be undesirable, immoral, or “unacceptable to the public,” in particular focus on tax avoidance as captured in *Table 2*.

Table 2: Broader use of Illicit Financial Flows

Source	Description
High Level Panel on Illicit Financial Flows from Africa (2015)	<p>Also includes activities “that, while not strictly illegal in all cases, go against established rules and norms, including avoiding legal obligations to pay tax.”</p> <p>They include in their list of activities aggressively avoiding tax and “base erosion and profit shifting.”</p>
European Parliament Report (2015), on tax avoidance and tax evasion as challenges for governance, social protection and development in developing countries	Includes in description of illicit financial flows: “typically originate from tax evasion and avoidance activities, such as abusive transfer pricing, against the principle that taxes should be paid where profits have been generated.”
Cobham, A. (2015), Illicit Financial Flows Assessment Paper.	“IFF is by its nature hidden, whether it is illegal or simply unacceptable to the public -- This makes clear that the source of funds may be perfectly legal, while the avoidance of tax, for example, may be technically legal but illicit according to societal norms.”
UN Human Right Council (2016), Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Experts	“In their broader sense, IFFs refer also to funds that, through legal loopholes and other artificial arrangements, circumvent the spirit of the law, including, for example, tax avoidance schemes used by transnational corporations.”
UNCTAD (2014), Trade and Development Report	“In a broader sense, IFFs also encompass all kinds of artificial arrangements that have been put in place for the essential purpose of circumventing the law or its spirit. Thus, illicit might not necessarily mean contravening the letter of the law but going against its spirit. In this case, illicit can be understood as something hidden or disguised. In this report, the key criterion used is whether such tax motivated IFFs are justified from an economic point of view. If a given international financial flow is part of a “tax-optimization” scheme without any concrete related economic activity, it could be considered “illicit.”
Picciotto, Sol (2018), Illicit financial flows and the tax haven and offshore secrecy system. Tax Justice Network	“Offshore is a murky world which facilitates a range of criminal, illegal, illegitimate and undesirable practices, all covered by the broad term illicit. They range from facilitating serious crime to behaviour which is unethical or undesirable, such as concealing assets from family members or business associates. It is sometimes said that many of these activities are ‘perfectly legal’, and hence legitimate.”

Source: Center for Global Development, 2018

Beyond the conceptual distinctions, an argument is often made that there is a major category of action which has been identified as both IFFs and also as legal avoidance and therefore, that the two areas cannot be separated. This category of action is trade misinvoicing.

Trade misinvoicing is a form of customs and/or tax fraud involving exporters and importers deliberately misreporting the value, quantity, or nature of goods or services in a commercial transaction.

According to the literature, trade misinvoicing is responsible for most illicit outflows from developing countries. Trade misinvoicing is the intentional misstating of the value, quantity, or composition of goods on customs declaration forms and invoices, usually for the purpose of evading taxes or laundering money. The four basic categories of trade misinvoicing are: import under-invoicing, import over-invoicing, export under-invoicing, and export overinvoicing¹⁰.

The resultant damage to a country's economy and development from trade misinvoicing is enormous. It ranges from declines in tax revenues that are vital for infrastructure investment thus limiting economic growth to detracting crucial resources for expanding social services thus, severely undermining development.

The IFFs agenda has momentum, but weaknesses remain in its foundations, with the definition, measurement, and estimation of IFF, especially as these apply to country level studies. Addressing these weaknesses must find solutions to the following challenges:

- Problems with the typical definitions of IFFs affect efforts to identify IFFs, estimate their value, determine their drivers, prioritise focus, and establish the effectiveness of anti-IFFs measures at various levels.
- Existing definitions of IFFs, often designed for a global context, have proven hard to relate to the IFF problems seen in individual countries.
- The methodologies researchers have used to make estimates of IFF within specific countries

have also proven problematic. Using full balance of payments or 'mirror' trade mismatches often fail to capture IFFs, including most originating from government corruption, criminal activities, and illegal corporate activity.

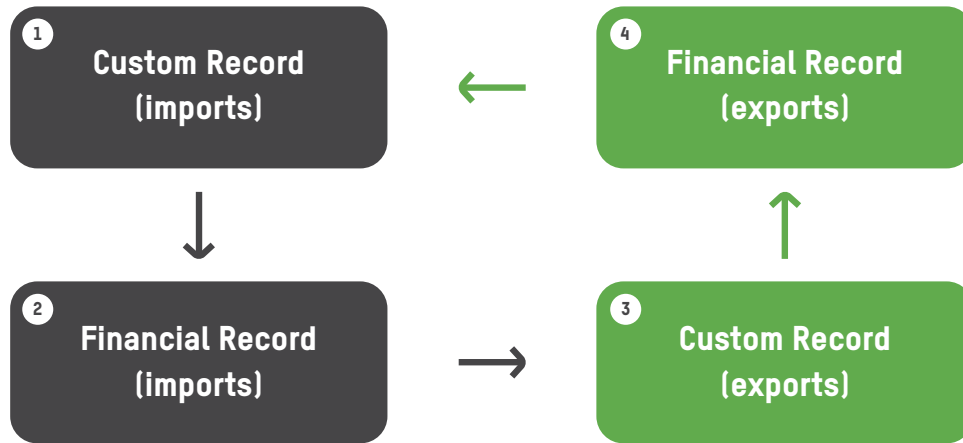
2.1. Conceptual Basis of IFFs and Trade Misinvoicing

The conceptual framework of trade, postulates that in a legal trade transaction there are four important stages:

- 01 the invoice value declared by an importer to a customs administrator,
- 02 the importer's payment recorded by financial institutions,
- 03 the invoice value declared by an exporter to a customs administrator and,
- 04 the exporter's receipt as recorded by financial institutions which should be aligned with the true or accurate value of the traded goods as captured in *Figure 2*.

