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mineral resources

Department:  
Mineral Resources  
REPUBLIC OF SOUTH AFRICA

**ASSESSMENT OF THE BROAD-BASED SOCIO-  
ECONOMIC EMPOWERMENT CHARTER FOR THE  
SOUTH AFRICAN MINING INDUSTRY (MINING  
CHARTER), MAY 2015**

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## MINISTER'S FOREWORD

The Constitution of South Africa has its foundation in the Freedom Charter. The preamble of the Freedom Charter reminds us that "We, the People of South Africa, declare for all our country and the world to know that South Africa belongs to all who live in it, black and white and that no government can justly claim authority unless it is based on the will of all the people".

It is through this Supreme Law that government has removed apartheid legislation that discriminated against people based on their race, gender, religion, culture and sexual orientation.

Since the dawn of democracy and adoption of the Constitution, the need to redress the imbalances of the past were amplified and given impetus as provided for in section 9 of the Constitution, i.e. "...equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons disadvantaged by unfair discrimination may be taken...".

To give effect to the above constitutional provision, the Mining and Minerals White Paper of 1998, section 100 of the Mineral and Petroleum Resources Development Act No. 28 of 2002 (MPRDA), and the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry (herein referred to as the Mining Charter) represent government-led interventions that seek to achieve social cohesion. The Mining Charter is intent on transforming the South African mining and minerals landscape into one that, inter alia:

- Restores the dignity of mineworkers through provision of appropriate housing and living conditions;

- Facilitates meaningful and sustainable change in ownership patterns to include transfer of ownership to Historically Disadvantaged South Africans;
- Provides for requisite training and skills development to not only transform the industry, but to ensure that it grows sustainably and competitively;
- Improves workplace diversity through employment equity;
- Contributes to the eradication of enclave development through community development programmes dedicated towards host communities and major labour sending areas;
- Facilitates procurement of goods and services from HDSA companies;
- Provides for sustainable development through analysis of samples in South African-based institutions, and implementation of both environmental management plans as well as commitments of the Mine, Health and Safety Summit.

The Mining Charter is a trailblazing sector-specific transformation instrument in pursuit of meaningful transformation. It was developed and subsequently refined by government, in collaboration with organised labour and business, in order to emphasise mutual inclusivity of meaningful transformation and global competitiveness of the mining industry.

As of 2014, the Mining Charter had been in force for a decade. This report presents the findings of an assessment in terms of the extent of progress to date.

Notwithstanding a paucity of companies of all sizes that have fully embraced the spirit and the letter of the Mining Charter, there's an extremely varied performance that seems

to suggest a compliance-driven mode of implementation, designed only to protect the "social license to operate".

Whereas the MPRDA has transferred the ownership of the mineral wealth of our country to all the people of South Africa, under the custodianship of the State, a proliferation of communities living in abject poverty continues to be largely characteristic of the surroundings of mining operations.

Limited progress has been made in embracing the broad-based empowerment ownership in terms of meaningful economic participation of HDSAs. The trickle flow of benefits that ought not only to service the loan, but also include cash-flow directly to a combination of beneficiaries, is vastly limited. To this end, the interests of mineworkers and communities are typically held in nebulously defined Trusts, which constrain the flow of benefits to intended beneficiaries. As a result, the mining industry has broadly been faced with increasing tensions with both workers and host communities.

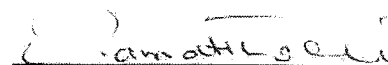
Some strides have been made to date in creating an enabling environment for women to participate in the development of mining and mineral resources.

However, more still needs to be done to ensure meaningful participation of women in the sector.

Transformation remains a central tenet of the government of South Africa. As a result, the Mining Charter targets remain applicable and the government will work tirelessly to turn this picture around and achieve radical socio-economic transformation to deracialise the economy and achieve greater equality in the development of the nation's mineral wealth.

I have to also point out that the Mining Charter remains an instrument to contribute towards attainment of the goals outlined in the National Development Plan.

In conclusion, I wish to acknowledge companies that have embraced the Mining Charter. I also recognise the support of members of the Mining Growth, Development and Employment Task Team (MIGDETT) and their pivotal role that enabled a fairly seamless process of assessment.



Adv. Ngoako Abel Ramathodi (MP)  
Minister of Mineral Resources

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## DEFINITIONS AND ABBREVIATIONS

**“BEE entity”** means an entity of which a minimum of 25% + 1 vote of share capital is directly owned in accordance with flow through principle;

**“Calendar year”** is defined as the one year period that begins on January 1<sup>st</sup> and ends on December 31<sup>st</sup>;

**“Community”** means a coherent, social group of persons with interest or rights in a particular area of land which members have or exercise communally in terms of an agreement, custom or law;

**“Continuing Consequences of all Previous deals”** refers to the continuing consequences of all previous deals concluded prior to the promulgation of the MPRDA, 2002, which would be included in calculating such credits/offsets in terms of market share as measured by attributable units of products;

**“Economic benefit to HDSA”** means the current value of HDSA shareholding minus the outstanding loan balance plus dividends paid to HDSA beneficiaries;

**“Effective ownership”** means the meaningful participation of HDSA in the ownership, voting rights, economic interest and management control of mining entities;

**“EMP”** means an approved environmental management programme contemplated in terms of section 39 of the Mineral and Petroleum Development Act No. 28 of 2002;

**“Enterprise Development”** means monetary and non-monetary support for existing or fostering of new HDSA companies in the mining sector of the economy, with the objective of contributing to their development, sustainability as well as financial and operational independence;

**“ESOP”** means Employee Share Ownership Schemes;

**“Historically Disadvantaged South Africans” (“HDSA”)** refers to South African citizens, category of persons or community, disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), came into operation;

**“Labour sending area”** refers to areas from which the majority of mine workers, both historical and current, are or have been sourced;

**“Level of management”** refers to the line of demarcation between various managerial positions;

**“Life of Mine”** means the number of years that a particular mine will be operational;

**“Meaningful Economic Participation”** includes, inter alia, the following key attributes:

- a) BEE transactions shall be concluded with clearly identifiable beneficiaries in the form of BEE entrepreneurs, workers (including ESOPs) and communities;
- b) Barring any unfavourable market conditions, some of the cash flow should go to the BEE partner throughout the term of the investment and, for this purpose, stakeholders will engage the financing entities in order to structure the BEE financing in a manner where a percentage of the cash-flow is used to service the funding of the structure while the remaining amount is paid to the BEE beneficiaries. Accordingly, BEE entities are enabled to leverage equity henceforth in a proportion to vested interest over the life of the transaction in order to facilitate sustainable growth of BEE entities;
- c) BEE shall have full shareholder rights such as being entitled to full participation at annual general meetings and exercising of voting, regardless of the legal form of the instruments used; and
- d) Ownership shall vest within the timeframes agreed with the BEE entity, taking into account market conditions

**“Mining Charter”** means the broad-based socio economic empowerment Charter for the South African Mining and Minerals Industry;

**“Mine community”** refers to communities where mining takes place and labour sending areas;

**“Non-discretionary procurement expenditure”** means expenditure that cannot be influenced by a mining company, such as procurement from the public sector and public enterprises;

**“Stakeholder”** refers to a person, group, organisation or system which affects or can be affected by an organisation’s actions which may relate to policies intended to allow the aforementioned to participate in decision making in which all may have a stake;

**“Social fund”** refers to a trust fund that provides financing for investments targeted at meeting the needs of poor and vulnerable communities as informed by commitments made by companies in terms of their social and labour plans; and

**“Sustainable development”** means the integration of social, economic, and environmental factors into planning, implementation and decision-making to ensure that the mineral and petroleum resources development serves present and future generations.

## 1. BACKGROUND

The Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA) came into effect on the 1<sup>st</sup> of May 2004 to introduce historical reform of the mining industry. These reforms gave effect to aspirations of the objects of Resolution 1803 of the United Nations, and were enunciated by the Mining and Minerals Policy (White Paper) objectives.

The reforms effectively transferred ownership of mineral and petroleum resources to become "the common heritage of all South Africans, under the custodianship of the state", consistent with the "internationally accepted right of the state to exercise sovereignty over its wealth, natural resources and economic activity", as prescribed in the UN Resolution 1803 of 1962 and the subsequent UN Charter of Economic Rights and Duties of States.

Furthermore, the MPRDA gave effect to section 24 of the Constitution of the Republic of South Africa by ensuring that the nation's minerals are developed in an orderly manner, while promoting justifiable social and economic development. In the first decade since its promulgation, the MPRDA has created an enabling environment for the growth, and the basis for transformation, of the industry, in keeping with the changing socio-economic and political landscape in South Africa. Notwithstanding tremendous progress to date on the reform of the mining industry through the MPRDA, the first ten years of implementation of the Act has provided the benefit of jurisprudence.

The objectives of the MPRDA are, amongst others, intended to:

- Facilitate equitable access to and sustainable development of the nation's mineral resources.
- Promote substantial and meaningful economic participation of the historically disadvantaged.
- Ensure that holders of mining rights contribute towards the socio-economic development of the areas in which they are operating.

Section 100(2) (a) of the MPRDA provides for the development of the Mining Charter as an instrument to effect transformation with specific targets. The Mining Charter was introduced in 2004 and provided an initial window of ten years for the industry to effect meaningful transformation.

In 2009, the Department conducted an interim assessment on the extent of progress on implementation of the Mining Charter, which informed deliberations of the mining stakeholders' summit and initiated a process to strengthen and sharpen its effectiveness in driving transformation and competitiveness in the mining sector.

In June 2010, the Mining Industry, Growth, Development & Employment Task Team hereafter referred to as "MIGDETT", a tripartite initiative comprising the government, organised business and organised labour (Department of Mineral Resources (DMR), South African Mineral Development Association, Chamber of Mines, National Union of Mineworkers, United Association of South Africa (UASA) and Solidarity) signed a declaration on the "strategy for sustainable growth and meaningful transformation of South Africa's mining industry". The mining stakeholders affirmed the mutual inclusivity of competitiveness and meaningful transformation of the mining industry and further ascertained that one attribute cannot be achieved without the other.

The Stakeholders' declaration served as the basis on which the Mining Charter was amended. The amended Mining Charter, while retaining all the original elements, sought to improve the construct, scorecard, and remove identified ambiguities. It introduced an element on "sustainable development and growth", which addresses the stakeholders' commitment to utilise South African based facilities for analysis, and research and development, throughout the mining value chain, together with the improvement of the industry's environmental management as well as progress in implementation of the mine health and safety summit commitments. Furthermore, it introduced the concept of meaningful economic participation.

This report presents the findings of the assessment of implementation of the Mining Charter against each element, effectively quantifying progress of implementation of the instrument in an aggregated manner over a ten year window period.

## 2. ASSESSMENT METHODOLOGY

### 2.1 Population Details

The population size for the assessment comprises all mining rights that were due for assessment. The assessment is based on information submitted on the web-based system.

A total of 962 mining rights were due for assessment. These exclude prospecting rights authorised to undertake bulk samples for feasibility studies, mining permits, mining rights of less than a year in operation, as well as smelters and refineries, as they are not required to implement the Mining Charter in terms of the MPRDA, 2002.

Of the 962 mining rights eligible for assessment, 442 submitted. This was further reduced to 375, due to the following:

- Mining rights that constitute the same mining operation were consolidated; and
- Submissions with glaringly erroneous data.

### 2.2 Population Weighting

Due to the huge variation in size and significance of mining right holders, a weighting methodology based on employment for each mining right holding was also applied in assessing the data. Accordingly, the aggregate industry results are presented on the following basis:

- Not-Weighted:  
This approach aggregates the industry on a basis that mines of different sizes have equal significance in the output.
- Weighted by Size of Mine (using employment):  
Employment figures have been used as a measure of the size of a mining right. This measure was selected as it is viewed to better capture the social impacts of mining operations, which significantly cut across all elements of the Mining Charter.

Weighting the output by size provides a measure of significance of the results as larger mining rights carry more weight than smaller mines in the aggregation of the industry performance.

### **2.3 Consultation Process**

The Minister of Mineral Resources established a task team under the auspices of the Mining Growth, Development and Employment Task Team (MIGDETT) as a stakeholder consultative platform on the Mining Charter assessment process. The Department developed a data collection tool, in consultation with the task team. This allowed web-based submissions of data by mining right holders

### **2.4 Web Based Data Collection System**

As stated above, to collect the data, the DMR developed a web-based system through which right holders were empowered to submit data electronically. This system contains a set of data collection tools outlining the required information on all the elements of the Mining Charter. The required data was sought in terms of Section 29 of the MPRDA, which provides for the Minister to direct any right holder to submit any data required to achieve the objectives thereof. The system made provision for mining right holders to declare the correctness of information submission and further places liability on mining right holders for the submission of misleading, incorrect and inaccurate information.

In dealing with the elements of Mine Community Development and Housing and Living Conditions, the information was augmented with the inspection data of the DMR, given that submitted data was inadequate.

## 2.5 Scoring Principle

The amended Mining Charter set out targets, measures and weightings on how mining right holders are assessed in line with the respective elements. The applicable scoring principles are summarised in Table 1 below.

**Table 1: Scoring principles for the elements of the charter**

<b>ELEMENT</b>	<b>SCORING PRINCIPLE</b>
<b>1. Reporting</b>	Determination of percentage of companies that have reported. Scoring is Yes if the company has reported and No if the company has not reported.
<b>2. Ownership</b>	<p><b>Category 1:</b> Equal or greater than 26% HDSA ownership credits, but does not have all three identifiable beneficiaries i.e. Entrepreneurs, ESOPS &amp; Communities.</p> <p><b>Category 2:</b> Equal or greater than 26% HDSA ownership credits and broad-based, but no trickle cash flow to HDSA.</p> <p><b>Category 2+:</b> Equal or greater than 26% HDSA ownership, broad-based, with reported trickle cash flow to HDSA.</p> <p><b>Category 3:</b> HDSA ownership below 26%.</p>
<b>3. Housing and Living Conditions</b>	<p>The Mining Charter has set a target of 100% conversion of hostels using the following measures:</p> <ul style="list-style-type: none"> <li>• Reduction in occupancy to one person per room by 2014.</li> <li>• Conversion of hostels into family units by 2014.</li> </ul> <p>If progress achieved is 100%, then the score is YES If progress achieved is less than 100%, then score is NO.</p>
<b>4. Procurement</b>	Calculation of percentage expenditure from BEE entities on capital goods, services and consumables, respectively. 2014 targets for Capital goods = 40%, Services = 70%, Consumables = 50% and 0.5% of annual spend on procurement from multinational suppliers
<b>5. Employment Equity</b>	Calculation of percentage HDSA representation to represent country's demographics at levels specified by the Charter. 2014 targets for Top Management = 40%, Senior Management = 40%, Middle Management = 40%, Junior Management = 40% and Core Skills = 40%
<b>6. Human Resource Development</b>	Calculation of percentage payroll expenditure on training as per target. 2014 target is 5% of total annual payroll (excluding mandatory skills development levies) to be spent on HRD
<b>7. Mine Community Development</b>	The element measures progress against implementation of mine community project commitments by December 2014
<b>8. Sustainable Development</b>	Calculation of percentage implementation of the tripartite plan on mine health and safety, approved EMPs and utilisation of SA facilities for analysis of samples. 2014 targets are EMPs = 100%, Tripartite Action Plan = 100% and Percentage of samples in South African facilities = 100%

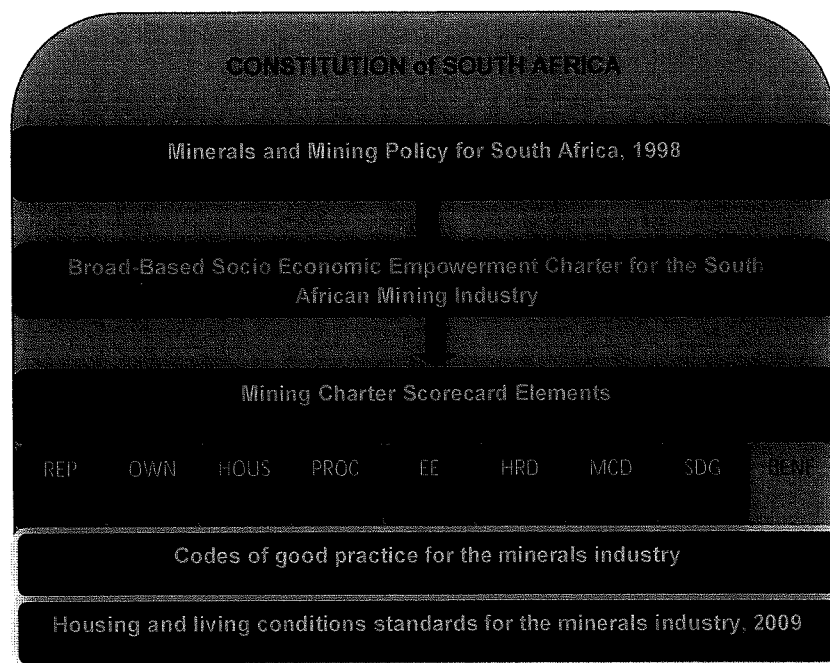


### 3. POLICY FRAMEWORK

#### 3.1 Mineral and Petroleum Resources Development Act, 2002

The mining and minerals policy framework is based on the Constitution of South Africa and the Minerals and Mining Policy for South Africa. The Mineral and Petroleum Resources Development Act (MPRDA, 2002) further enunciates the afore-mentioned policy. The Mining Charter is provided for in terms of section 100 of the MPRDA as an instrument intended to give effect to transformation in the mining industry. The Mining Charter, as amended, identified elements on which transformation of the industry is premised. Further, the Mining Charter scorecard was strengthened in 2010 to appositely quantify the minimum thresholds for each of the identified elements. The transformation tools are supplemented by the codes of good practice as well as the housing and living conditions standards, as provided for in section 100 of the MPRDA, 2002. Figure 1 summarises the structure of the mining policy framework as it relates to transformation.

Figure 1: A structure of the transformation policy framework for the mining industry



Legend: REP – Reporting; OWN – Ownership; HOUS – Housing and living conditions; PROC – Procurement and enterprise development; EE – Employment Equity; HRD – Human Resource Development; MCD – Mine Community Development; SDG – Sustainable Development and Growth ; BENF - Beneficiation

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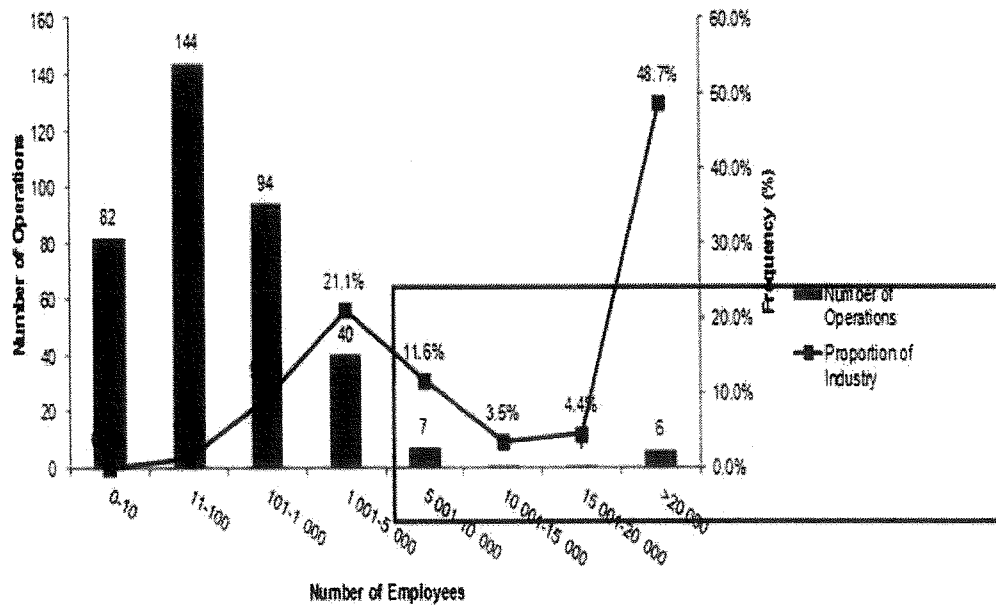
### 3.2 Mining Charter

Section 100(2) (a) of the MPRDA, 2002 provides for the development of the Mining Charter to facilitate the transformation of the mining industry. The Mining Charter is the product of stakeholders in the mining industry and is representative of stakeholders' commitment to initiate and implement the transformation of the industry.

### 4. FINDINGS OF THE ASSESSMENT

The report provides a brief outline of each of the Mining Charter elements and elaborates on the findings of the assessment of results characterised as not-weighted and weighted, using employment figures.

Figure 2: Distribution of employees in the mining industry.



The significance of weighting the data is demonstrated in Figure 2, with 1.4% of employees, employed in operations with up to 100 people (small mining right holders), which operations make up 60.3% of the rights assessed. Similarly, 30.4% of employees are employed in operations with a range of employees from 101 and 5000 (medium mining right holders), which operations make up 35.7% of the rights.

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Notably, 68.2% of the employees are employed in operations with more than 5000 employees, which operations make up 4% of the rights.

#### 4.1 Reporting

In terms of section 28(2)(c) of the MPRDA, 2002, every mining company must report its level of compliance with the Mining Charter annually, and the 2014 targets were due to be reported by the 31<sup>st</sup> March 2015. Reporting is ring-fenced as a measure in the Mining Charter.

For this assessment, out of 962 mining rights eligible for assessment, data for 442 mining rights was submitted. The figure of 442 is, however, representative of approximately 95 percent of employment of those rights that were due for assessment. Table 2 below shows the distribution of mining rights by province.

**Table 2:** Distribution of mining rights that have submitted by province

Province	Total Number of mining rights			Total Number of rights
	Active	Care and Maintenance	Closed	
<b>Gauteng</b>	55	11	0	66
<b>North West</b>	48	13	0	61
<b>Limpopo</b>	24	5	1	30
<b>Northern Cape</b>	42	6	0	48
<b>KwaZulu-Natal</b>	42	3	3	48
<b>Mpumalanga</b>	61	6	1	68
<b>Free State</b>	24	1	0	25
<b>Western Cape</b>	59	5	2	66
<b>Eastern Cape</b>	25	4	1	30
<b>Total</b>	<b>380</b>	<b>54</b>	<b>8</b>	<b>442</b>

From the total figure of 442 mining rights that submitted, 54 are in care and maintenance, 380 are active and 8 are closed. The number of rights analysed is further reduced to 375 for reasons outlined in Section 2.1.

#### 4.2 Ownership

The deracialisation of the mainstream economy constitutes a critical component of normalising society, consistent with the national efforts to construct a democratic society with appropriate norms and values. The ownership element of the Mining Charter represents a stakeholders' co-developed intervention that seeks to drive

transformation in the mining industry, in line with the constitutional imperative and the mining and minerals regulatory framework.

The Mining Charter assessment of 2009 illuminated weaknesses that inhibited attainment of broad-based economic empowerment of HDSAs - such as:

- Conspicuous lack of transfer of ownership into black hands;
- Access to funding;
- Indebtedness of HDSAs in transactions;
- Limited flow of dividends to HDSA partners to service the loan; and
- Onerous conditions and financially cumbersome structures of BEE deals.

Significantly, the reported level of BEE ownership was established to have been concentrated in the hands of anchor partners and Special Purpose Vehicles (SPV), representing a handful of Black beneficiaries, dubbed the "usual suspects". This was contrary to the spirit and aspirations of both the Freedom Charter and Mining Charter. At the time, aggregated BEE ownership reached a maximum of 9% against a target of 15%.

In terms of the amended 2010 Mining Charter, stakeholders committed to address the ownership shortfall to give effect to meaningful economic participation in the element of ownership. To this effect, all empowerment structures were to include:

- Clearly identifiable beneficiaries in the form of BEE entrepreneurs, employees and communities;
- A measure of cash flow to BEE partners throughout the term of investment in part to service the funding of the loan while the remaining amount is paid directly to the BEE beneficiaries;
- Enabling BEE entities to leverage equity in proportion to vested interest over the life of the transaction in order to facilitate sustainable growth of BEE entities;
- Full shareholder rights which would necessitate participation at annual general meetings and the exercise of voting rights; and
- Ownership to vest in the time frame agreed with the BEE.

The amended Charter further recognised continuing consequences of previous deals concluded prior to the promulgation of the MPRDA, 2002.

The scoring principles for the ownership element are premised on the categories outlined in Table 1 of the methodology, read with the aforementioned criteria. Information submitted by individual right holders was processed in terms of these scoring principles and presented henceforth as aggregated.

### ***Overarching HDSA Ownership***

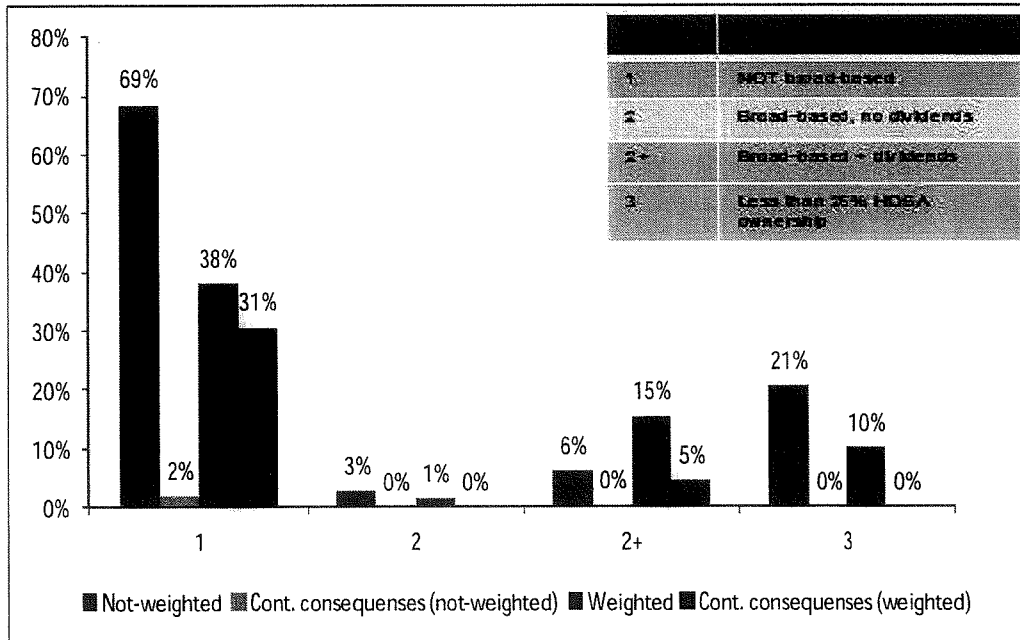
The analysis of ownership is based on total mining right population, exclusive of five right holders that have overstated their BEE ownership in excess of 100%.

At face value, 79% of submissions of not-weighted data have reportedly met and exceeded the target of 26% HDSA shareholding with total industry simple average HDSA ownership of 30.6% (Figure 3). Furthermore, when the data is weighted the percentage of submissions with HDSA ownership at or greater than 26% increases to 90% and accordingly the total industry simple average HDSA ownership increases to 32.5%.

However, the majority of mining right holders (69% weighted and 71% not-weighted) concluded empowerment transactions with only one or two of the identifiable beneficiaries, which is not in accordance with the prescript of the Mining Charter, as amended. Of these rights, only 3% and 1% (not-weighted and weighted respectively) concluded empowerment transactions with all requisite identifiable beneficiaries, but with no reported trickle cash flow to HDSA partners. Furthermore, only 6% not-weighted and 20% weighted of mining right holders have fulfilled the full requirements of meaningful economic participation as inscribed in the Mining Charter.

It should be noted that the data analysed had taken into account consequences of previous deals, which is reflected in categories 1 and 2+ in Figure 3. In category 1, 2% of the right holders had claimed continuing consequences, which increases to 31% when the data is weighted. In category 2+, 0.3% of the right holders claimed continuing consequences which also increased to 5% when the data is weighted.

**Figure 3:** Proportion of mining right holders with meaningful HDSA economic participation (weighted and not-weighted)



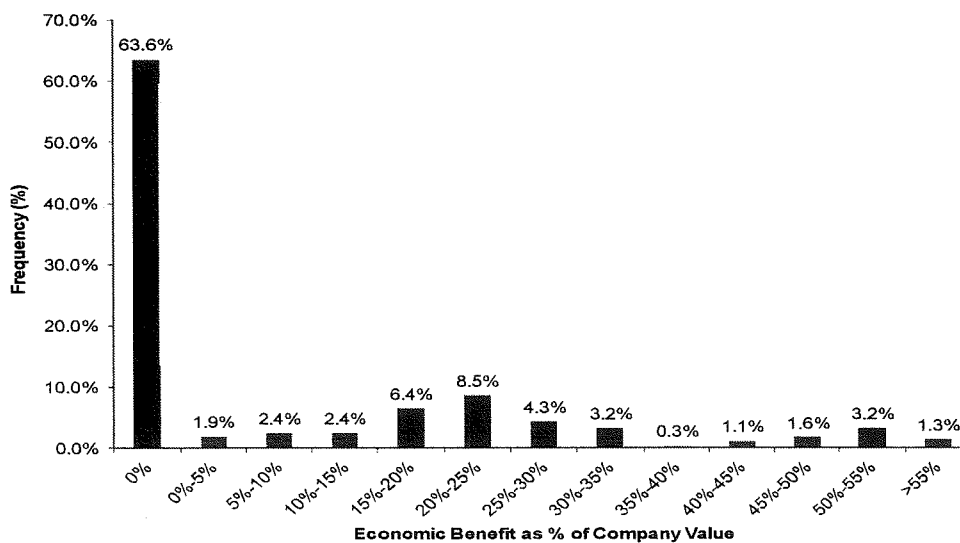
**Extent of economic benefit to HDSAs**

The concept of economic benefit is defined as current value of HDSA shareholding minus the outstanding loan balance plus dividends paid to HDSA beneficiaries. The analysis of economic benefit for not-weighted and weighted data shows that 64% and 37% of right holders respectively have provided no economic benefit to HDSA beneficiaries (Figure 4 and Figure 5). This analysis further reveals that for not-weighted and weighted data, 63% and 36% of right holders managed to accrue value to HDSAs.

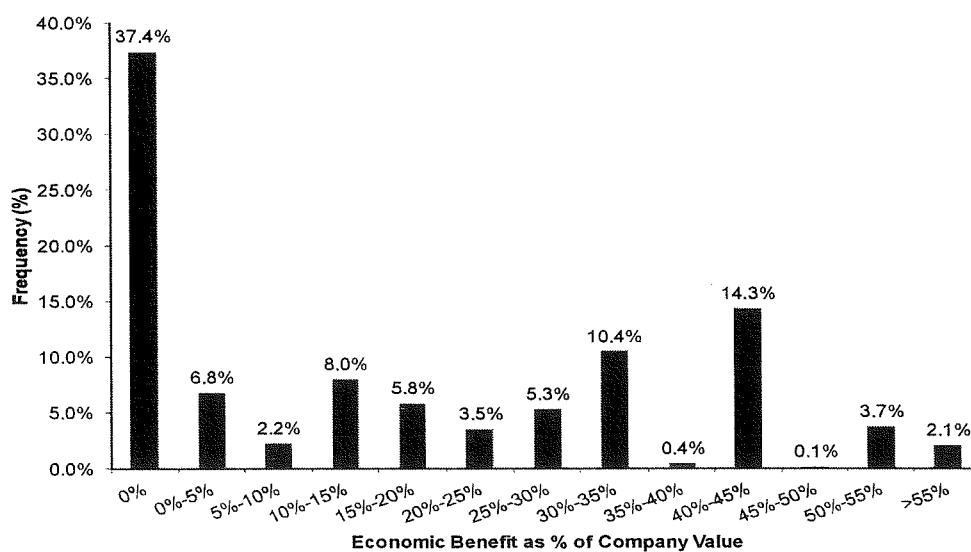
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**Figure 4: Extent of economic benefit accruing to HDSAs (not-weighted)**



**Figure 5 : Extent of economic benefit accruing to HDSAs (weighted)**



**Full shareholder rights and economic benefit by size**

The data was further analysed for full shareholder rights and economic benefit to HDSAs in terms of categories defined as large (5000 employees or greater), medium

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(from 101 employees to 5000 employees) and small (equal and less than 100 employees) and HDSA ownership accordingly assessed (Table 3).

**Table 3: Full shareholder rights and economic benefit to HDSA categorised by size**

<b>HDSA Shareholder Credits</b>			
HDSA Ownership	Rights size by employment		
	Large	Medium	Small
<26%	21%	17%	25%
≥26%	79%	83%	75%
<b>Economic Benefit to HDSA</b>			
Economic Benefit to HDSA	Rights size by employment		
	Large	Medium	Small
0%	29%	55%	71%
Between 0% - 26%	35%	20%	21%
≥26%	36%	25%	8%

Although 79% of large right holders have reportedly met or exceeded the 26% HDSA ownership target with a simple average HDSA ownership of 26.2% amongst these large right holders, 64% have transferred economic benefit of between 0% to 26%. However, 29% of the HDSA partners have accrued no (0%) economic benefit at all.

Similarly, 83% of medium right holders have reportedly met or exceeded the 26% HDSA ownership target with a simple average HDSA ownership of 34.1% amongst these medium sized right holders, 75% have transferred the economic benefit of between 0% to 26% to HDSA, and 55% of the HDSA partners have accrued no (0%) economic benefit at all.

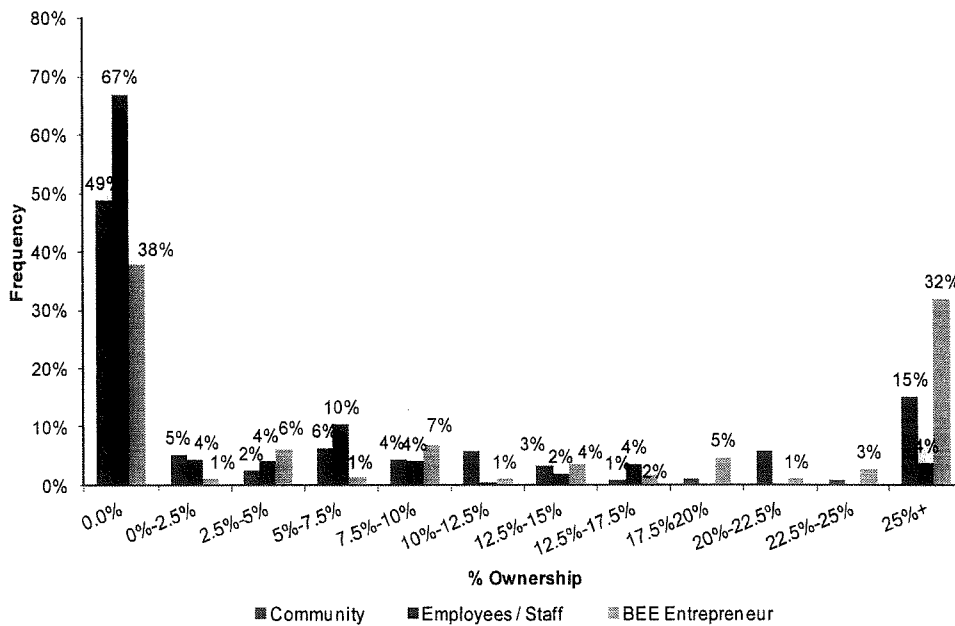
For small right holders, the trend worsens even further with 75% of such right holders having reportedly met or exceeded the 26% HDSA ownership target with a simple average HDSA ownership of 28.4% amongst these small right holders, whilst a disproportionate 92% have transferred the economic benefit of between 0% to 26% to HDSA and 71% of the HDSA partners have accrued no (0%) economic benefit at all.