¹⁰ See Baker, Raymond, Christine Clough, Dev Kar, Brian LeBlanc, and Joshua Simmons. 2014. Hiding in Plain Sight: Trade Misinvoicing and the Impact of Revenue Loss in Ghana, Kenya, Mozambique, Tanzania, and Uganda: 2002-2011

Figure 2: Conceptual Frame of Trade



Source: World Customs Organisation, 2018



THE MINING INDUSTRY AND THE EXTENT OF ILLICIT FLOWS IN THE MINING SECTOR IN SOUTH AFRICA

3.1. Background of the Mining Industry

South Africa is the leading supplier of a variety of minerals and mineral products, which include rich deposits of platinum, gold, diamonds, coal antimony, chromite, cobalt, copper, iron ore, lead manganese, nickel, silver, steel, titanium, uranium, vanadium, zinc and zirconium.

South Africa is the world's largest producer of gold, platinum group metals and chromium. It is also the fourth-largest producer of diamonds, which were first discovered in 1870 near the town of Kimberley. The mining industry, led by gold and diamonds, has continued to grow, generating revenues that drives industrialization in South Africa.

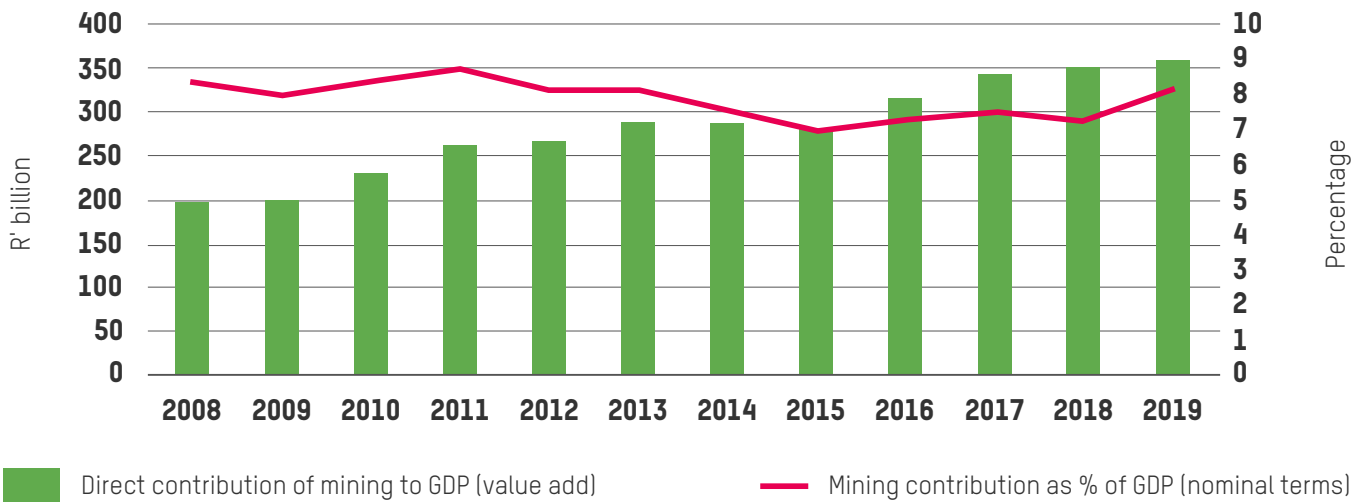
South Africa owns about 90 per cent of the globe's platinum metal reserves, 80 per cent of its manganese, 73 per cent of its chrome, 45 per cent of its vanadium

and 40 per cent of its gold reserves. South Africa is also a major supplier of coal (world rank 5), iron ore (9), nickel (5) and uranium (5)¹¹. Many of the world's largest mining companies are based in South Africa or have South African origins. Some examples of such companies include De Beers, Anglo American, Anglo Platinum, Anglo Gold Ashanti, Gold Fields, Impala Platinum Holdings, Lonmin Plc and Harmony Gold.

The Mining industry is one of the country's key economic sectors with potential for substantial contribution to economic growth, job creation, transformation and infrastructure development, consistent with the government's objectives of higher and more balanced economic and inclusive growth. In 2016, mining contributed R317.7 billion or 7.3 percent to gross domestic product from R286.5 billion in 2015 an increase of R19.7 billion. In 2019, mining contributed R360.9 billion or 8.1 percent to gross domestic product from R350.8 billion in 2018 or 7.3 percent, reflecting an increase of R10.1 billion. Mining contribution increased from R197.6 billion in 2008 to R360.9 billion in 2019, reflecting an annual average increase of 5.78 percent that translated to a cumulative increase of 82.6 percent. Figure 3 below shows the mining contribution to the economy as a percentage of GDP spanning in the period between 2008 and 2019.