**Ownership Distribution by Identifiable Beneficiaries**

The reported information was analysed for ownership distribution in line with meaningful economic participation by identifiable beneficiaries. The not-weighted data shows that 67%, 49% and 38% of mining right holders did not consider mineworkers (ESOPs), communities and BEE entrepreneurs respectively as their empowerment beneficiaries (Figure 6). Further, 36%, 30% and 29% each of mining right holders have concluded empowerment transactions wherein communities, BEE entrepreneurs and mineworkers respectively have a shareholding of between 0% and 26%. However, 32%, 15% and 4% of mining right holders have reportedly concluded empowerment transactions wherein BEE entrepreneurs, communities and mineworkers (ESOPs) respectively secured ownership levels of 26% and above.

**Figure 6:** Percentage shareholding by workers, communities and BEE for right holders with broad based HDSA shareholding (not-weighted)



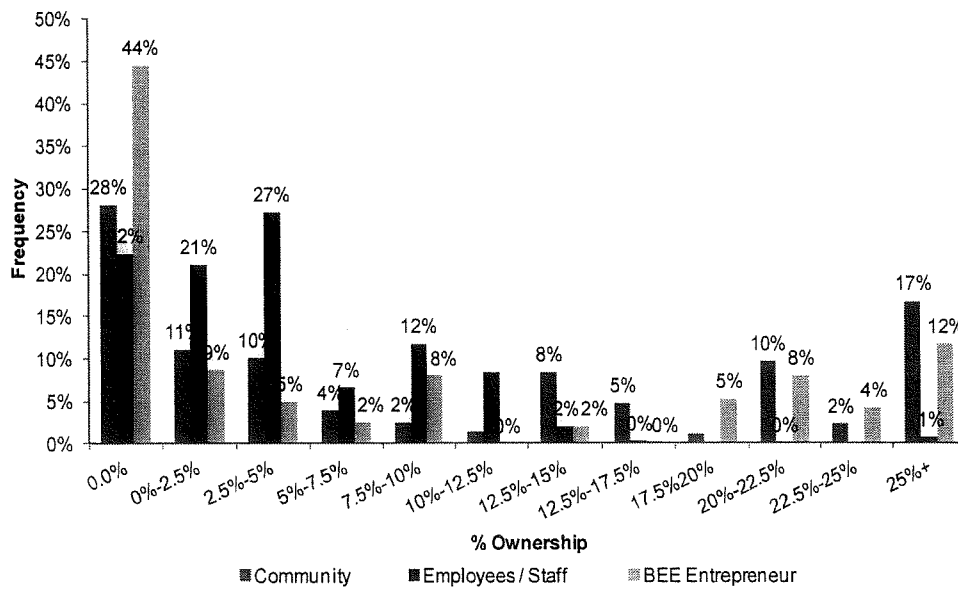
Conversely for weighted data (Figure 7), there appears to be improvement in the distribution among identifiable beneficiaries. To this effect, 77%, 55% and 44% of mining right holders have empowerment transactions wherein mineworkers (ESOPs), communities and BEE entrepreneurs respectively have a shareholding

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ranging between 0% and 26%. Unfortunately, 44%, 28% and 22% of mining right holders have empowerment transactions wherein BEE entrepreneurs, communities and mineworkers (ESOPs) correspondingly have received no shareholding. However, shareholding of communities, BEE entrepreneurs and mineworkers exceeded 26% for 17%, 12% and 1 % of mining right holders respectively.

**Figure 7 :** Percentage shareholding by workers, communities and BEE for right holders with broad based HDSA shareholding (weighted)



The analysis further reveals that approximately two thirds and almost half of all mining right holders (not-weighted) have not empowered mineworkers and communities respectively. In cases where the two categories are empowered, the efficacy of the transactions is yet to be established. Generally, the interests of both categories are administered through trusts, with varying degrees of success. Having said this, the analysis also indicates a handful of community trusts that have not only meaningfully benefited from their shareholding, but have extended the footprint of participation in the mining industry through investments in other mining operations.

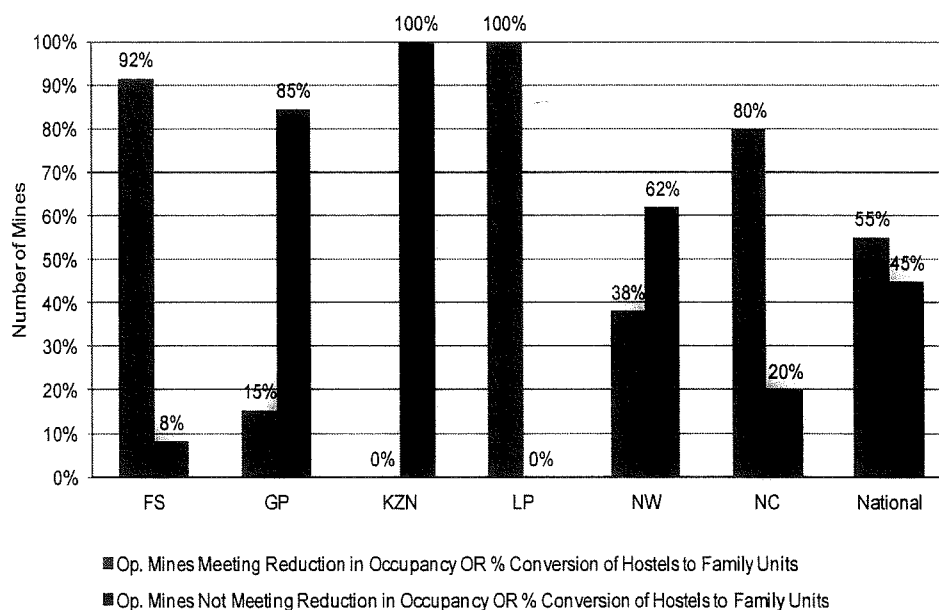
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### 4.3 Housing and Living Conditions

The Mining Charter has sought to restore the dignity of mineworkers by ensuring that right holders with traditional hostels reflective of the old-order environment are completely eliminated by 2014. This target represents aspirations and commitment of the mining stakeholders in the declaration on "strategy for sustainable growth and meaningful transformation of South Africa's mining industry", in which improved living and working conditions were identified as one of the key features to achieve productivity. The Mining Charter resultantly set the following targets:

- Conversion or upgrade of hostels into family units by 2014;
- Attainment of occupancy rate of one person per room by 2014; and

**Figure 8:** Performance of mining right holders against the target set for housing and living conditions in 2014.



The assessment of this element was only applicable to those right holders that had hostels. To achieve the target for 2014, right holders with hostels are required to achieve either the reduction in occupancy rates or the conversion of hostels to family units. The reported data showed that (Figure 8), overall 55% of the mining right holders met the target for improving the living conditions of the mineworkers by either reducing occupancy rate to one person per room or converting hostels to

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family units. The provinces with the highest number of mining right holders meeting this target were Limpopo, Free State and Northern Cape at 100%, 92% and 80% respectively. The provinces where the majority of mining right holders did not meet the target include KwaZulu-Natal, Gauteng and North West, where 100%, 85% and 62% respectively of the mining right holders fell short of meeting the target. Western Cape and Mpumalanga Provinces are not included in the data analysed because the augmented data in this element indicated that there were no hostels in these provinces.

#### **4.4 Procurement and Enterprise Development**

Local procurement presents an opportunity to leverage the mining industry to stimulate economic growth in South Africa. To this effect, mining right holders are required by the Mining Charter to procure a percentage of their capital goods, consumables and services from BEE entities.

The procurement element of the Mining Charter is a deliberate intervention by mining industry stakeholders to create new avenues for HDSA suppliers' participation in the mainstream economy. To this effect, mining stakeholders agreed to the following measures:

- Procure a minimum of 40% of capital goods from BEE entities by 2014;
- Ensure that multinational suppliers of capital goods annually contribute a minimum of 0.5% of annual income generated from local mining companies towards socio-economic development of local communities into a social development fund from 2010; and
- Procure 70% of services and 50% of consumer goods from BEE entities by 2014.

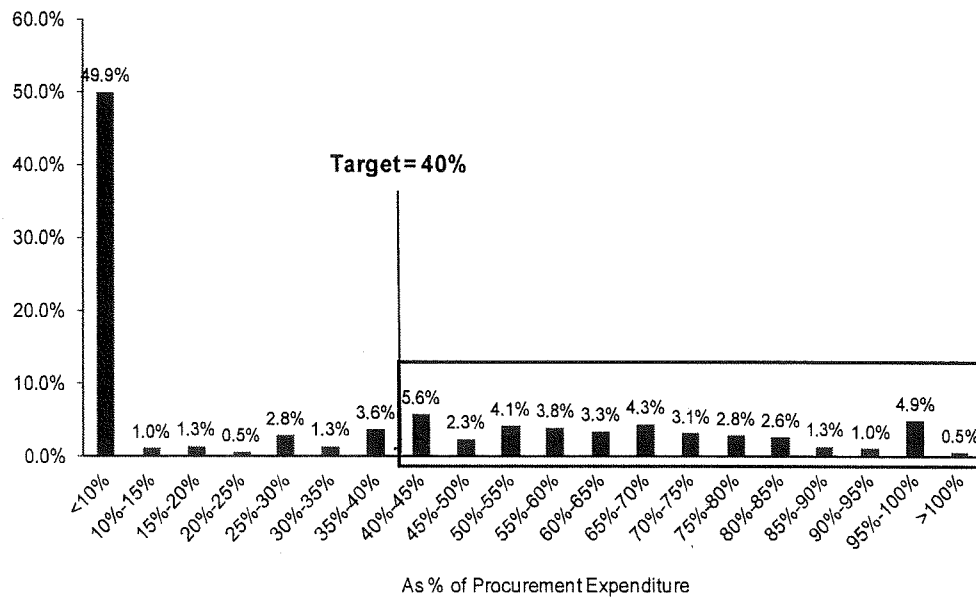
The above mentioned targets exclude non-discretionary procurement expenditure.

#### **Capital Goods**

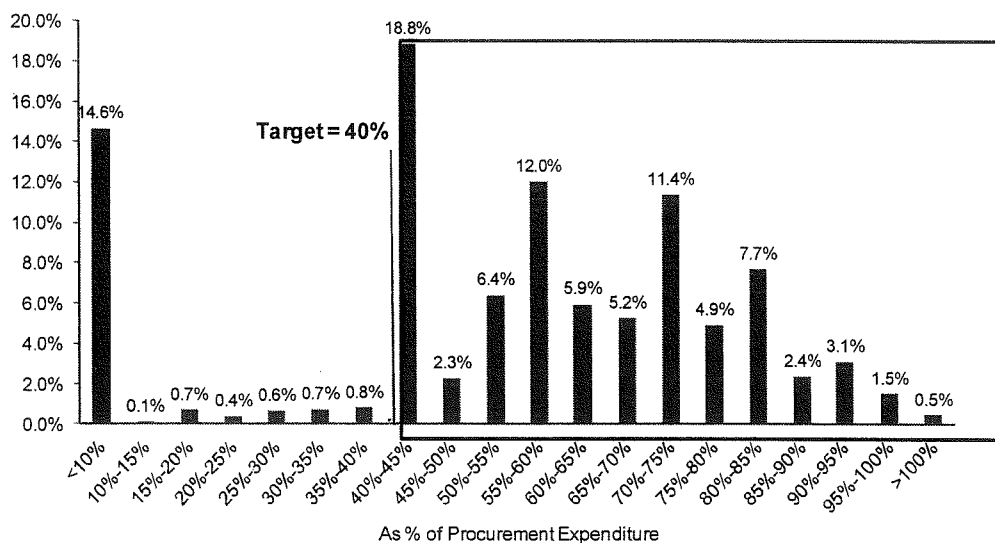
The percentage of right holders meeting the 40% target is 39.1% when the data is not-weighted (Figure 9). Figure 10 shows that 81.6% of mining right holders (weighted) met the 2014 target of spending 40% of their total expenditure on capital

goods sourced from BEE entities. Furthermore, 14.6% (weighted) procured less than 10% of their capital goods from BEE entities.

**Figure 9 :** Distribution of capital goods procurement expenditure from BEE entities (not-weighted)



**Figure 10:** Distribution of capital goods procurement expenditure from BEE entities (weighted).



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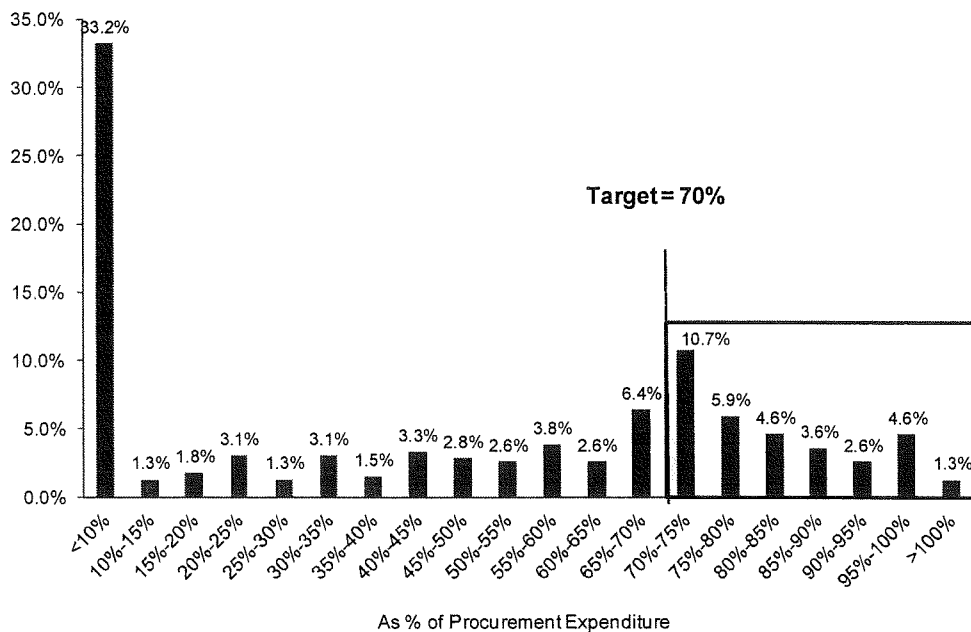
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**Services**

With respect to procurement of services from BEE entities, 32% of the rights in the not-weighted dataset met the target of 70% (Figure 11). It is noteworthy that 64.8% of mining right holders met the 2014 target when data is weighted by employment (Figure 12). The level of population that have not met the minimum thresholds dropped from 66.8% to 35.1% when the data is weighted. This clearly indicates that the mining right holders not yet meeting the requisite thresholds are concentrated among the smaller employers.

Furthermore, it should be note that the weighted and not weighted data sets contained records with procurement expenditure of more than 100%. For not-weighted data, the percentage of rights with this error was 1.3% and for weighted data 0.1%.

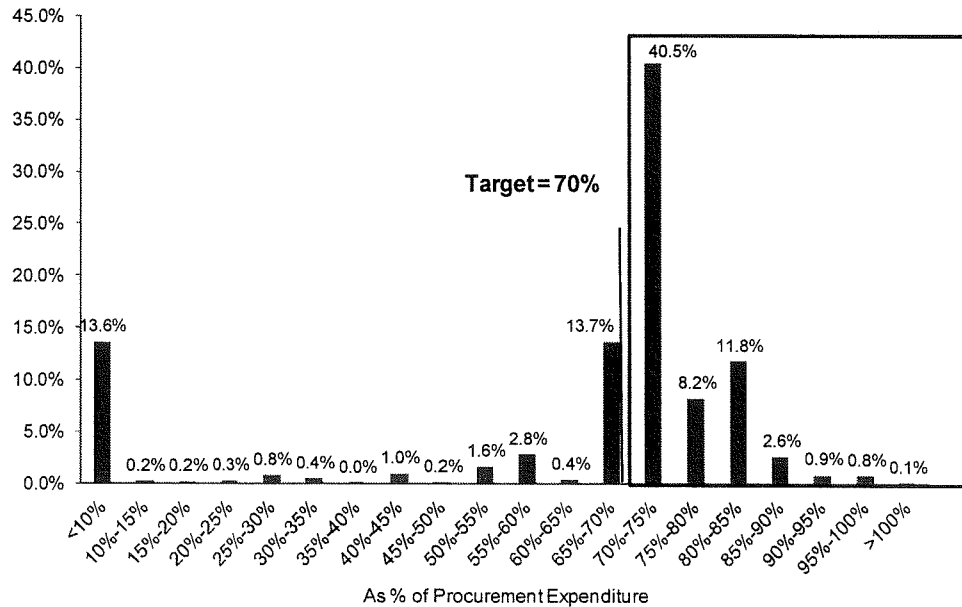
**Figure 11** : Distribution of services procurement expenditure from BEE entities (not-weighted)



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**Figure 12:** Distribution of services procurement expenditure from BEE entities (weighted).



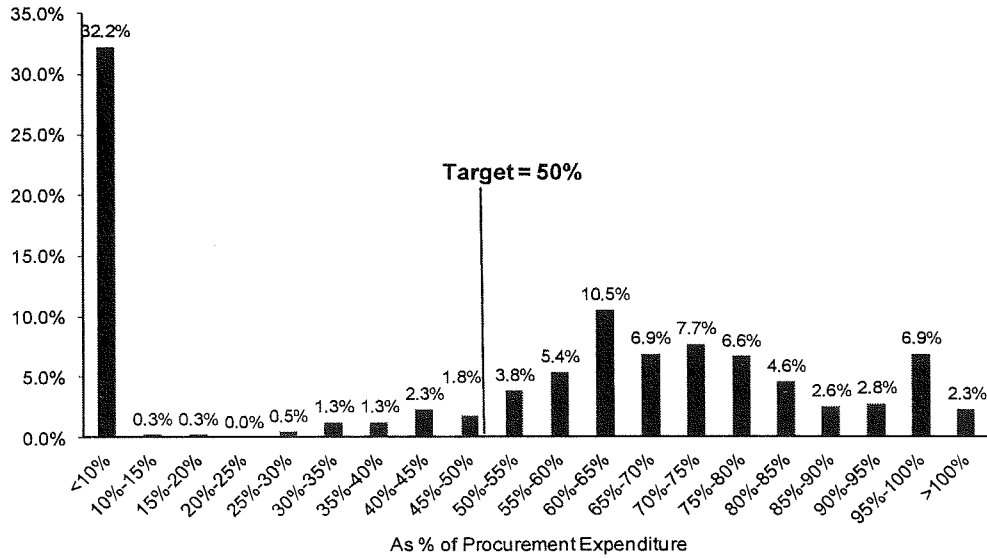
**Consumables**

On procuring consumables from BEE entities, the not-weighted data shows that 57.8% of rights met the 2014 target of 50% (Figure 13). There is, however, a marked increase when weighing the data with employment, with mining right holders meeting the target increasing to 82.7% (Figure 14).

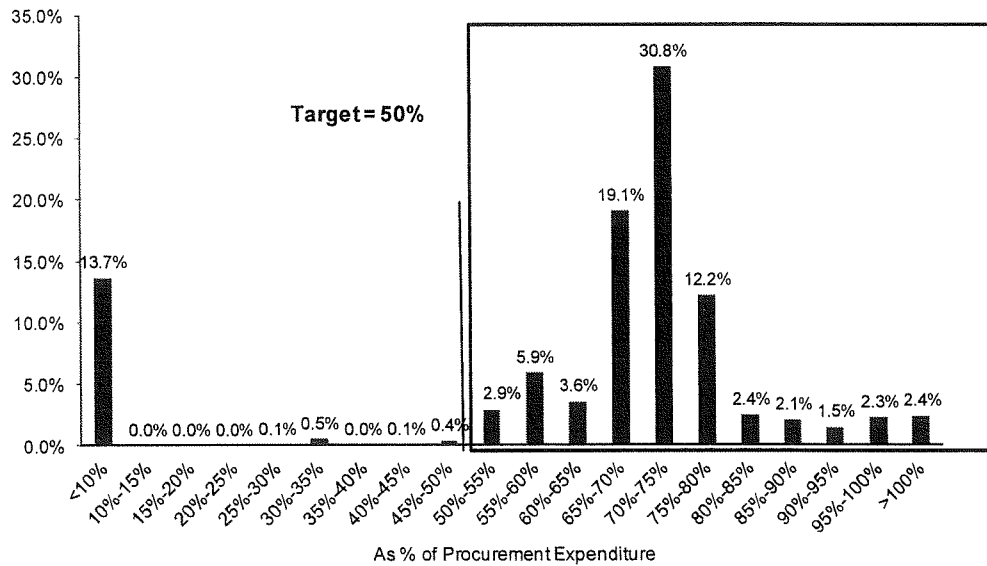
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**Figure 13 :** Distribution of Consumables procurement expenditure as a function of total consumable goods procurement expenditure from BEE entities (not-weighted)



**Figure 14:** Distribution of Consumables procurement expenditure as a function of total consumable goods procurement expenditure from BEE entities (weighted)



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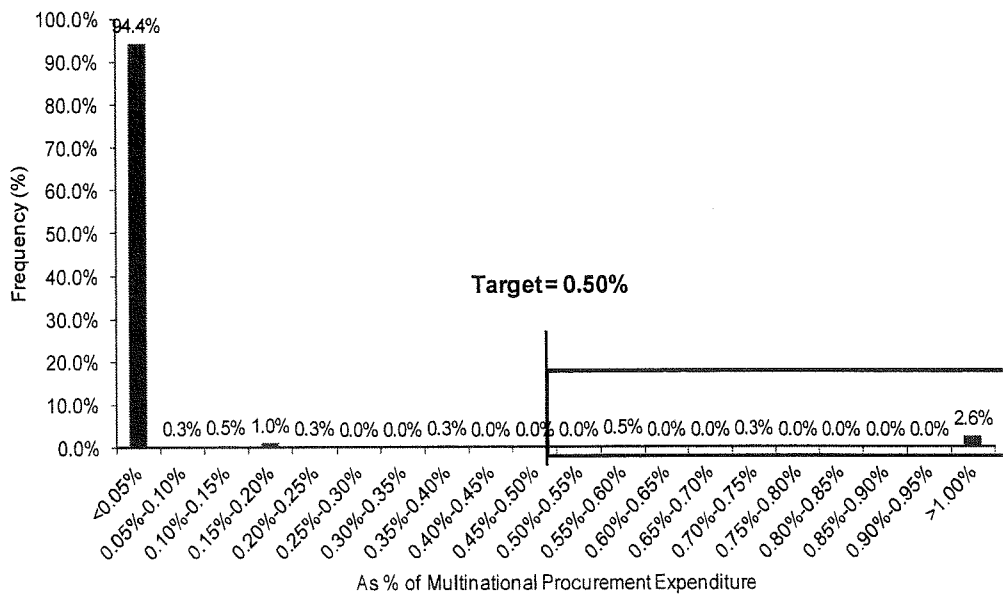
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**Multinational supplier's contribution to the Social Fund**

Only 3.4% (not-weighted) have reportedly met the required target (Figure 15). Weighted data (Figure 16) indicates that 14.9% of the industry has reportedly met and exceeded the target of multinational suppliers contributing towards the social fund.

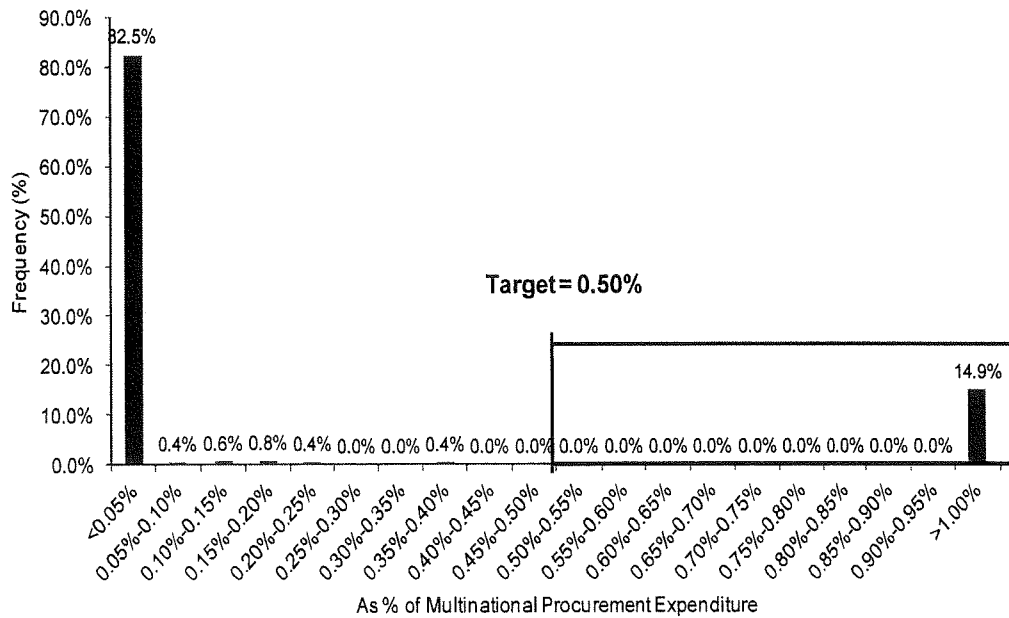
**Figure 15 :** Distribution of right holders reportedly with multi-national supplier contribution to social fund (Not-weighted)



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**Figure 16:** Distribution of right holders reportedly with multi-national supplier contribution to social fund (weighted)



#### 4.5 Employment Equity

The amended Mining Charter represents stakeholders’ recognition that workplace diversity and equitable representation at all levels are catalysts for social cohesion, transformation and competitiveness of the mining industry. In order to create a conducive environment to ensure diversity as well as participation of HDSAs at all decision-making levels and core occupational categories in the mining industry, every mining company must achieve a minimum of 40% HDSA demographic at:

- Executive management (Board) level by 2014
- Senior management (EXCO) level by 2014
- Core and critical skills level by 2014
- Middle management level by 2014
- Junior management level by 2014

In addition, mining companies must identify and fast-track their existing talent pools to ensure high level operational exposure in terms of career path programmes.

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**Table 4: HDSA representation at different employment functional categories**

Category	African		Coloured		Asian (Indian and Chinese)		White		Foreign National		Total HDSA
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	
Top Management (Board)	32.0%	9.4%	3.9%	1.5%	2.8%	1.1%	37.4%	3.4%	8.5%	0.0%	54.1%
Senior Management (EXCO)	29.1%	5.2%	3.8%	0.7%	4.1%	2.1%	49.3%	5.7%	0.0%	0.0%	50.7%
Middle Management	26.3%	8.6%	4.4%	1.0%	2.1%	0.9%	45.1%	9.4%	1.8%	0.3%	52.7%
Junior Management	41.9%	9.0%	5.0%	1.0%	0.6%	0.2%	33.1%	5.1%	4.0%	0.1%	62.8%
Core Skills	64.1%	8.6%	1.7%	0.3%	0.1%	0.0%	6.1%	0.4%	18.2%	0.4%	75.2%

**EAP Levels are:** African Males (40%), African Females (35%), Coloured Males (6%), Coloured Females (5%), Asian Males (2%), Asian Females (1%), White Males (6%), and White Females (5%)

Analysis of the reported aggregated information in Table 4 above shows that the mining industry exceeded the 40% target set to be achieved by 2014 in the different functional categories. HDSA representation was highest in the core skills category at 75.2%, followed by junior management at 62.8%.

When the applicable Economically Active Population (EAP) level is taken into account, African males are under-represented in the functional categories of top management, senior management and middle management and African females are significantly under-represented in all categories. Similarly, the coloured race group is significantly under-represented, for both males and females, at all categories. Whereas Asian males are over-represented at board, senior and middle management levels, they are under-represented at junior management and core skills.

On the other hand, Asian females are over-represented at board and senior management and under-represented in the remaining functional categories. White females are over-represented in all categories except at board and core skills. Important to note is that white males still dominate in the higher functional

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categories, being over-represented at all functional categories except at core skills, where their representation is at the EAP demographic level of 6%.

### ***Women participation in mining***

Prior to the introduction of the Mining Charter, female representation in the mining industry was insignificant. The 2004 Mining Charter set a target of 10% for representation of women in mining by 2009, however, only 6% representivity was achieved. The overall representation of women in the mining industry has increased to 10.5% by 2014. The reported data shows that there is still a long way to go before women are fully represented in the mining industry.

### **4.6 Human Resource Development**

For South Africa to realise sustainable development and growth, the mining industry requires continuous gap assessment and development to ensure that there is enough supply of requisite skills. To this end, the HRD element was introduced not only to expedite transformation of the workplace by skilling workers but also to place the country on a more competitive trajectory by strengthening the skills pillar.

The 2010 assessment indicated that there were still low levels of development in terms of functional literacy, career pathing and mentoring of empowerment groups. The amended Mining Charter required mining right holders to spend 5% of total payroll (excluding skills development levies) by 2014 on HRD. The reported data from the submissions shows that 35.3% of the right holders (not-weighted) did meet this target (Figure 17).

Figure 17: HRD expenditure as a percentage of payroll (not-weighted)

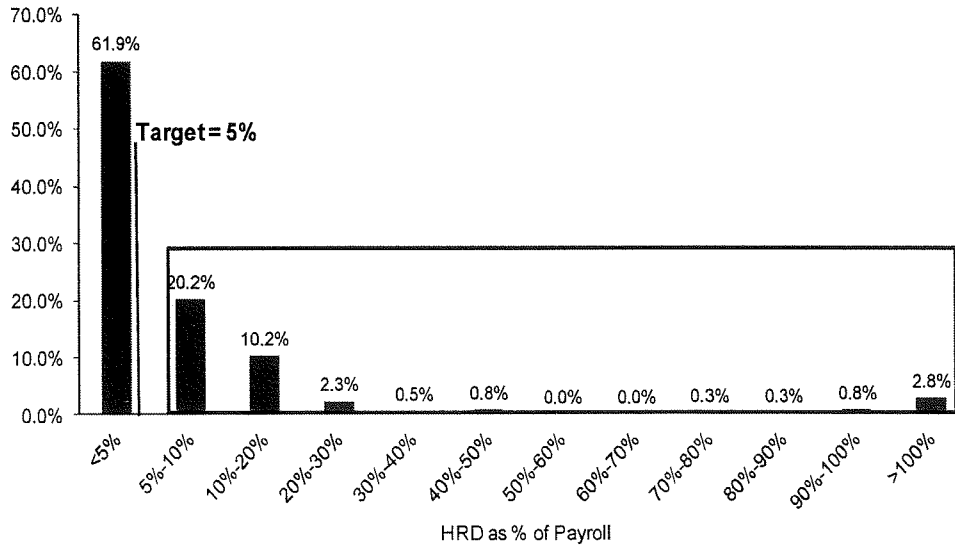
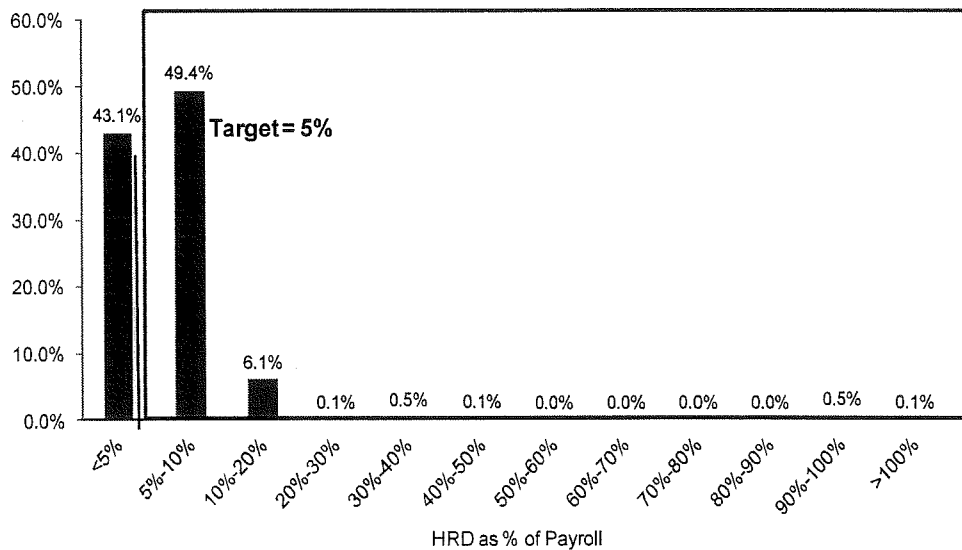


Figure 18: HRD expenditure as a percentage of payroll (weighted)



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When weighted, the number of right holders meeting the target increases to 56.8% (Figure 18). The comparison of the weighted and not weighted graphs suggests that the smaller employers are less inclined to comply with the HRD targets than the larger companies.

Although there are some right holders that have striven to meet this target, there are still a significant number of right holders that have fallen below the requisite threshold. It should be noted that 2.8% of mining right holders reported HRD expenditure greater than total payroll, which could be an overstatement.

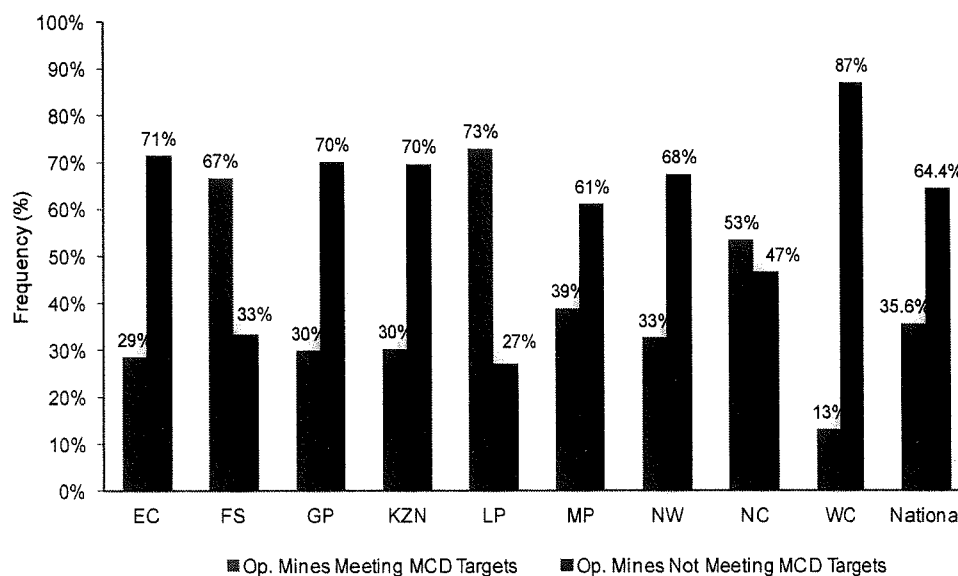
**4.7 Mine Community Development**

Mining host communities have historically endured a disproportionate negative socio-economic impact from the development of mining. Mining activities in South Africa are largely concentrated in remote and under-developed areas. To this effect, mining stakeholders, in pursuit of uplifting and improving socio-economic conditions amongst these communities, agreed to develop programmes through social and labour plans and other related initiatives to contribute towards the development of both host communities and major labour sending communities. Figure19 shows the level of progress made with regard to meeting targets of implementation of approved projects. The data shows that nationally only 36% of mining right holders have met their set target on mine community development (MCD). It is also evident from the data that Limpopo has attained the highest level of progress with reported performance at 73%, followed by Free State and Northern Cape at 67% and 53% respectively. However, the picture depicts that Western Cape was the worst performing province with 87% of the mining right holders not meeting the targets, followed by Eastern Cape at 71% as well as KwaZulu-Natal and Gauteng at 70% each.