¹¹ See Curtis "Mining and Tax in South Africa: Costs and benefits". Available at <http://www.curtisresearch.org/SAfrica.MiningTax.Feb09.Curtis.pdf>

Figure 3: Mining Contribution as a % of GDP (nominal terms)



Source: Minerals Council South Africa, 2019

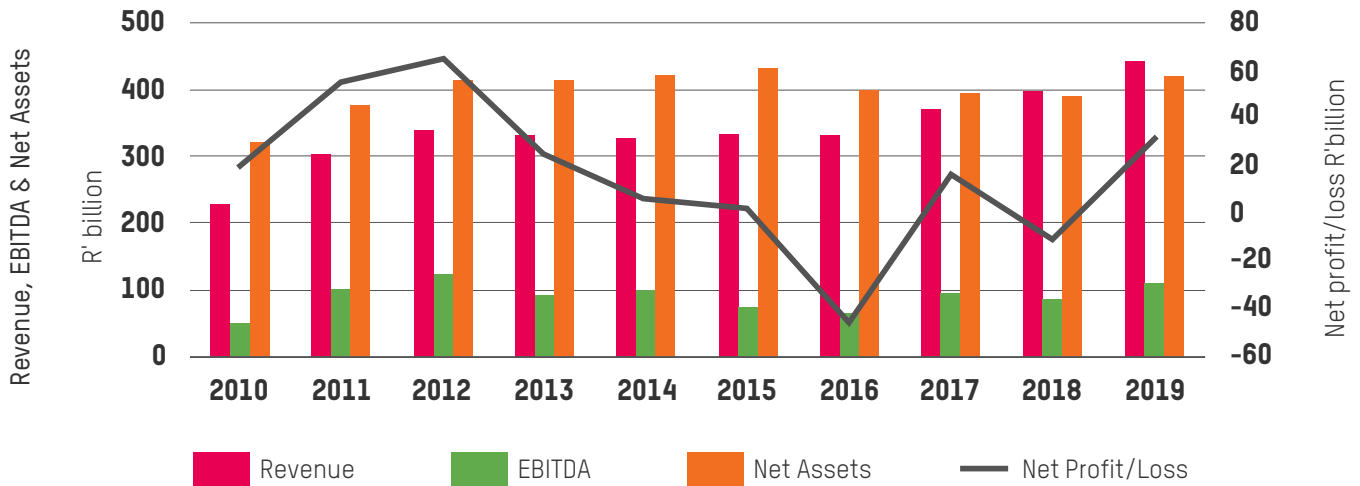
3.2. Financial Health of the Mining Industry

The revenues, profit margins and net assets for the mining sector have been increasing over the past decade, reflecting good health of their finances.

The accumulated profit of the mining industry between 2010 and 2019, amounted to R221 billion. *Figure 4* shows a ten-year summary of financial information for the mining sector.



Figure 4: Ten Year Summary of Financial Information, 2010-2019



Source: PwC, 2019

3.3. Tax Regime for the Mining Industry

Mining entities are allowed to deduct capital expenditure incurred from taxable income derived from mining operations, subject to certain limitations as discussed in the paragraph below.

Capital expenditure includes, expenditure on shaft sinking and mine equipment as examples. It also includes expenditure on development, general administration and management before the commencement of production or during a period of non-production.

The deduction of capital expenditure incurred on a particular mine is restricted to the taxable income derived from that mine only. Any excess (unredeemed) capital expenditure will be carried forward and deemed to be capital expenditure incurred during the next year of assessment of the mine to which the capital

expenditure relates. The capital expenditure of a mine cannot be set-off against non-mining income such as interest, rental, other trading activities etc. However, if a new mine commenced mining operations after 14 March 1990, its excess (unredeemed) capital expenditure may also be deducted from the total taxable income derived from mining of other mines operated by the taxpayer, as does not exceed 25% of such total taxable income derived from its other mines.

The taxable income of a company derived from mining for gold is taxed in accordance with a special formula. A company which derives taxable income from other mining operations is taxed at the same rate (28%) as is applicable to other companies. Taxpayers conducting mining operations are required to rehabilitate areas where mining has taken place. These taxpayers are therefore required to make provision for rehabilitation expenses during the life of the mine. Amounts paid in cash to rehabilitation funds are allowed as a deduction for income tax purposes. *Table 3* shows the corporate income taxes, mining royalties and other mining taxes for South Africa.

Table 3: Corporate Income Taxes, Mining Royalties and Other Mining Taxes in South Africa

Corporate Income Tax	
Rate of CIT	28%

Mineral Taxes	
Mineral and Petroleum Resource Royalty (MPRD)	
Copper	0.5% - 7%
Gold	0.5% - 5%
Iron Ore	0.5% - 7%
Coal	0.5% - 7%
Deductible from CIT calculation	YES

Withholding Tax	
Dividends	10%
Royalties	12%
Any other payments	Licensing fees
Social contributions	Yes. Required

Source: PWC, 2012

Taxation of mining companies has been at the forefront of the debate in South Africa as to whether government derives sufficient revenue from this sector to support public spending. The concerns are that the mining tax regime of South Africa is archaic, complex and out of touch with current economic realities. Consequently, the Minister appointed the Davis Tax Committee, whose terms of reference included a review of the South African mining tax regime. In 2017, the Davis Tax

Committee (DTC) issued its final report on mining tax in South Africa. The report concluded that it is time to work towards aligning the mining corporate income tax regime more closely with the tax applicable to other taxpaying sectors, generally, leaving the royalty system to respond to the non-renewable nature of mineral resources. It also noted that the argument that the current mining tax system does much to encourage the much sought after investment which

these rules were originally intended to attract is not convincing. It recommended an approach that would bridge many of the gaps caused by breaches of the principle of neutrality that are created by the current mining tax system.

3.4. Institutional Cooperation for Arresting IFFs in the Mining Industry

In most instances, trade misinvoicing is quoted as one of the largest component of IFFs in the mining industry. It encompasses trade-based money laundering, as well as illicit transfer of funds.

Through deceptively manipulating the value, description, quantity, or quality of goods and origin, funds are transferred across borders using legal and illegal or informal financial channels.