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**Figure 19: Extent of implementation of approved MCD projects**



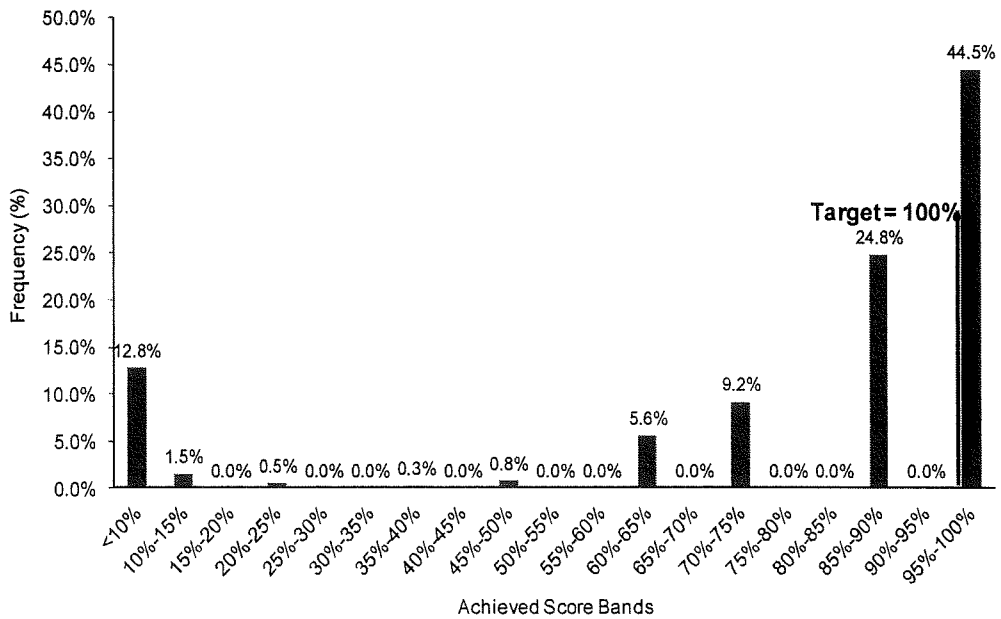
#### 4.8 Sustainable Development and Growth of the Mining Industry

##### Implementation of approved EMPs

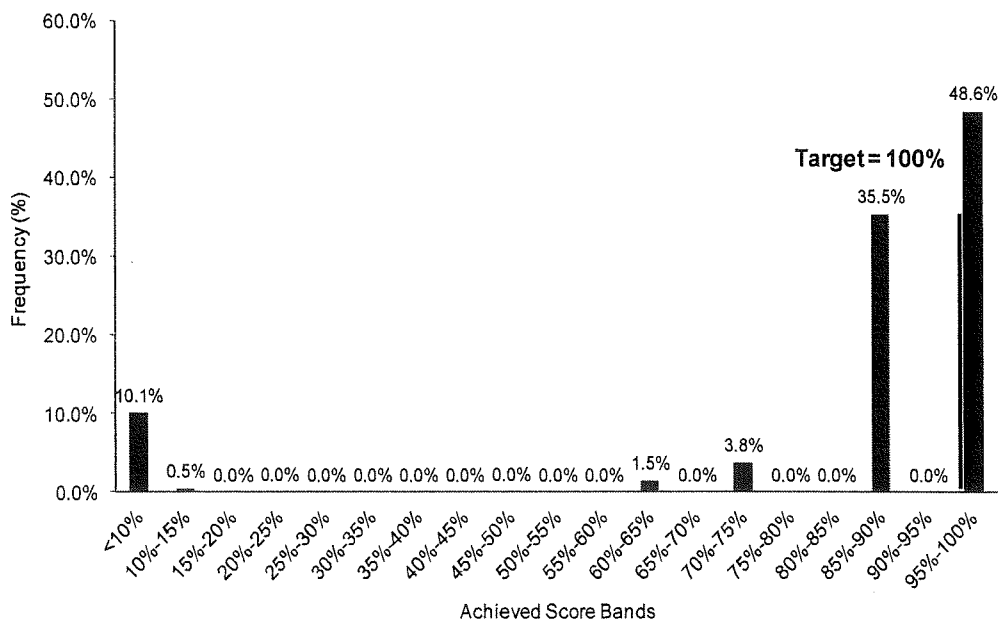
The majority of the right holders did not meet the target for implementation of EMPs as stipulated in the Mining Charter, with only 44.5% of the rights assessed as meeting the target as shown in Figure 20 below. Weighting the data resulted in an increase in the percentage of rights complying to 48.6% (Figure 21).

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**Figure 20:** Implementation of approved EMPs (not-weighted)



**Figure 21:** Implementation of approved EMPs (weighted)



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**Improvement of the industry's health and safety performance**

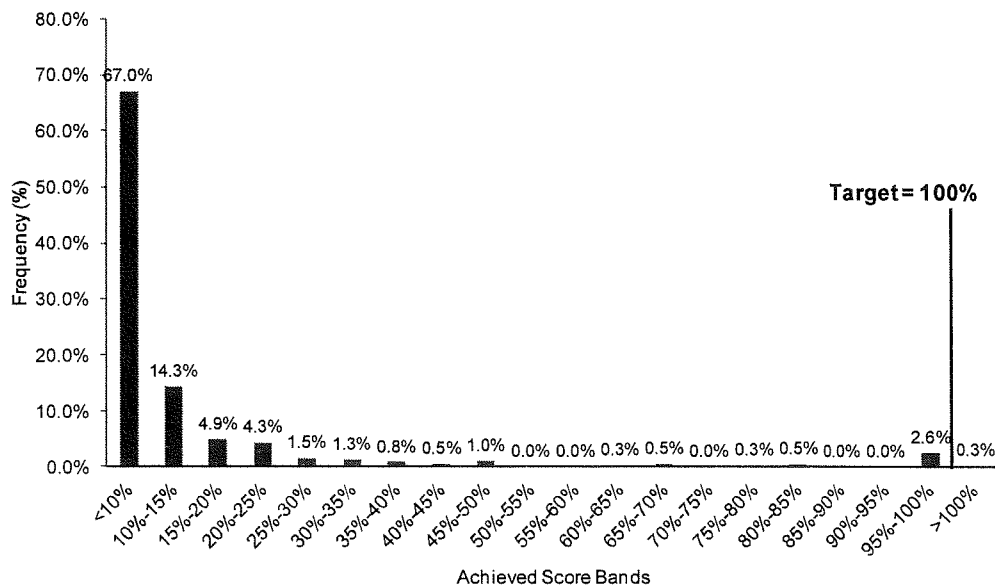
This element comprises six sub-measures, namely Occupational Health and Safety (OHS) reporting, training of OHS representatives and shop stewards, investigation of Mine Health and Safety Council (MHSC) research outcome for implementation, investigation of leading practices from Mine Occupational Safety and Health (MOSH) for implementation, adherence to TB and HIV/Aids guidelines and implementation of culture transformation framework.

In assessing the results, Figure 22 shows that only 2.6% of right holders met the target for implementing all sub-measures of the tripartite action plan (not-weighted). When the data is weighted (Figure 23), the performance decreases to 1.4%.

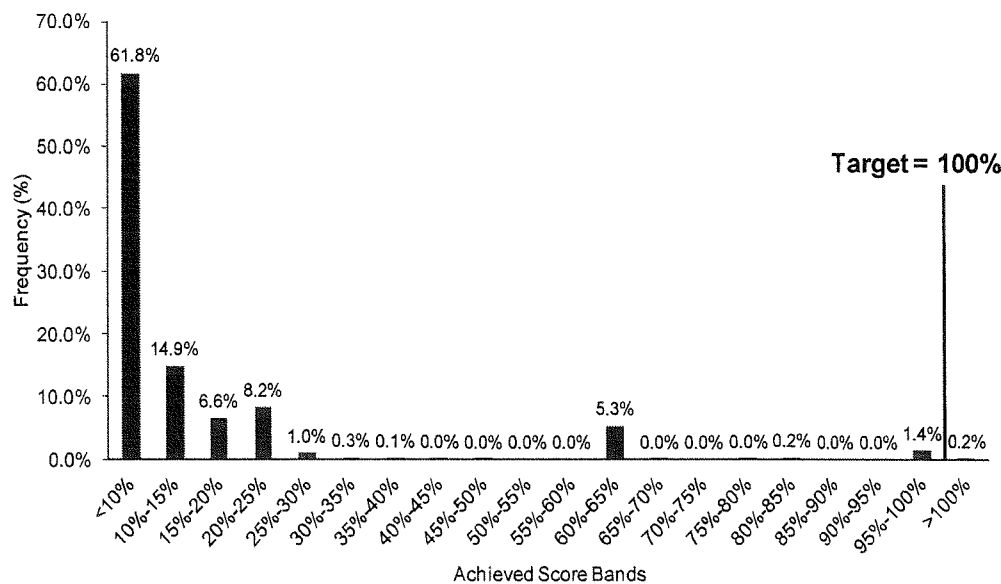
It should be noted that for both the weighted and not-weighted data sets, there were rights reporting more than 100%. The percentage of right holders with erroneous reports was 0.3% and 0.2% for not-weighted and weighted data respectively.

Although the aggregated results for all sub-measures indicate that mining right holders did not do well in the implementation of the tripartite action plan, it should be noted that there has been significant improvement on health and safety performance in the sector. This is supported by the reduction in fatalities, injuries and occupational diseases after the enactment of the Mine Health and Safety Act (Act no. 29 of 1996). For instance, there has been an 80% reduction in fatalities from 412 in 1996 to 84 in 2014. Also, there has been a 64% reduction in the total number of occupational diseases from 18371 in 2003 to 6577 in 2014.

**Figure 22:** Distribution of performance by mining right holders with implementation of the tripartite action plan (not-weighted).



**Figure 23:** Distribution of level of performance by mining right holders with implementation of tripartite action plan (weighted)



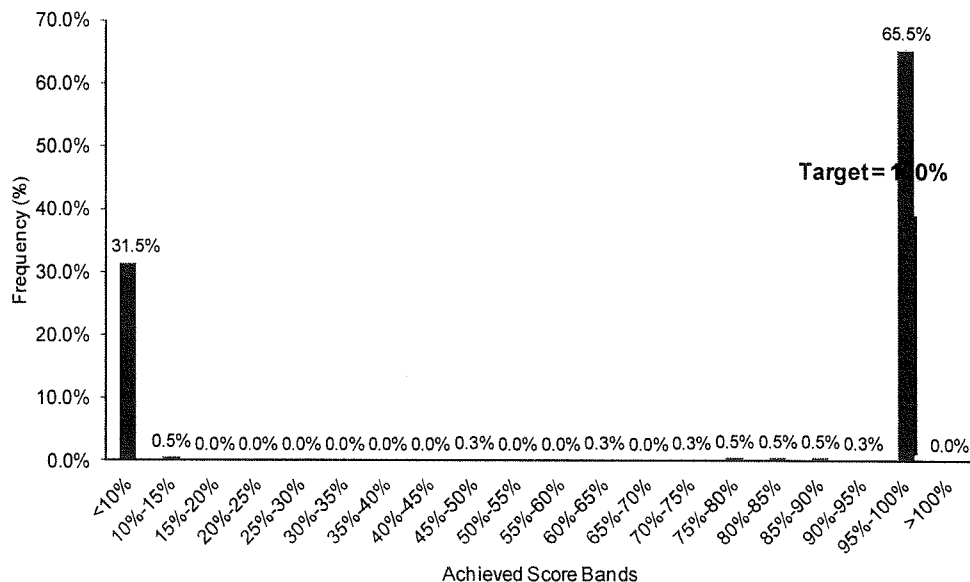
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**Utilisation of South African based research facilities for analysis of samples across the mining value chain**

A majority (66%) of the right holders met and exceeded the target of utilising South African based research facilities (Figure 24). At the same time, 35% of mining right holders fall below the target of implementation, analysing less than 10% of their samples in South African based facilities. The extent of progress changes once the data is weighted from 65% to 84% (Figure 25) , which implies that most of the large employers complied with this element of the Charter.

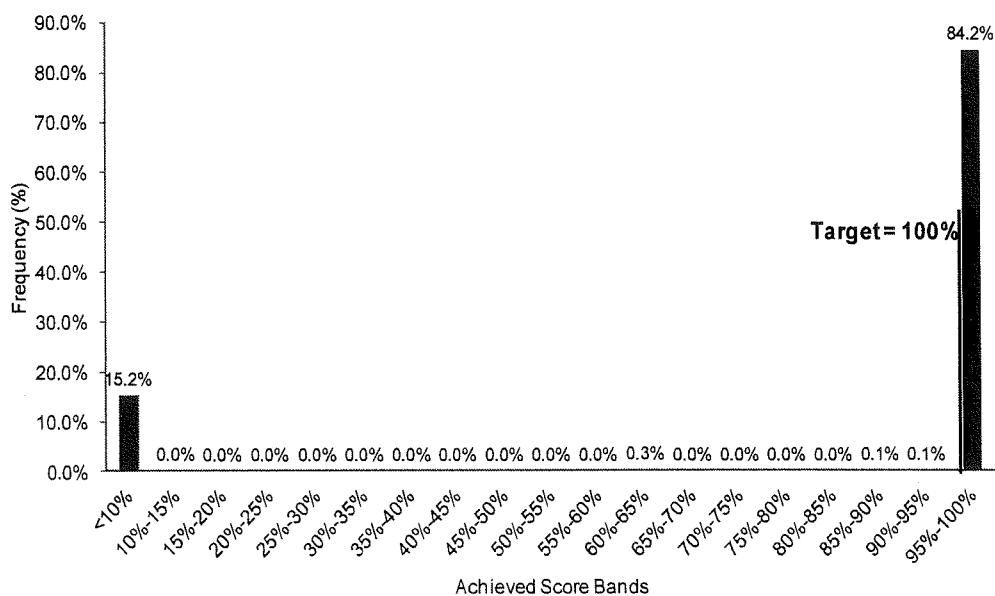
**Figure 24:** Percentage of right-holders utilising South African Facilities for sample analysis (not-weighted).



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Figure 25: Percentage of right-holders utilising South African Facilities for sample analysis (weighted).



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## 5. CONCLUSIONS

This second phase of the evaluation of progress made towards the implementation of the revised 2010 Mining Charter coincides with the declaration by the President that 2015 is the year of the Freedom Charter. The revised Mining Charter was initiated through the undertaking of mining industry stakeholders of the declaration on the Strategy for the Sustainable Growth and Meaningful Transformation of South Africa's Mining Industry 2010. Stakeholders committed themselves to mitigate various constraints that were evident in infrastructure inadequacies, the regulatory framework and the low levels of exploration in research and development. The amended Mining Charter further improved the reporting process to be followed by mining companies through an improved scorecard, reporting measures, clear targets and time frames.

### **Reporting**

For the current assessment, 962 right holders were due to submit data for the Mining Charter assessment. For this assessment, only 46% of the eligible right holders submitted data. In terms of employment these mining rights account for 95% of total employment by rights that were due for assessment. This 95% is a fair representation of the South African mining industry. Majority of mining right holders that have not submitted are mainly small and medium sized.

### **Ownership**

The assessment reveals that whilst a significant number of right holders, irrespective of size by employment, have reported to have met or exceeded the 26% HDSA ownership threshold, the meaningfulness of economic participation remains largely elusive.

When it comes to the extent of broad based empowerment transactions, a simple average score shows that communities and ESOPs participation is low. When size is taken into consideration, the result changes, with the BEE entrepreneurs dropping from most of the HDSA deals. As a result, an assumption can be made that most of the larger employers have concluded deals with employees and communities rather than entrepreneurs. It can also be deduced that small and medium sized right

holders have not significantly empowered workers and communities. The results of the assessment further shows that there has been limited impact in terms of intended beneficiaries realising optimal economic benefits.

### ***Housing and Living Conditions***

The data shows that only 55% of right holders with hostels met the 2014 target for housing and living conditions for mine workers. It has to be pointed out that the structure of the Mining Charter only requires right holders to report on conversion and upgrading of hostels and does not provide reporting for alternatives such as living out allowances and provision of housing. The assessment, furthermore, reveals that some right holders erroneously reported under this element when they should not have, as this element was intended to ensure improvement of housing and living conditions of workers in hostels. Nonetheless, it is clear that the objective of improving the living conditions of mine workers has not been fully realised, especially taking into consideration that nearly half the right holders did not meet the target, notwithstanding the fact that there were mineworkers who opted to take the living out allowances.

### ***Procurement and Enterprise Development***

The findings on this element show that when data is not weighted less than half of the right holders met the targets for the sub-elements of capital goods, services and multinational suppliers' contribution to the social fund. Just over half of the right holders met the target of 50% in respect of the consumables sub-element. In all the cases, when the data is weighted, it shows an increase in the percentage of right holders meeting the targets with percentages increasing to 81.6%, 64.8%, 82.7% and 14.9% for capital goods, services, consumables and multinational suppliers' contribution to the social fund respectively. With the exception of multinational suppliers' contribution to the social fund, this trend shows that, generally, large right holders are meeting the targets set for the procurement sub-elements. It also shows they have significant influence over their suppliers, having ensured that these targets are met, which will be significant leverage in promoting localisation of the manufacturing of these inputs to the sector.

With regard to the creation of the social fund to improve socioeconomic conditions in mining communities, the assessment shows that most companies did not contribute to the social fund. Although stakeholders had committed to develop mechanisms for multinational suppliers of capital goods to the mining industry which are operating in South Africa to contribute to the social development fund, this aspect has largely fallen through the cracks. There is a need for greater focus to design and implement a mechanism that will ensure that this is realised.

### ***Employment Equity***

From this assessment, it is evident that white males still dominate most of the key functional categories, especially senior and middle management. Furthermore, data shows that African females are underrepresented at all levels and more still needs to be done to improve their empowerment in the industry. The data shows that the industry has met HDSA representation targets (40%) in all functional categories.

### ***Human Resource Development***

The assessment shows that most of the right holders have not met the target of spending 5% of their annual payroll on skills development.

### ***Mine Community Development***

It can be seen from the augmented data that only 36% of the mining right holders have met the mine community development target for 2014. In order to promote sustainable socio-economic conditions of communities, this element requires mining right holders to put more effort on implementation of their approved projects.

### ***Sustainable Development and Growth***

The element emphasises the need to balance economic benefits with social and environmental issues. The submitted data on the sub element of implementation of approved EMPs shows that there is only a 4% improvement in the level of performance when the data is weighed, from 44.5% to 48.6% which indicates that, across all employment sizes, less than half of the right holders comply.

Although the aggregated results for all sub-measures for Health and Safety element indicate that mining right holders did not do well in the implementation of the tripartite

action plan, it should be noted that there has been significant improvement on safety performance in the sector.

The mining tripartite stakeholder's stakeholders have undertaken to prioritise and address occupational health and safety through the Mine Health and Safety Council. In this regard, stakeholder's re-affirmed commitment to improve health and safety during the Mine Health and Safety Summit of 2014. With regard to the utilisation of South African based research facilities, the performance is encouraging.





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STRICTLY CONFIDENTIAL

7 March 2015

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Note to DMR Director General Dr Thibedi Ramontja

CONFIDENTIAL: DESCRIPTION OF THE IMPACT ON COMPANIES POTENTIALLY AFFECTED BY THE EXCLUSION OF PAST EMPOWERMENT TRANSACTIONS (IN RELATION TO UPCOMING MINING CHARTER ASSESSMENT AND ITS NEGATIVE IMPACT ON THE OWNERSHIP ELEMENT MEASUREMENT)

*Synopsis: The purpose of this note is to provide the DG and Minister with a description of the size of the challenge facing the mining industry, if the continuing consequences of certain previous BEE deals are excluded. At the core of the Chamber's submission to the Minister and DG is that the continuing consequences of all previous deals should be included in the measurement of compliance with the ownership element of the Charter discussion. This follows the letter sent to the Minister on the 23<sup>rd</sup> February 2015, which set out the industry's position and the significant implications of excluding previous deals. The Chamber shares this confidential information to forge a way to a workable solution for the DMR and industry together. The Chamber and its members remain fully committed to the Mining Charter and transformation in the South African economy.*

Introduction

The Chamber appreciates the opportunity to engage the DMR leadership on this key issue. It is very much in our collective interests that a resolution is found to the matter in the interest of promoting stability, investment and transformation in the mining sector.

The purpose of this document is to reiterate the Chamber's input to the Minister and DG that the continuing consequences of previous deals should be included in the measurement of compliance of the mining companies with the ownership element of the Mining Charter. There needs to be a separation of legal compliance away from the questions on whether the objectives of the Charter and the Act had been achieved. The fact that the companies had complied when their mining rights

COUNCIL OF THE CHAMBER: M Teke (President), Ms KT Kweyama (Vice President), G Briggs (Vice President), A Bam, M Cutifani, P Dunne, J Evans, N Froneman, T Goodlace, C Griffith, G Heale, N Holland, MJ Houston, B Magara, N Mbazima, T Mkhwanazi, X Mkhwanazi(Dr), D Matlou, R Moodley, M Mothoa, SA Nkosi, M O'Hare, B Petersen, S Phiri, N Pienaar, N Pretorius, A Sangqu, MP Schmidt, B Sibilya, PW Steenkamp, S Venkatekrishnan.

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were granted (as the DMR agreed with their Charter plans) and that companies had focused on meeting the spirit and objective of the Act by creating a critical mass of BEE that could become self-perpetuating. The fact that some of the BEE players had existed the mining BEE deals to go into other sectors should not be held against the mining companies.

This document highlights the significant number of mining companies that have in good faith done BEE transactions in the post 2004 period that would be materially prejudiced if the continuing consequences of previous transactions are excluded from the measurement exercise. This was included in the letter sent to the Minister on 23 February 2015.

This is a matter of critical importance to the mining industry as the Chamber and its members believe that companies have met the spirit and intent of the Charter and that the continuing consequences should be included. Companies have complied with the Charter requirements and the DMR, in issuing companies with mining rights, has agreed with the companies' transformation plans. The fact that some of the BEE companies have sold out of their equity stakes (and so empowerment has been created in other areas of the economy due to mining) or that equity prices have fallen so as to challenge BEE deals does not take away the significant effort the industry has invested in meeting the requirements on transformation.

As elucidated in the letter to the Minister on 23 February 2015, the Chamber never agreed to the insertion of the underlined wording in the following section that was inserted into the revised Mining Charter. "The continuing consequences of all previous deals concluded prior to the promulgation of the Mineral and Petroleum Resources Development Act, 28 of 2002 would be included in calculating such credits/offsets in terms of market share as measured by attributable units of production." To, in 2010, retrospectively exclude the consequences of previous BEE deals concluded between 2004 and 2010, would be exceptionally unfair and counterproductive given the industry's significant commitment to doing BEE deals in that period without necessarily locking in their BEE partners.

Overview

The Chamber has undertaken to assess the potential impact on the industry and Chamber members, given the significant risks it poses to shareholder value, stakeholder relations and investment prospects for the industry. The Chamber's study encapsulates a significant portion of the industry, providing an impact assessment of 80 – 90% of the value of the mining industry. The information is based on confidential discussions with companies' combined with publically available information per the company disclosures.

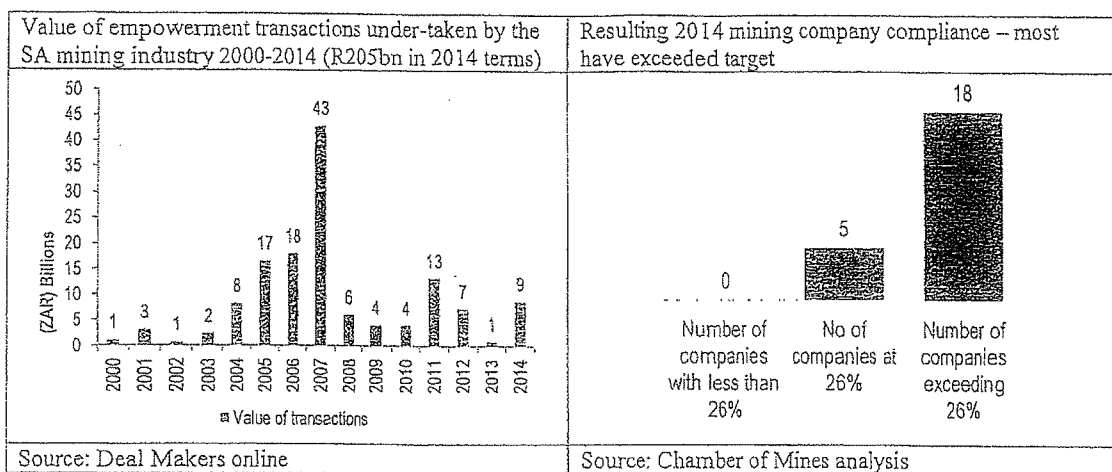
Impact assessment on the mining industry

The Chamber has considered 23 mining companies, across 6 of the largest mining sectors. All of the companies, based on the representations made to Chamber, have met or exceeded the industry target of 26% HDSA by 2014. This is supported by the value of empowerment transactions undertaken by the industry since 2000, which equates to R205bn (in 2014 money terms). A significant number of the transactions were done between 2004 and 2010.

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At a sectoral level, the table below summarises the levels of empowerment, in relation to both the past transactions and current BEE ownership of the sector. At an industry level, the Chamber estimates the empowerment level to range from 26% to 50%. The past transactions component of that we estimate to be from 0% to 17% across the sectors. (The weighting applied is based on a combination of volumes and values).

**Sector level summary of industry empowerment**

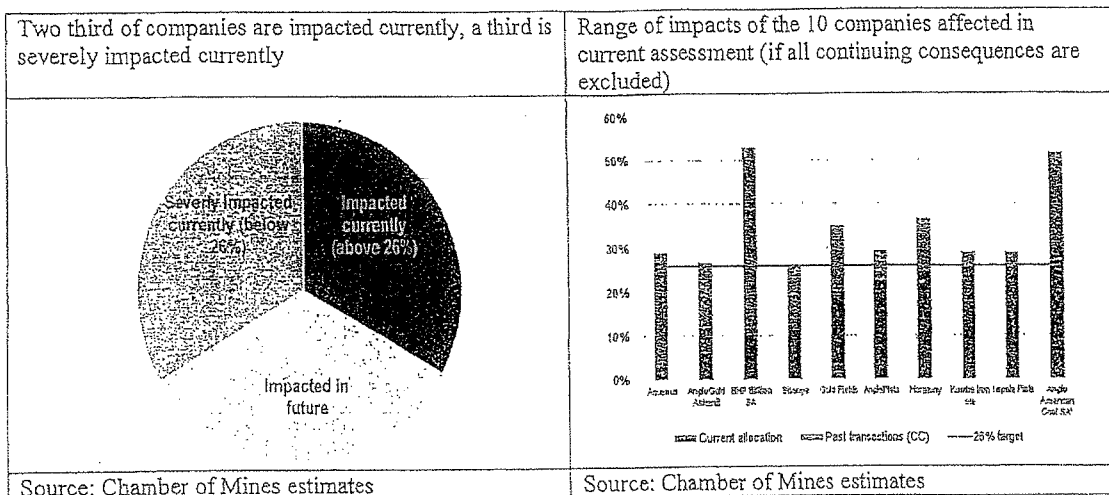
	Number of companies	Target: Attained vs exceeded	Total HDSA ownership level (percentage points)	Past transactions (percentage points)	Excluding previous deals (percentage points)
SA assets only					
COAL	7	Exceeded	50%	17%	33%
IRON ORE	2	Exceeded	35%	2%	32%
MANGANESE ORE	2	Exceeded	32%	0%	32%
DIAMONDS	1	Attained	26%	0%	26%
PGM	6	Exceeded	30%	5%	25%
GOLD	5	Exceeded	30%	16%	14%

Source: Chamber of mines estimates

**Impact of excluding the continuing consequences of previous deals**

Of the total 23 companies which have attained and exceeded the ownership requirements, two thirds will have a negative impact on their ownership scores during the current assessment if the continuing consequences of previous deals are excluded. Of this component, about one third of the total companies will be at risk of having their ownership score move below the 26% target. The remaining third is at risk of future assessments being negatively impacted as BEE companies may decide to exit their investment to realise value. In other words this is not just about the period up to 2014 but also into the future.

If the continuing consequences of any previous deal was excluded (in an extreme scenario) this would result in seven major companies having BEE ownership levels of less than 26% (Anglo American Platinum, Gold Fields, Harmony, Sibanye Gold, AngloGold Ashanti, BHP Billiton Coal and Aquarius Platinum) with three companies just making the 26% target (Kumba Iron Ore, Impala Platinum and Anglo American Coal SA).



In a scenario where pre-2004 transactions are accepted but transactions post 2004 are excluded the 33% of companies severely impacted would fall to 24%. This represents 5 major companies. (Anglo American Platinum, Gold Fields, Sibanye Gold, AngloGold Ashanti (their Izingwe and ESOP) and Aquarius Platinum).

The Chamber wishes to highlight that these estimates may provide emphasis on the current dilemma facing companies, however, the read through implications have far reaching implications for every company. These companies completed transactions in good faith in the 2004-2014 period to meet the spirit and intent of the Charter. The exclusion of the continuing consequences of these deals has significant reputational risks for the mining companies and for investment in the mining sector.

All the HDSA empowerment partners in mining will want, and should be entitled, to monetise value at some stage and mining companies are at risk of their empowerment levels declining, through the process of BEE partners exiting or decreasing their shareholding. This is a normal outcome of transformation whereby BEE partners want to realise value from mining transactions (or any other investment) and therefore sell their shares. The fact that the BEE shareholders may not necessarily want to stay in mining, does not mean significant transformation has not taken place or that the mining companies should be penalised for allowing the BEE partners to exit. If the consequences of these deals are not included and the DMR insists that companies have to retain a 26% BEE level, this will force mining companies to perpetually dilute other shareholders if the required BEE partners cannot be found in the open market. The consequences will be a shareholder revolt, significant divestment from mining companies and a significant constraint on companies to raise capital in the future.

Conclusion and recommendation

As demonstrated in this document a significant portion of the mining industry (33%) will be impacted if the continuing consequences of the previous deals are excluded, with 24% of the industry by value falling below the 26% ownership target. The exclusion of the continuing consequences of previous deals post 2004 will have a devastating impact on a number of companies, negatively affecting their shareholders and potentially their mining rights.

The Chamber remains firmly of the view that the continuing consequences of previous BEE deals should be taken into account in measuring the performance of the mining companies in terms of the

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Summary of industry empowerment levels and past transactions component

SA assets only	Target	Diff	Total empowerment	Past transactions (Continuing consequences)	Equity and asset level
<b>COAL</b>	26%	24%	50%	17%	33%
Anglo American Coal SA*	26%	26%	52%	25%*	27%
BHP Billiton Coal SA	26%	27%	53%	43%*	10%
<b>IRON ORE</b>	26%	9%	35%	2%	32%
Kumba Iron ore	26%	3%	29%	3%	26%
<b>PGM</b>	26%	4%	30%	5%	25%
AngloPlats	26%	4%	30%	7%*	23%
Impala Plats	26%	3%	29%	3%	26%
Aquarius	26%	3%	29%	26%*	3%
<b>GOLD</b>	26%	4%	30%	16%	14%
AngloGold Ashanti	26%	1%	27%	21%#	6%^
Gold Fields	26%	9%	35%	15%	20%
Harmony	26%	11%	37%	12%*	24.5%
Sibanye	26%	0%	26%	15%	11%

Note \* for Anglo American SA and BHP Billiton all or significant part of historic BEE deals done before 2004.  
 Note #^ for AGA 21% of past transactions done before 2004 and 6%^ is ESOP and Inzingwe deal done post 2004.

Source: Chamber of Mines estimates

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**MINISTER  
MINERAL RESOURCES  
REPUBLIC OF SOUTH AFRICA**

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**Mr M Teke**  
**President: Chamber of Mines**  
5 Hollard Street  
Johannesburg, 2001

Dear Mr Teke,

**REF: Publication of the revised Broad Based Socio-Economic Empowerment Charter for the South African Mining Industry (The Mining Charter).**

I write to provide you with an update on the progress we are making in furthering the transformation agenda of the mining industry, as enjoined by Section 100(2) (a) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA).

I have initiated a process to review the Broad Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry (hereafter referred to as the Mining Charter). The review is aimed at, *inter alia*, the need to align and integrate Government policies to remove ambiguities in respect of interpretation and create regulatory certainty. In addition, this is intended to provide for optimisation of transformation impact, including the drive for the industry to become a catalyst for broader development. Given the mutually reinforcing nature of competitiveness and transformation of the industry which was affirmed in the endorsement of the

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Mining Growth, Development and Employment Task Team (MIGDETT), the importance of this phase of the review cannot be overstated.

In this regard, the draft review of the Mining Charter has accordingly been developed, taking into account and aligning with the provisions of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), the Codes of Good Practice (DTI Codes), the Employment Equity Act, 1998 (Act No. 55 of 1998) and related laws.

It is in this context that I deem it necessary to publish the draft reviewed Mining Charter in the Government gazette for public comments for a period of 30 days as defined by the MPRDA, commencing from the 15 April 2016.

Please note that during the 30 days period mentioned above, my officials will be inviting your constituent representation on the subject matter as a key stakeholders through MIGDETT for further consultation on the reviewed mining charter 2016.

I look forward to receiving your valuable contribution hereto in our joint pursuit to "*Move South Africa Forward, together*".

Sincerely,



**Mr Mosebenzi J. Zwane, MP**  
**Minister of Mineral Resources**

**Date:** 13/04/2016

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CHAMBER OF MINES  
of South Africa

## MEDIA STATEMENT

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042/2016

### CHAMBER OF MINES NOTES RELEASE OF DRAFT MINING CHARTER

*Commits to constructive engagement with the DMR and other stakeholders in pursuit of ongoing transformation*

**Johannesburg, 15 April 2016.** The Chamber of Mines has noted the publication today by the Minister of Mineral Resources of a new draft of the Broad-based socio-economic empowerment charter for the South African mining industry (Mining Charter) that has been prepared by the Department of Mineral Resources (DMR).

The Charter is the instrument that gives effect to the intentions of the Mineral and Petroleum Resources Development Act. It initially came into effect in 2004 and a revised version was gazetted in 2010. Chamber of Mines member companies continue to be committed to the achievement of all the transformation objectives of the Mining Charter and, for the most, have met the targets set by the 2010 Mining Charter.