It is therefore important that customs administrations import and export data on mining commodities and tax authorities' purchase and sales data on mining commodities is mutually shared and matched in order to detect any irregularities concerning mispricing of imported and exported consignments of mining commodities. The sharing by tax authorities of information on payment transactions could also be useful to customs from the valuation perspective. When conducting compliance audit of the customs value for related party transactions involving multinational enterprises. Customs administrations can benefit from information derived from the transfer pricing studies which have been developed for profit tax purposes, and which are generally based on the application of the OECD transfer pricing guidelines.

Both the OECD transfer pricing guidelines and the WTO Customs Valuation methodology are designed to ensure that related party prices are comparable with those between unrelated parties. The risk to

customs is generally undervaluation of imported goods to reduce customs duties, whereas the tax risk is overvaluation of goods and services to reduce the taxable profit. There is also a possibility that fraudsters are manipulating both tax and customs declarations to their advantage. For instance, where low duty rates and high tax rates apply, customs values may be deliberately overdeclared in order to reduce taxable profits. Therefore, sharing information and knowledge in this area would be mutually beneficial.

Since customs valuation ensures integrity to the downstream value addition activities for business and taxation purposes, a coordinated approach to customs valuation and transfer pricing is mutually beneficial between customs and tax authorities. In addition, customs should also focus on export valuations, alongside import valuations, thus obviating the possibility of using export channel for illicit financial flows. A joint approach to compliance management, risk management and audit could be an effective means to further enhance cooperation and coordination between customs and tax authorities. A comprehensive and harmonized approach by the two authorities would strengthen ongoing measures against IFFs. As import/export activities may materially affect a business' tax compliance obligations for both direct and indirect taxes, it is essential that the legislative arms of both customs and tax authorities should co-operate to ensure that the objectives of legislation in their respective fields do not conflict.



3.5. Institutional Arrangement and Cooperation for IFFs in the South African Mining Industry

The South African Revenue Service (SARS) is statutorily tasked to collect revenue for government and enforce compliance with tax and customs legislation.

Within SARS, a specific division exists that focuses on combating of tax evasion, customs offences and assistance to general law enforcement agencies in efforts to combat crime, from a financial and customs perspective. Their activities include, among others, conducting preliminary investigations and enquiries where there is reason to believe that serious tax or customs offences have been committed with the aim of determining the most suitable action to apply based on the circumstances of the case.

The South African customs plays an integral role in the facilitation of movement of goods and persons entering or exiting the borders of South Africa. The core functions are to enforce customs as well as related trade laws; collect duties and taxes; ensure the social welfare of the citizens of South Africa by controlling the import and export of prohibited and restricted goods; ensure timely clearance of goods and facilitate the speedy movement of travellers through South African borders. Furthermore, the core functions, seek to support South Africa's integration into the global economy in a way that benefits all South Africans; where elements of serious duties or levies evasion are identified and that such matters are handed over to the Tax and Customs Investigations Unit for further investigation and enforcement activities.

Other key law enforcement agencies include:

- The South African Police Service (SAPS)
- The Asset Forfeiture Unit (AFU)
- The Special Investigating Unit (SIU)

- The Directorate for Priority Crime Investigations (DPCI)
- The National Prosecuting Authority (NPA)
- The Financial Intelligence Centre (FIC)

Corruption Investigation

Anti-corruption law enforcement is the responsibility of various police, prosecution and other law enforcement agencies. The DPCI within SAPS is responsible for the investigation of serious commercial crime and serious corruption. The prosecution of complex corruption and other offences is the responsibility of the Specialised Commercial Crimes Unit (SCCU) within the NPA.

The Department of Public Service and Administration (DPSA) is the government body responsible for the co-ordination of South Africa's anti-corruption strategy. The Public Service Anti-Corruption Strategy was adopted in 2002 and emphasises an integrated, cross-sectorial approach to combating corruption. The DPSA Strategy is implemented through the Anti-Corruption Coordinating Committee.

Inter-Agency Co-Operation in Fighting IFFs

A comprehensive approach to IFFs should involve recognising that the activities of separate agencies do not operate in isolation. Officials in agencies including the tax administration, the customs administration, the FIU, the police and specialised criminal law enforcement agencies, the public prosecutor's office, authorities responsible for corruption investigations and financial regulators should recognise that the knowledge and skills required to combat financial crime are often spread across each of these agencies. Therefore, effective inter-agency co-operation prevention agencies responsible for combating IFFs are essential.

In South Africa, SARS is statutorily permitted to share information with financial regulatory agencies such as the Financial Services Board (FSB), Financial Intelligence Centre (FIC), South African Reserve Bank and the National Credit Regulator. This information disclosure is limited to information necessary for the purpose of exercising a power or performing a regulatory function or duty under the legislation administered by these agencies.

SAPS can generally only obtain information relevant to non-tax investigations from SARS through an ex parte court application or under specific legislation related to the prevention and investigation of serious organised crime. Information requests under this legislation must be specific. SARS may also inform the police where it discovers evidence of a possible non-tax offence, but only if it first obtains specific consent from the court pursuant to an ex parte application. SARS is obliged to disclose certain information to the FIC under section 36(1) of the FIC Act, which disclosure is not limited by SARS statutory duty of confidentiality. In respect of the discovery of tax evasion, other law enforcement agencies may report such suspicions to SARS, but SARS has a discretion to lay criminal charges for the purposes of prosecution. When laying charges, SARS may only disclose information related to, or which constitutes material information for the proving of a tax offence. If SARS imposes civil sanctions for tax evasion, such as administrative noncompliance or understatement penalties, it is generally not relevant to the criminal investigation and prosecution and not disclosed when SARS lays a criminal charge and prosecution is instituted.