The version published this morning will be used as the basis for engagement between the DMR and key industry stakeholders. At a meeting this morning between Minister Mosebenzi Zwane and Chamber office bearers and a number of company CEOs, he and the Chamber team agreed on a process over the coming month, or beyond if necessary, on the content of a revised version of the Mining Charter. This is the first sight the industry has had of the draft and the Chamber is now studying its content.

A further factor to be considered is that the Chamber is currently seeking clarity through the High Court on the interpretation of black economic empowerment ownership transactions carried out by the industry between 2004 and 2014. This decision, which is only expected later this year, will undoubtedly influence both the



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assessment of the industry's historical performance in terms of ownership and the way forward and could significantly influence this version of the Charter.

Says Chamber President Mike Teke: "With more than a decade of the application under our belt, we have better understanding of the drivers of transformation that yield the most desirable outcomes, and some of the potential pitfalls. We look forward to constructive interaction with government and the other stakeholders in the period ahead. It is in all of our interests that a mutually acceptable version of the revised charter is finalised at the earliest opportunity."

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**CHAMBER OF MINES OF SOUTH AFRICA**

WRITTEN SUBMISSION TO THE MINISTER OF MINERAL RESOURCES ON THE DMR'S DRAFT REVIEWED  
BROAD BASED BLACK-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING AND  
MINERALS INDUSTRY, 2016 PURSUANT TO GOVERNMENT NOTICE 450 GG 3933 OF 15 APRIL 2016

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## EXECUTIVE SUMMARY

The Chamber of Mines of South Africa (the Chamber) welcomes the opportunity granted by the Minister of Mineral Resources to make written submissions on the DMR Reviewed Mining Charter.

It must be stated that the approach taken to gazette the Reviewed Mining Charter, in which interested and affected parties were given 30 days in which to submit written representations; without appropriate and meaningful participation by stakeholders, is of considerable concern to the Chamber and its members. The Chamber is concerned that the approach chosen by the Minister to review the Mining Charter will not allow for sufficient time for all stakeholders to participate meaningfully in a process that will lead to a final Mining Charter that will have the full support of all the key stakeholders.

Whilst every opportunity has been taken to document a considered Chamber response and recommendations on the Reviewed Mining Charter, the limited time frame within which to submit this response has compromised our ability to put forward empirical evidence to support all our positions. Having said that, the Chamber positions are based on our internal analysis of industry performance, legal counsel opinion, the current market conditions and our members' view of what an aligned Mining Charter should entail in order to promote our shared objectives of a transformed, inclusive and prosperous mining industry.

The Chamber members, which represent approximately 90% of South Africa's mineral production, have highlighted the following as fundamental concerns and founding principles which need to be taken into consideration in the development of a Revised Mining Charter:

### 1. Mining Charter Alignment Process

The Chamber's submission will show that whilst the Reviewed Charter aims to align the Mining Charter to the BBBEE Codes in order to create consistency of regulation, it has in fact created further potential for confusion and uncertainty especially with regard to the following:

The Mining Charter was developed by the DMR Minister in terms of s100(2)(a) of the MPRDA; therefore:



- (a) The Mining Charter is not a code of good practice issued or gazetted by the Minister of Trade and Industry in terms of s9 of the BBBEE Act. It was in fact developed by the DMR Minister in terms of s100(2)(a) of the MPRDA and gazetted as such.
- (b) The confusion created by the Reviewed Mining Charter as to whether it can be used for revoking issued mining rights as well as whether the final assessment results of a mining rights holder by the DMR can be used for general commercial purposes.
- (c) Should the DTI not issue such Sector Codes for the mining industry, mining companies will be governed by the generic Codes for the purposes of determining their BEE score. The issuing of generic Codes or Sector Codes constitutes compliance with section 9 of the BBBEE Act.
- (d) The adoption of the definitions from the B-BBEE Act and Codes without first making the necessary amendments to the MPRDA to eradicate mis-alignment between the Mining Charter and the MPRDA, thus making the Mining Charter ultra-vires.

The Chamber respectfully submits that the process which has been adopted creates confusion, in that it is not possible to develop a Reviewed Charter which is based on concepts contained in the BBBEE Act and Codes, without first procuring an amendment by Parliament to the MPRDA, for example to adopt the definitions from the BBBEE Act and Codes. And that is indeed the solution which the Chamber very respectfully suggests, namely that the present process relating to the development of a Reviewed Charter be terminated, and be replaced by the development of a further MPRDA Amendment Bill which gives effect to the present objectives, and in which the Reviewed Charter will appear as a schedule (Schedule III) to the MPRDA itself, and in which other provisions of the MPRDA (such as definitions) will be amended or replaced in such a way that the Reviewed Charter which appears in such schedule will be harmonised with such other provisions of the MPRDA itself.

## **2. The Chamber's court application in case 41661/2015**

The outcome of the Declaratory Order court application will have major implications on the Reviewed Mining Charter as a whole. It therefore would have been prudent if the court case would have been concluded prior to the conclusion of the Mining Charter alignment process. There is no provision in the MPRDA for amendments to or review of the Mining Charter or for development of a new Charter in substitution of the Original Charter and hence both the 2010 Charter and the reviewed Charter are ultra vires the MPRDA itself. The Chamber is of the view



that the above problem needs to be resolved by amendments to the MPRDA itself and not the Charter.

Furthermore, it is the Chamber's view that the requirement to unbundle and restructure existing transactions is tantamount to retrospective regulation where mining rights have already been granted based on those transactions. The Chamber is also gravely concerned that such unbundling will benefit the deal makers and banks more than the intended Black beneficiaries. Finally the Chamber raises concerns about the prescriptive nature of the ownership element as proposed in the Reviewed Mining Charter. Such prescriptions will regress the progress made to date and further make the South African Mining industry uncompetitive. Limiting ownership structures to individual mining rights will further disadvantage the Black beneficiaries as they will not have access to more diversified portfolios of mine ownership, and may be limited to only one which compromises the construct of black industrialists.

### **3. Legal**

The Chamber is gravely concerned that the MPRDA does not grant the Minister any powers to review the Mining Charter as it is purported to be done under s100 2 (a). This submission will make relevant references to show that the MPRDA and the B-BBEE Act and its Codes are different and have two different purposes that should not be confused through the Mining Charter.

### **4. Definitions**

The Reviewed Charter imports definitions from the BBBEE Act which are out of alignment with the definitions in the MPRDA this may create interpretation challenges.

### **5. Compliance Mechanism**

The Chamber is concerned that the DMR does not provide clarity on when the Mining Charter can be used for purposes of granting mining rights as well as when it can be used for commercial purposes in the economy. The Reviewed Mining Charter creates confusion by introducing BEE Codes assessment ratings for compliance purposes when the Mining Charter score card itself is not properly aligned to that of the Codes. For purposes of the Mining



Charter it would be ideal to clearly state how the regulator will apply the provisions of the MPRDA when some or all of the elements of the ring-fenced elements are not met.

#### 6. Scorecard

The Chamber is concerned that the Reviewed Charter does not adopt the flexibility of the scorecard contained in the DTI Codes. The DMR scorecard is less flexible.

#### In Conclusion

The above fundamental concerns and founding principles are not exhaustive and will be further expounded in the attached submission document.

The Chamber welcomes the DMR's intention to align government policies and create regulatory certainty. On reading the requirements for alignment to the Generic DTI Codes the Chamber notes that the DMR has not followed these requirements. This leaves a question as to whether the process chosen by the DMR will lead to the credibility of the Reviewed Charter and its acceptance in the economy as a whole being questioned. The Chamber and its members are looking forward to a Reviewed Mining Charter that will be acceptable to other economic sectors in a manner that will not require mining companies to be rated under the DTI Codes once they have been rated by the DMR. The Chamber would like to reiterate that it supports an aligned Mining Charter that will remain regulated under the MPRDA as stated in Section 100 (2) (a) of the MPRDA.

The Chamber is a strategic partner in the country's transformation objectives and as such believes that beyond compliance, ongoing engagements with stakeholders such as the DMR, organised labour and communities are necessary for collective efforts to contribute to an inclusive industry and to meet the country's development agenda.

Transformation therefore is not only a regulatory requirement, but we believe, is also it a business imperative. For this reason the Chamber is of the view that all stakeholders who are directly affected by the Mining Charter and the manner in which it needs to be implemented need to actively participate and agree in the development of the content of the Revised Mining Charter and the design of how it will be measured.

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As a representative body of major and emerging mining companies in South Africa the Chamber takes the opportunity to make submissions to the DMR in response to the recently published Mining Charter.

The Chamber's further comments contained in our submission, which are necessarily driven by the content of the Reviewed Charter, are in the light of the above founding principles, subject to and without detracting from the above founding principles and what the Chamber has said in relation thereto above, so that the Chamber's further comments below fall at all times to be read in the context of such founding principles.





**CHAMBER OF MINES OF SOUTH AFRICA**

**WRITTEN SUBMISSION TO THE MINISTER OF MINERAL RESOURCES ON THE DRAFT REVIEWED BROAD BASED BLACK-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING AND MINERALS INDUSTRY, 2016 PURSUANT TO GOVERNMENT NOTICE 450 GG 39933 OF 15 APRIL 2016**

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**I. INTRODUCTION**

The Chamber of Mines of South Africa (the Chamber) thanks the Minister of Mineral Resources (the DMR Minister) for the invitation to comment on the above Draft Reviewed Mining Charter (the Mining Charter), and hopes that he will find its comments to be constructive. It also thanks the DMR Minister and the Department of Mineral Resources (the DMR) for having given effect to some of the suggestions to provide policy certainty as recommended by the Chamber.

In these comments, reference to the Mining Charter means, collectively, the Original Mining Charter, 2004, the Mining Charter, 2010 as well as the Reviewed Charter (or, as the context may require, each of the above charters).

The Chamber believes that the Mining Charter is a stakeholder agreed instrument that is used to drive transformation in the mining sector. For this reason the Chamber believes that all stakeholders who are directly affected by the Mining Charter and the manner in which it needs to be implemented need actively to participate in and agree to the development of the content of the Mining Charter and the design of how it will be measured or how its scorecard will be developed.



## II. BACKGROUND

The Chamber is a voluntary employer organisation that represents major and emerging mining companies. The membership of the Chamber is structured as follows:

- 4 Associations namely; Aggregates, Sands Producers Association of Southern Africa (ASPASA), South African Diamond Producers Organisation (SADPO), Association of Shaft Sinkers and SA Mining Contractors, Clay brick Association of South Africa (CASA)
- 30 Emerging Mining Companies
- 38 Major Mining companies

The 72 members of the Chamber represent more than 90% of mineral production in South Africa. The South African mining industry contributes 7.7 % of Gross Domestic Product (GDP), 25% of merchandise exports and approximately 12% of the Johannesburg Stock Exchange (JES) market capitalisation.<sup>1</sup> The 72 members of the Chamber currently comply with the Mining Charter and will be materially affected by the changes proposed in the Reviewed Mining Charter.

The Chamber is a strategic partner in the country's transformation objectives and as such believes that beyond compliance, ongoing engagements with stakeholders such as the Department of Mineral Resources (DMR), organised labour and communities are a necessary requirement for collective efforts to contribute to an inclusive industry and to meet the country's economic growth and the development agenda.

Transformation therefore is not only a regulatory requirement, but we believe it also a business imperative. For this reason the Chamber is of the view that all stakeholders who are directly affected by the Mining Charter and the manner in which it needs to be implemented need to actively participate and agree in the development of the content of the Mining Charter and the design of how it will be measured.

As a representative body of major and emerging mining companies in South Africa the Chamber takes the opportunity to make this submission to the DMR in response to the recently published DMR Reviewed Mining Charter.

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<sup>1</sup> Chamber of Mines estimates: Stats SA 2014



### III. MINING INDUSTRY CONTEXT

The Chamber and its members remain committed to transformation and growth in the mining sector. Significant progress has been made to ensure that the objectives of transformation are met and that the targets set in the Mining Charter are achieved. Any amendments to the Mining Charter will need to consider the real impact of the Mining Charter since its inception in 2004.

#### 1. Mine Community Development

The Chamber and its members can attest to the significant milestones that have been achieved in the transformation journey whilst recognizing that more work still needs to be done. The Anglo American Group of Companies (Anglo Platinum, Anglo Coal, De Beers and Kumba Iron Ore), Impala Platinum, Royal Bafokeng Platinum, AngloGold Ashanti, South32, Sibanye Gold, Exxaro and others have successfully converted or eradicated hostels and established single room and or family units to improve the living conditions and dignity of their employees. The mining Industry prides itself in building basic education infrastructure like schools and crèches and health facilities in mine host communities in collaboration with relevant government departments. Those companies that draw a significant number of their employees from labour sending areas have made significant contributions towards infrastructure development, health and basic education facilities in their respective labour sending areas.

#### 2. Human Resource Development

The mining industry has contributed considerably towards the education and training of its employees. Progress has been made in Adult Education and Training where literacy levels have improved from over 60% illiteracy in 2002 to below 30% in 2014. In 2016, there are more qualified black artisans than there were in 2002. The industry has invested significantly in skills development and evidence of this investment can be demonstrated by the approximately 10,000 bursaries offered to deserving black students at various institutions of higher learning in the past 12 years; apart from those issued by the Mines Qualification Authority (MQA). The industry has spent an average of R3 billion to R5 billion per annum in various education and training programmes for its employees including communities.



### 3. Ownership

According to the DMR's own numbers, 90% of mining right holders on a weighted basis had achieved the 26% BEE ownership target. The DMR's average ownership level was 34% versus the 26% target. Approximately R159 billion of value to HDSAs has been transferred in the form of ownership since the inception of the Mining Charter.

### 4. Difficult Economic Conditions

The mining industry has in the past five years gone through challenging economic conditions. The decline in commodity prices, rising costs and falling productivity, have resulted in a sustained decline in the industry's viability. Additionally, reduced investment in capital expenditure and in exploration and new mining projects, has had the unintended negative consequence of large scale restructuring. In 2014, the industry made a R10 billion loss (after taxes and dividends) and this escalated to a R37 billion loss in 2015; the only loss-making sector of the entire economy. Approximately 59 000 people have lost their jobs in the mining industry (in the period January 2012-December 2015) and a further ±30 000 are currently faced with the threat of retrenchment. The DMR and its other tripartite partners including the Chamber are currently engaged in exploring possible measures of reducing the negative impact of large scale retrenchment through the Jobs declaration which is proving difficult to implement. At the same time the industry has had to restructure to survive. Collaborative partnership is key.

Given these conditions in the mining sector, it is not clear if whether the DMR has done a thorough Regulatory Impact Assessment of the implications and possible consequences of introducing the Reviewed Charter in its current format. Some stakeholders do not appear fully to comprehend the socio-economic impact of this Reviewed Charter. Perhaps an independent agent or institution needs to be commissioned to conduct a full and thorough Regulatory Impact Assessment (looking at all aspects of the Reviewed Charter) before a decision is made on how best to make changes or add new things or targets to the Mining Charter.



## 5. Transformation

Whilst the industry is in support of the country's transformation agenda, it is our considered view that the current Charter as published does not do enough to ensure the growth of a competitive mining industry through promoting regulatory certainty.

The subject of transformation has to be broader than compliance targets. If our members are to accept the Mining Charter as currently presented, not only would the industry regress in terms of current contributions, but the industry would have missed a key opportunity to formulate a Mining Charter that is realistic, forward looking and can contribute to the establishment of black industrialists that will benefit the industry as well as meet the state's objectives of an inclusive and growing economy.

The comments and recommendations that will follow in this submission will be made with the foregoing context in mind.

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**IV. THE REVIEWED BROAD BASED BLACK-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING AND MINERALS INDUSTRY, 2016**

The Minister of Trade and Industry released General Notice 1047 GG 39350 of 30 October 2015 to exempt the DMR from applying the requirements contained in section 10(1) of the Broad-Based Black Economic Empowerment Act 53 of 2003 ("BBBEE Act"). In effect, this was done to allow the DMR sufficient time to align the Mining Charter developed by the DMR Minister in terms of the Mineral and Petroleum Resources Developments Act, 2002 ("MPRDA") to the BBBEE Act and the BBBEE Codes of Good Practice ("Codes").

On 15 April 2016, the DMR released its own version of the Reviewed Charter for the South African Mining and Minerals Industry; 2016 for public comment. Interested and affected parties were given 30 days in which to submit written representations on the Draft Reviewed Mining Charter.

It is of grave concern to the Chamber that the DMR chose to gazette the Reviewed Charter without meaningful stakeholder engagement or participation. It is our view that this approach may compromise the process. The Chamber further believes that a Charter that is concluded within 30 days without full participation and engagement of all key stakeholders will not result in an inclusive Mining Charter that has the full support of all its stakeholders and buy-in by the economy at large.



**V. SUMMARY OF MAJOR ISSUES WHICH ARE OF CONCERN TO THE CHAMBER**

The following are overarching provisions that have not been addressed in the Reviewed Charter:

-In regard to alignment with the Codes, the Reviewed Charter does not provide for any weighting points.

-The Chamber recommends that reference to other Acts such as the Companies Act, the Small Business Act etc. especially with regards to definitions, be referenced to specific sections in those Acts to allow for consistency in understanding.

-In respect of the preamble, the last paragraph on page eight of the Reviewed Charter seems to be defining the net value principle. If this is the case, the Chamber does not agree to the principle of net value being included.

-The Reviewed Charter will result in the need to restructure implemented transactions (some new, others recently re-financed) in terms of paragraph 2.11 (transitional arrangements), i.e. existing mining right holders have a maximum of three (3) years to align to the provisions of the Reviewed Charter.