Co-operation between government agencies include inter-agency committees under the control of several government departments or ministries. These include the Multi-Agency Work Group, which seeks to improve compliance and identify systemic solutions to failures within the financial and procurement system, and the Anti-Corruption Task Team, which deals with prominent corruption cases. Law enforcement agencies also co-operate by way of joint investigations by assigning personnel from each agency to a team, with the exception of SARS. Where SARS officials are assigned

to such joint teams, their legislative powers under the Tax Acts may not be used and only their investigative and financial skills are utilised. SARS co-operates with joint investigation teams of other agencies, but in a parallel fashion. Only where a tax investigation becomes a criminal investigation can information be shared with such teams to the extent permitted by law. Operational agreements exist between SARS and the police and prosecuting authority, which define the processes by which SARS should conduct criminal investigations to ensure compliance with criminal law.

Co-operation with business, the tax profession, academic bodies and other organisations happens under the tax practitioner regulatory scheme. The tax profession through certain statutory bodies such as law societies and recognised controlling bodies of which tax practitioners are members, may report information regarding tax evasion to SARS and the Revenue Service may also to a limited extent disclose information to such bodies to assist with their regulatory functions.

3.6. The extent of IFFs

3.6.1. South Africa

The FGI research for the year 2015 using the DOTS dataset from the IMF show that South Africa is in the top quintile (30) of countries, ranked by dollar value of illicit *outflows*, at \$10.2 billion, accounting for 23 percent of the total illicit outflows Sub-Saharan Africa. *Table 4* below shows the DOTS-based Estimates of Potential Trade Misinvoicing for South Africa.

Table 4: DOTS-based Estimates of Potential Trade Misinvoicing for South Africa, 2015

	Potential Import Misinvoicing		Potential Export Misinvoicing		Total trade with advanced countries	Inflows (millions of US \$)	Outflows (millions of US \$)
	Over - Invoicing (a)	Under - Invoicing (b)	Over - Invoicing (c)	Under - Invoicing (d)			
South Africa	2,5	5,8	1,2	10,7	77 399	5 365	10 207

Source: GFI staff estimates using data from the International Monetary Fund's Direction of Trade Statistics (DOTS), 2019

The GFI research for 2015 using the Comtrade dataset from the United Nations show that South Africa is in the top quintile (30) of countries, ranked by dollar value of illicit *outflows*, at **\$5.9 billion**. Table 5 below show the Comtrade-based estimates of potential trade misinvoicing for South Africa in 2015.

Table 5: Comtrade-based Estimates of Potential Trade Misinvoicing for South Africa, 2015

	Potential Import Misinvoicing				Potential Export Misinvoicing				Total trade with advanced countries	Inflows (millions of US \$)	Outflows (millions of US \$)
	Over - Invoicing (a)		Under - Invoicing (b)		Over - Invoicing (c)		Under - Invoicing (d)				
	Weighted gap	Weighted (%)	Weighted gap	Weighted (%)	Weighted gap	Weighted (%)	Weighted gap	Weighted (%)			
South Africa	4	31,9	7,6	28	3,2	31,2	6,7	40,9	55 042	5 896	5 913

Source: GFI staff estimates using data from the International Monetary Fund’s Direction of Trade Statistics (DOTS), 2019

Analysis of trade misinvoicing in South Africa from 2010 to 2014 shows that the potential loss of revenue to the government is **\$7.4 billion annually or, a total of \$37 billion during the period**. The average portion of revenue lost due to import misinvoicing each year is **\$4.8 billion**. This amount can be further divided into its component parts: uncollected VAT tax (\$2.1 billion), customs duties (\$596 million), and corporate income tax (\$2.1 billion). Lost revenue due to misinvoiced exports was \$2.6 billion on average each year which is related to lower than expected corporate income and royalties. *Table 6* below summarizes trade misinvoicing and potential revenue losses in South Africa in average annual figures across the five-year period from 2010 to 2014.



Table 6: Trade Misinvoicing and Potential Revenue Losses in South Africa, 2010–2014

	USD Millions
Average Import Value Analysed	92 052
Import Under-Invoicing	16 308
Average VAT%, Lost Revenue	2 110
Average Customs Duty %, Lost Revenue	596
Import Over-Invoicing	9 833
Average Company Income Tax%, Lost Revenue	2 134
Average Export Value Analysed	88 145
Export Under-Invoicing	11 598
Average Company Income Tax %, Lost Revenue	2 517
Average Royalties, Lost Revenue	116
Export Over-Invoicing	8 584
Potential Revenue Losses	7 473

Source: UN Comtrade: Trade data. WITS: Tariff data. SARS: VAT rate and exemptions/zero-rated goods, royalty collections by commodity for calculating effective rate (inclusive of 5% unpolished diamond export tariff). PWC/World Bank 'Paying Taxes' 2017: profit tax rate

3.6.2. The Mining Sector

Silver and platinum export misinvoicing in South Africa

The United Nations Conference on Trade and Development (UNCTAD) research show that at the trading partner level reveals heavy concentration of silver and platinum exports. Using partner data, Japan and the United States account for 54.2 percent of South Africa's total silver and platinum exports; adding China (11.5 percent) yields 65.7 percent of total exports of these products.

The estimates of trade misinvoicing for the silver and platinum group show that South Africa saw a

cumulative amount of export underinvoicing of **\$19 billion** over the 15-year period between 2000 and 2014. This represents 97 per cent of total export misinvoicing vis-à-vis the world (\$24 billion), and 13.8 per cent of the country's cumulative exports of silver and platinum to the world over the same period.

The estimation results show systematic export underinvoicing throughout the period. The amounts of export misinvoicing are relatively small, representing generally less than 10 per cent of total exports. However, in 2000 and 2002, underinvoicing of silver and platinum exports to South Africa's top nine trading partners amounted to 97 percent and 98 percent of total exports respectively. Another year that recorded substantial export underinvoicing was 2014, at 17 percent of total exports.

Trade with these three dominant trading partners accounts for the lion's share of silver and platinum export misinvoicing. Trade with China generates particularly high export underinvoicing, amounting to **\$13.9 billion**, and with the United States, it amounts to **\$6.8 billion**. There is also evidence of overinvoicing in exports to Hong Kong (SAR China) (\$1.8 billion), to Switzerland (\$6.3 billion) and to the United Kingdom (\$4.8 billion). With respect to its nine major trading partners, South Africa saw a cumulative amount of

export underinvoicing of \$19 billion over the 15-year period.

This represents 97 percent of total export misinvoicing vis-à-vis the world (\$24 billion), and 13.8 percent of the country's cumulative exports of silver and platinum to the world over the same period. Table 7 below shows silver and platinum exports and export misinvoicing and partners' share in South Africa's total exports between 2000 and 2014.

Table 7: Silver and Platinum Exports and Export Misinvoicing (Millions of constant 2014 dollars) and Partners' Share in South Africa's Total Exports (Per cent), 2000-2014

	Silver and platinum exports and export misinvoicing			Partner's share in South Africa's total silver and platinum exports	
	Exports (South African data)	Exports (partner's data)	Export misinvoicing	Exports (South African data)	Exports (partner's data)
Economy					
China	1889,3	15934,1	13855,8	1,8	11,5
Germany	8080,9	10745,1	1855,9	7,8	7,8
Hong Kong	3667,3	2265,4	-1779,6	3,5	1,6
Italy	536,8	3642,9	3052,5	0,5	2,6
Japan	35118,8	41949,6	3318,9	33,9	30,4
Republic of Korea	1774,6	5061,9	3109,9	1,7	3,7
Switzerland	15742,4	10994,2	-6322,5	15,2	8
United Kingdom	12399,3	8778,3	-4860,9	12	6,4
United States	23705,5	32914,5	6838,4	22,9	23,8
Partners	102925	132286,1	19068,5	99,2	95,8
World	103738	138122,2	24010,4	100	100

Source: UN Comtrade data

Iron ore export misinvoicing in South Africa

The United Nations Conference on Trade and Development (UNCTAD) research show that iron ore exports from South Africa exhibit a very high geographical concentration. China accounts for 61.7 percent of total iron ore exports, followed by Japan with 13 percent.

South Africa's iron ore exports, which rose steadily and rapidly until 2010, were accompanied by an equally rapid increase in export underinvoicing. But there was a drastic change in the pattern after 2010, from systematic export underinvoicing to systematic export overinvoicing. With respect to South Africa's seven leading export destinations, there was a cumulative amount of export underinvoicing of **\$5.6 billion** over the period 2000–2010, or **\$512 million** per annum. In contrast, over the period 2011–2014, the country

recorded **\$1.3 billion** in iron ore export overinvoicing or **\$338 million** per annum. This pattern was driven primarily by trade with the Netherlands and Japan which exhibited substantial export overinvoicing during the period between 2011 and 2014.

If these two countries are excluded, export overinvoicing was recorded only in 2010, to the tune of \$68.8 million. Except for the Netherlands, there was net export underinvoicing in trade with all the other major trading partners. Along with the Netherlands, the top two trading partners, China and Japan, accounted for the bulk of export misinvoicing: export underinvoicing for China (\$3 billion) and Japan (\$1 billion), and export overinvoicing for the Netherlands (\$1.4 billion). Table 8 below shows iron ore exports and export misinvoicing and Partners' share in South Africa's total exports between 2000 and 2014.

Table 8: Iron Ore Exports and Export Misinvoicing (Millions of constant 2014 dollars) and Partners' Share in South Africa's Total Exports (Per cent), 2000–2014

	Iron ore exports (by volume) and misinvoicing			Partner's share in South Africa's total iron ore exports	
	Exports (South African data)	Exports (partner's data)	Export misinvoicing	Exports (South African data)	Exports (partner's data)
China	31922	38146	3031,9	61,7	66,3
Germany	2645,5	3197,1	287	5,1	5,6
Italy	1015,6	1171,4	54,2	2	2
Japan	6712,3	8402,1	1018,6	13	14,6
Netherlands	1658,8	452,2	-1372,5	3,2	0,8
Republic of Korea	1900	3049,7	959,7	3,7	5,3
United Kingdom	1496,5	1948	301,8	2,9	3,4
Partners	47350,7	56366,5	4280,7	91,5	98
World	51733	57527,1	620,8	100	100

Source: UN Comtrade data

INSTITUTIONAL AND LEGAL FRAMEWORK TO IMPROVE GOVERNANCE OF RESOURCE REVENUE IN THE MINING SECTOR

The mining sector is primarily regulated by statute and in terms of the Minerals and Petroleum Resources Development Act, 28 of 2002 (MPRDA). Black Economic Empowerment (BEE) in the mining industry is regulated under the Broad-Based Socio-Economic Empowerment (BBSEE) charter for the Mining and Minerals Industry, 2018 (Mining Charter III).

Mining Charter III came into force on 1 March 2019 and significantly increased BEE threshold requirements in respect of ownership, procurement and employment equity. Prospecting and mining activities are regulated by the various environmental and healthy and safety laws.

The state is the custodian of South Africa's petroleum resources and has a duty to administer these resources for the benefit of all South Africans. The Minister is authorised to grant or refuse applications mining rights under the MPRDA. The mining industry is regulated at national level by the Department of Mineral Resources and Energy (DME) (previously the Department of Mineral Resources) which, through its regional offices, implements and administers the MPRDA. In respect of environmental matters, the Department of Environment, Forestry and Fisheries (DEFF) is responsible for drafting all relevant legislation and regulations governing mining and environmental issues. The DME, in turn, is responsible for implementing these laws or regulations in so far as the laws/regulations pertain to the mining sector.

The Constitution of the Republic of South Africa, 1996 is the supreme law of the Republic. Section 24 of the Constitution states that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development; and ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.

The common law applies to the extent that the MPRDA does not regulate a specific issue but the provisions of the MPRDA prevails to the extent of any inconsistency. Other relevant statutes include:

- The National Environmental Management Act (NEMA), 1998
- The National Environmental Management Waste Act (NEMWA), 2008
- The National Environmental Management Air Quality Act (NEMAQA), 2004
- The National Water Act (NWA), 1998
- The National Environmental Management Protected Areas Act (NEMPAA), 2003
- The National Environmental Management Biodiversity Act (NEMBA), 2003 (and the relevant provincial conservation ordinances and statutes)
- The National Heritage Resources Act (NHRA), 1999
- The Mineral and Petroleum Resources Royalty Act (MRPPA), 2008
- The Labour Relations Act (LRA), 1995
- The Mine Health and Safety Act (MHSA), 1996

THE MINING INDUSTRY AND COMMUNITIES

The Mineral and Resources Act of 2004 requires mining rights applicants to submit SLPs to promote human resources and local economic development planning. SLPs were conceived as a remedial means to correct the disparity between mine workers and communities on the one hand and mine owners and managers on the other hand (CALS, 2014).

They are aimed at ensuring that mining companies have plans in place to share the benefits generated from their mining rights with the communities. These plans entail, but are not limited to, contribution to infrastructure development, education, and housing. In accordance with the detects of the Mineral and Resources Act of 2004, once a mining right is awarded, the SLP is legally binding.

However, SLPs are severely contested. Mining companies argue, for instance, that their industry is already under a lot of financial pressure to be burdened with responsibility for transformative socio-economic outcomes (CoM, 2017a; Cronje et al., 2014). They contend that their primary contribution to the nation's redistributive mandate is through employment creation and tax revenues. In their view, it is the responsibility of government to redistribute public funds in alignment with the social goals of alleviating poverty and inequality (Cronje et al., 2014).

Contrarywise, social investment by mining companies should be transformative and not externalise social and environmental costs (Humby, 2015). Social investment by mining companies has therefore been criticised for allowing mining activity to continue with minimal disruption and cost (Kloppers & du Plessis, 2008). According to Mushonga (2012) in South Africa, social investment by mining companies is based on the fact that mining companies take resources from society for their own use and therefore they have a responsibility to return to society the value of these resources. These claims gain some credence in the evidence that demonstrate social investment by mining companies as separate to the structures and daily operations of most companies, without substantially redirecting it towards socially and environmentally responsible business practices.

Evidence regarding the impact of SLPs suggests that compliance is partial, that requirements are vague, do not lend themselves to rigorous impact assessments, that they provide limited scope for community participation and overall that they have limited potential to achieve the intended social and economic objectives set out in the Constitution (CALS 2014). This was demonstrated by the failure of the Lonmin Mining Company to meet the housing targets set in the company's SLP at Marikana. Housing and labour related issues among others fuelled the dispute between trade unions and management which subsequently culminated in the death of over 40 mineworkers in 2014.

SLPs do not appear to cater for actual community needs, a sentiment that is echoed by mining communities throughout South Africa. At the most

macro-level are critiques of the very manner in which the SLP system is conceived and the core assumptions underpinning it. These critiques maintain that the SLP system neither promotes long-term planning, nor incorporates sustainability considerations, preventing SLPs from serving their intended purpose. SLPs seem to be an unrefined tool for dealing with a complex and nuanced area involving a range of social, economic and environmental variables.

In assessing whether the manner in which SLPs were implemented and promoted the achievement of the objectives set out in the MPRDA, a study by the Centre for Applied Legal Studies (CALs) identified the following deficiencies: undemocratic approach to development; no access to SLPs and related information; participation in the design and implementation of SLPs; weak co-operative governance and responsibility shifting; no regional alignment of SLP initiatives; secretive companies' relationship with traditional leaders of mutual benefit to the detriment of communities; exclusion of communities directly impacted by mines; inadequate systems for approving and monitoring compliance with SLPs.

The study made the following recommendations: laws, regulations and policies developed in a manner that recognises communities as a central role player; transparency and dissemination of SLPs; make DMR's PAIA process more accessible to communities; independent problem solving service; establish fund enabling communities to access specialists; specify requirements for community participation in the design and amendment of SLPs; specify requirements for periodic reporting back to communities; measures to address gender inequality to be required in SLPs; integrate the development of SLPs into the IDP annual review and require community participation in this process; quantify the formula for determining required financial provision for each mining operation; greater regulation on securing financial provision.

It is therefore clear that there are fundamental flaws in the SLP system which limit it as a tool for community and worker development. The most logical step is for government to amend the current mining legislative framework to give expression to the principle of free prior and informed consent, to address the negative social and economic impacts of mining and greater regulation of the trusts and other vehicles held on behalf of the communities on whose land mining takes place.



CONCLUSION AND RECOMMENDATIONS

The mining industry in South Africa offers an opportunity for greater domestic revenue mobilization. However, the country remains unable to take full advantage of the proceeds. Mining companies have made billions of rands in profits and IFFs continue unabated. The communities in which mining takes place are yet to see the real benefits of mining.

Taxation is the most predictable instrument for mobilizing government revenues. It is highly depended on effective tax systems which are capable of reducing tax evasion, as well as avoidance. However, the weak fiscal regime along the mining value chain in South Africa is interacting in a vicious cycle with illicit and sophisticated tax avoidance practices of mining companies such as trade misinvoicing. The outcome is often significant cross-border IFFs, which negatively impacts on domestic resource mobilization efforts.

This calls for government to formulate and implement effective strategies, policies, laws and regulations for mobilizing optimal revenues from the mining industry. It also requires a capacitated SARS that is able to track, stop and repatriate illicit financial outflows. At a minimum, this involves completely eliminating the development inhibiting practices along the mining value chain. Illicit financial practices are products of asymmetry of knowledge and power along the value chain. Integrating the investment and governance dimensions remain critical.

South Africa has the laws, policies and institutions to fight IFF and corruption in the mining industry. The problem is the lack of political will, and the low capacity of the oversight mechanisms. There are also many international initiatives to fight IFF and corruption, but their effect is largely unfelt because of their inherent weaknesses.

Combating IFF in the mining industry requires a strategic reorientation of the mining legislative framework will ensure policy consistency for effectively stemming IFFs; strengthen capacity to implement an effective, forward-looking approach; extend transparency and accountability up and down the mining value chain; move from voluntary to mandatory transparency and translate transparency into accountability; and connect anti-corruption, illegal exploitation, and tax agendas.

There are several policy implications emanating from this study. Firstly, policy efforts could focus on a limited number of products and partners to increase the effectiveness of reforms. It is possible to identify key products and export destinations needed for trade misinvoicing. Secondly, improvements are urgently needed in data gathering at the product and partner levels, notably to ensure clarity and consistency in the classification of products over time and across partners, and appropriate recording of the origin and destination of exports. Thirdly, there is a need for an investigation at the company and transaction levels to assess the magnitudes and identify the mechanisms of export and import misinvoicing. Enhanced transparency in global trade is indispensable, especially through coordinated enforcement of the rules on country-by-country reporting by TNCs at the global level.

The study makes the following recommendations:



Inter-Agency Co-Operation

Reviewing of models for sharing information among different agencies:

- Improving the ability of SARS to share information with agencies such as the police and other law enforcing and financial regulation agencies by introducing an obligation for SARS to report to these institutions any serious offence, including suspected corruption, money laundering or terrorist financing activities, and to share information relevant to investigations into these offences or activities. This should also include an obligation on any agency which holds information relevant to the administration and assessment of taxes to make this information available to SARS.
- Enabling SARS the fullest possible access to the information contained in suspicious transaction reports (STRs) received by the FIC, subject to the necessary safeguards. This should be enabled through legislative framework, operational structure and procedures that facilitate the maximum effectiveness in the use of STRs.
- Establishment of legislative framework, operational structure and procedures that facilitate access for the South African customs access to foreign exchange transactions database in order to examine whether 'financial transactions' between traders correspond to the 'value of traded goods'.
- Promotion of a shared sense of responsibility between the private sector and South African

customs, in addition to enhanced effective information exchange, to tackle

- IFFs and trade misinvoicing which may arise, for instance, from collusion among importers and exporters.
- Employment of enhanced models for co-operation with the legal and policy framework to enable joint risk management, joint investigation teams, joint audit programmes, joint intelligence centres, secondments and co-location of personnel, and joint training programmes.
- Exchange information on the beneficial ownership of traders between SARS and other Tax authorities, which may affect the actual transaction value of traded goods. Exchange customs records on the trade and financial records of the matched trade, customs-to-customs cooperation.



Legislation and Policy

- Establishment of specific IFFs and trade misinvoicing legislative and policy framework that will enable SARS and all other law enforcing and financial regulation agencies to detect and determine the tax value of intra-company transactions in a rigorous and consistent manner, including spelling out the operational procedures by which the entire financial, taxation and legal systems are to be administered.
- Establishment of specific tax legislative and policy framework that will limit the reliance on arm's length principle and the difficulty of finding comparable transactions.



Capacity Building

- Establishment of administrative structure at SARS that will solely responsible for producing a pool of well trained, highly skilled officials that are adequately empowered to execute IFFs and trade misinvoicing laws, procedures and policies.
- Equipment of SARS with IFFs and trade misinvoicing expertise and technical sector knowledge to detect and quantify IFFs and trade mis-invoicing risks in the mining sector.
- Establishment of measurable plans to narrow the gap, obtain more regular and precise information from mining houses and develop automatic exchange information with other jurisdictions.



Leveraging Technology

- According to the International Telecommunication Union (ITU), Measuring Digital Development Facts and Figures Report, in 2019, 61 countries had a fixed-broadband subscription including 5 GB of data costs less than 2 per cent of Gross National Income (GNI) per capita. A mobile-broadband subscription with a 1.5 GB data package costs less than 2 per cent of GNI per capita in 89 countries, including four Least Developed Countries (LDCs), signalling considerable progress made in broadband prices as a percentage of GNI in recent years. Against this background, utilisation of new technologies such as data analytics and blockchain to prevent and detect any fraudulent manipulation of trade transactions by sharing and analysing relevant information in a trusted and secure manner is recommended.