-The DMR cannot retrospectively legislate. Mining rights approved by the DMR should not have to be redone

-The implications of the requirement to align do not appear to have been carefully considered by the DMR, since this is going to perpetuate the theme of the ultimate beneficiaries of B-BBEE continuing to be the deal makers and funders of these transactions rather than true empowerment for the beneficiaries. The implications of the unbundling process and reorganising BEE deals will result in a decrease in net Present Value of Mining Projects with less value to be unlocked by historically disadvantaged South Africans. Furthermore, the beneficiaries would not have access to more diversified portfolios of mine ownership, and may be limited to only one. We are aware that a company can apply to the Minister for permission to construct a consolidated transaction, however, the permission is not fait accompli.

-There is a lack of clarity as to whether "ring-fenced" elements are to be interpreted as Priority elements as per the Codes



The following are major issues which are of concern to the Chamber and which are mentioned here in alphabetical order and therefore not necessarily in order of importance, but which will be addressed at the appropriate places in the Charter element-by-element commentary.

- Annual Turnover
- BEE Compliant Company
- BEE Entity
- BEE Entrepreneur
- Beneficiation
- Black owned/controlled entity
- Codes
- Continuing Consequences
- Calendar Year
- Effective Ownership
- Locally Manufactured Goods
- Meaningful Economic Participation
- Ministerial Skills Development Trust
- Ring fenced Elements
- Small Business Development
- Social Development Trust
- Special Purpose Vehicles





## VI. FOUNDING PRINCIPLES

The Chamber submits that the following founding principles apply to the Reviewed Charter and to the Chamber's comments on it.

### 1. Separation of Powers between the Legislature and the Executive

To the extent that the 2010 Charter and the Reviewed Charter purport to give the Minister powers not flowing from or contained in the MPRDA, both charters offend the separation of powers doctrine.

### 2. The issues identified by the Chamber in the Chamber's court application in case 41661/2015

The issues identified by the Chamber in the declaratory order application in relation to the Original Charter, 2004 and to the 2010 Charter are applicable also to the Reviewed Charter. These issues are more fully set out in paragraph 2.1 below.

### 3. The Amendment or Review of the Charter

There is no provision in the MPRDA for amendments to, or review of, the Mining Charter or for the development of a new Charter in substitution of the Original Charter and hence both the 2010 Charter and the reviewed Charter are ultra vires the MPRDA itself.

The Chamber is of the view that the above problem should be resolved by amendments to the MPRDA itself and not the Charter.

### 4. The relationship of the MPRDA and the Mining Charter on the one hand, and the BBBEE Act and Codes on the other.

• Reference is made in the last two paragraphs of the Preamble to the Reviewed Charter, of alignment between the MPRDA and Mining Charter on the one hand, and the BBBEE Act and Codes on the other. The Chamber submits that those paragraphs disclose fundamental misconceptions in regard to these issues.

(i) The Mining Charter was developed by the DMR Minister in terms of s100(2)(a) of the MPRDA.

(a) The Mining Charter is not a code of good practice issued or gazetted by the Minister of Trade and Industry in terms of s9 of the BBBEE Act. It was in fact developed by the DMR Minister in terms of s100(2)(a) of the MPRDA and gazetted as such.

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(b) The Mining Charter is also not a transformation Charter for the mining and minerals sector of the economy which was developed by major stakeholders in that sector and gazetted by the Minister of Trade and Industry in terms of s12 of the BBBEE Act. Again, it was in fact developed by the DMR Minister in terms of s100(2)(a) of the MPRDA and gazetted as such.

(c) The need to align the Mining Charter with the BBBEE Act comes from the perceived conflict between the two. There is no such conflict in law.

(ii) The above will apply equally to the Reviewed Charter, i.e. it will neither be a code of good practice nor a transformation Charter as envisaged in ss9 and 12 of the BBBEE Act but rather will be a reviewed Charter developed by the DMR Minister albeit acting ultra vires his powers in terms of s100(2)(a) of the MPRDA, in so far as s10(1)(a) which intends to elevate the Codes to the level of parliamentary legislation is constitutionally sound.

(iii) The above also reveals that the purposes of the MPRDA and the Mining Charter on the one hand, and the BBBEE Act and Codes on the other, are entirely different. In all other aspects, the BBBEE Act and Codes are simply measuring devices and do not impose any requirement of compliance. The MPRDA, on the other hand, is a specific legislative instrument designed inter alia to lead to meaningful participation of historically disadvantaged persons in the mining and minerals industries.

(iv) The issuing of any sector specific Codes (Sector Codes) for the mining industry should be a task undertaken by the DTI in consultation with the mining sector. Should the DTI not issue such Sector Codes for the mining industry, mining companies will be governed by the generic Codes for the purposes of determining their BEE score. The issuing of generic Codes or Sector Codes constitutes compliance with section 9 of the BBBEE Act.

(vii) To the extent that a minimum BEE level is a qualification criterion, the:

(a) qualification criterion in the Mining Charter could be achieving the minimum BEE level. The mining company either achieves that BEE level or not; but

(b) the determination of the BEE level will be conducted in terms of the Codes or any Sector Codes. The Mining Charter should not contain a scorecard against which a mining company is awarded a BEE score.



- The Reviewed Charter imports definitions from the BBBEE Act which importation is not competent since the Reviewed Charter is ostensibly founded in the MPRDA and must carry forward the definitions which are contained in the MPRDA.

If Government wishes to achieve "alignment" of all legislative instruments dealing with empowerment, the correct place to do so is to amend the various pieces of legislation themselves and not the Mining Charter.

- The result of the above is not alignment but rather conflation, which gives rise to confusion and uncertainty.

- In the light of the above, what the Reviewed Charter achieves is not alignment but conflation, i.e. a confusion of the purpose of and concepts in the MPRDA and Mining Charter on the one hand, and of and in the BBBEE Act and Codes on the other, and gives rise to greater uncertainty than ever.

- The Chamber very respectfully submits that the process which has been adopted creates confusion, in that it is not possible to develop a Reviewed Charter which is based on concepts contained in the BBBEE Act and Codes, without first procuring an amendment by Parliament to the MPRDA, for example to adopt the definitions from the BBBEE Act and Codes. And that is indeed the solution which the Chamber very respectfully suggests, namely, that the present process relating to the development of a Reviewed Charter be terminated, and be replaced by the development of a further MPRDA Amendment Bill which gives effect to the present objectives, and in which the Reviewed Charter will appear as a schedule (Schedule III) to the MPRDA itself, and in which other provisions of the MPRDA (such as definitions) will be amended or replaced in such a way that the Reviewed Charter which appears in such schedule will be harmonised with such other provisions of the MPRDA itself.

##### 5. The Chamber's further comments

The Chamber's further comments below, which are necessarily driven by the content of the Reviewed Charter, are in the light of the above founding principles, subject to and without detracting from the above founding principles and what the Chamber has said in relation thereto above, so that the Chamber's further comments below fall at all times to be read in the context of such founding principles.



## VII. PREAMBLE

In its Preamble the Reviewed Charter states that “the review process takes into account the need to align and integrate Government policies to remove the ambiguities in respect of interpretation and to create regulatory certainty. In this regard the reviewed Mining Charter is aligned to the provisions of the Broad-Based Black Economic Empowerment (Act 2003 (Act No. 53 and the Codes of Good Practice (DTI Codes).”

The Chamber welcomes the DMR’s intention to align government policies and create regulatory certainty. On reading the requirements for alignment to the Generic DTI Codes the Chamber notes that the DMR has not followed these requirements. This leaves a question as to whether the process chosen by the DMR will finally lead to the credibility of the Reviewed Charter and its acceptance in the economy as a whole being questioned. The Chamber and its members are looking forward to a Reviewed Mining Charter that will be acceptable to other economic sectors in a manner that will not require mining companies to be rated under the DTI Codes once they have been rated by the DMR. The Chamber would like to reiterate that it supports an aligned Mining Charter that will remain regulated under the MPRDA as stated in Section 100 (2) (a) of the MPRDA. The definition of a “BEE compliant company” as described in the Reviewed Charter refers to the DTI Codes as they relate to the procurement element only. Does this mean that the mining companies must comply with the DTI Codes only in relation to “Procurement, Supplier and Enterprise Development.”?

One of the main purposes of the Mining Charter is to acquire mining rights to mine in South Africa, not to revoke mining rights after the holder has been assessed under the Reviewed Charter. The DMR needs to provide clarity on when the Mining Charter can be used for purposes of granting mining rights as well as when it can be used for commercial purposes in the economy. It is not sufficient to state that, “Mining right holders who have not complied with the ownership, housing and living conditions and human resources development elements as well as those who fall between level 6 and 8 of the Mining Charter scorecard will be regarded as non-compliant with the provisions of the Charter and the MPRDA shall render the mining right holder in breach of the MPRDA and subject to the sanctions in the Act.”

For purposes of the Mining Charter it would be ideal to clearly state how the regulator will apply the provisions of the MPRDA when some or all of the elements of the ring-fenced elements are not met. In this way the regulator creates certainty on how non-compliant mining right holders will be treated by law.



### **VISION**

The Chamber is satisfied with the Vision of Mining Charter.

### **MISSION**

The Chamber is satisfied with the Mission statement of the Mining Charter.

### **DEFINITIONS**

Specific requests for clarity on definitions will be captured in the element-by-element commentary which follows. As mentioned above however, since the Mining Charter has its source and origin in the MPRDA, the definitions must accord with those in the MPRDA, and if definitions are to be changed, they must be changed in the MPRDA itself first so as to avoid misalignment between the MPRDA and the Mining Charter.



## VIII. PART A

### 1. OBJECTIVES OF THE MINING CHARTER

It is necessary to obtain clarity as to whether the Mining Charter's objectives are limited to the granting of mining rights by the DMR specifically, as the scorecard in the Mining Charter is not aligned to the B-BEE Codes. The B-BEE Codes allow for proportional weightings with appropriate points allocated to each of the scorecard areas. Is the DMR expecting companies to produce generic codes certifications for other procurement processes with the private sector and other government agencies and departments? As set out above, the Chamber's view is that the MPRDA / Mining Charter and the BBBEE Act / Codes play separate and distinct roles.

### 2. ELEMENTS OF THE MINING CHARTER

The Chamber welcomes the exclusion of the following 2 pillars:

- Health and Safety
- Environment and Sustainable Development

The Chamber believes that the Mine Health and Safety Act, 1996 and the initiatives that are in place to improve Health and Safety in the mining industry through the Mine Health and Safety Council have made significant strides to improve Health and Safety in the industry.

In terms of the Environment and Sustainable Development Pillar, the Chamber is of the view that there are sufficient mechanisms in place in terms of regulations made in terms of the MPRDA and in terms of the National Environmental Management Act, 1998 to measure and report on the companies' performance on approved EMPs/ Environmental Authorisations and any other environmental regulatory requirements. Consequently, there is no need for additional mechanisms through the Mining Charter. Such additional mechanisms would in effect create duplication of the auditing and reporting requirements that are already catered for in the current legislation.



## **2.1 OWNERSHIP**

This is classified as a “ring-fenced” element. The threshold of 26% Black ownership has been retained. The Chamber proposes that the term “priority element” be utilised as per the BEE Codes.

The Preamble of the Mining Charter states the intent to “align the Mining Charter to the provisions of the Broad-Based Black Economic Empowerment Act, 2003 and the Codes of Good Practice (DTI Codes).” However, there is very limited evidence of alignment of the ownership element in the Mining Charter. The following are concerns which relate to the alignment of the Ownership Element to the Codes:

- The scorecard does not mention any weighting points related to Ownership and uses “YES/NO” which will not assist in calculating the final weighting points that will lead to calculating the different levels of compliance.
- Inconsistent definitions .e.g. BEE Compliant company, effective ownership.
- The Charter has adopted the BEE Black definition, however, the ownership scorecard still refers to HDSA ownership.
- The issue of Continuing Consequences is yet to be settled in the courts. In the amended Codes, the loss of shareholding mirrors the same number of years that the BEE shareholder was in existence. The Chamber and its members would prefer that the consequences of previous transactions should be retained in perpetuity.

The alignment requirements as stipulated in the Mining Charter are retrospective and prescriptive and this is not the requirement in the Codes. The DTI Codes do not prescribe how entities should arrive at the 26% Black Ownership. The Mining Charter is proposing that of this 26% no less than 5 % of shares should be in the form of ESOPS which under the Mining Charter, comprises of entrepreneurs, community and workers, respectively; the interests of which should be held in a Registered Trust. A maximum of 11% can be offset against Beneficiation. An unintended commercial consequence of this prescription is the lock-in of the empowerment shares for the life of mine which members of the Chamber do not agree with.

The inclusion of a Special Purpose Vehicle to drive ESOPs is a concern as, especially the requirement to incorporate a registered Memorandum of Incorporation (MOI). The intention for introducing such conditions for Ownership and participation at Board level are understood. However, they introduce



the concept of a significant minority block that tends to stifle decision making at Board level. This is also against Company law and JSE Regulations and the Companies Act, 2008. Companies should have the flexibility to engage their employees on an appropriate empowerment model which can include a profit share mechanism.

These stringent prescriptive conditions will also create negative conditions for investment in the mining industry.

As mentioned above, the Mining Charter will result in the unbundling of some existing transactions (some new, others recently re-financed) in terms of S2.11 (transitional arrangements), i.e. existing mining right holders have a maximum of three (3) years to align with the provisions of the charter. The Chamber is concerned as to whether implications of the requirement to restructure past and existing transactions have been considered by the DMR. The implications of the unbundling process and reorganizing BEE deals will result in increased transactions costs, with financial institutions being the main beneficiaries and no impact on the intended black beneficiaries. Furthermore, the beneficiaries will not have access to more diversified portfolios of mine ownership, and may be limited to only one. A company can apply to the Minister for permission to construct a consolidated transaction however the permission is not a fait accompli.

There is also a concern that this will open the doors for bankers and deal makers, at the expense of the black beneficiaries.

Furthermore the inclusion of the 11% Beneficiation as an offset, whilst welcome, requires further guidelines on how it will be measured and incentivised if companies already have a 26% Black ownership. A proper mechanism to recognise beneficiation credits should be developed.

Alignment to the Codes has not been achieved in respect of the ownership provisions as the following critical facets of the Codes have not been addressed:

- a) Sale of Assets provisions,
- b) Continuing consequences provisions
- c) Exclusion of South African Mandated Investments from the value of the equity
- d) The Exclusion of Foreign operations from the value of the equity
- e) The consideration of equity equivalency participation for foreign multinationals





f) Application of the Modified Flow Through Principle

All the above are currently viewed as allowable enhancements to the measurement of equity held in the hands of black people. However, the Mining Charter makes reference to compliance with its ownership provision as the absolute attainment of 26% direct equity in the hands of black people (split between individuals, ESOPS and CBOS equally). The Mining Charter does not make provisions for the indirect provisions catered for in the Codes.

2.1.1. Effective Ownership

The term needs to be adequately defined and clarified to limit room for speculation and confusion within the mining industry.

Does this mean the following can be applied?

- 40% exclusion of mandated investments, government entities
- Apply modified flow through principle
- Continuing Consequences and a whole host of principles applied in the Codes of Good Practice (the Codes)

Foreign generated revenue/profits from foreign territories can also be excluded.

In the Mining Charter, a mine would find itself with different ownership structures as the new requirement is that each ownership be done "per mining right"

For consolidation purposes and simplicity, it would make more sense to consolidate ownership at Group level (approval by the Minister is required for this). This will be beneficial, not only for the mines but shareholders. It is such consolidation at Group level that gives an opportunity for black shareholders to have interest in other diversified mines either than just one mining right.

Should there be a retrospective review and unbundling of all past deals, which we do not support; who would bear the cost of such an exercise?

2.1.2 Definitions

There is a need to set clear definitions for the following terms on the Ownership Element:

**BEE Compliant Company**



- The Codes do not contain a concept of “BEE Compliant Company” or compliance with the Codes.
- An entity is measured under the Codes and achieves a BEE rating of Level 1 to Level 8 or a rating of Non-Compliant.
- In the Chamber’s view, the definition of BEE Compliant should either be:
  - (i) an entity that achieves at least a Level 8 BEE contributor status under the Codes; or
  - (ii) an entity that qualifies as an empowering supplier under the Codes.

#### **BEE Supplier**

The concept of “BEE supplier” must be defined. It is not clear what is intended by this term and whether it is a reference to BEE level or particular Black ownership.

#### **Codes**

If it is intended to cross-reference the Codes, the Mining Charter should specifically define the Codes.

#### **Meaningful economic participation**

The Codes measure the level of Black participation in the ownership of an entity using various methodologies. Ownership relates to the economic interest (dividends) and voting rights attaching to the shares. A Black shareholder owning 1% of a company is an owner notwithstanding that 1% may not be a material or meaningful percentage ownership. There is no requirement in the BBBEE Act or the Codes for a specific level of Black ownership which constitutes “meaningful economic participation”.

In terms of section 2 of the BBBEE Act, the objectives of the BBBEE Act include:

- (i) “promoting economic transformation in order to enable meaningful participation of Black people in the economy; and
- (ii) promoting investment programmes that lead to broad-based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity”.

In the Chamber’s view, the Mining Charter should move away from the concept of “meaningful economic participation” and refer to companies being required to have a specific level of Black ownership.



### 2.1.3 Beneficiation

The scorecard says it is discretionary:

- What is the definition of discretionary?
- What is the percentage?
- What is beneficiation? (Sale of asset?)
- Is there a formula and threshold?
- What is the definition of refining?

The beneficiation offset only benefits those who have not achieved the 26% target and this is unfair to those companies that have invested in beneficiation in various forms and if they already have achieved the 26% black ownership target. A workable formula to allow for beneficiation offsets should be developed.

### 2.1.4 Suggestions on the Ownership Element

- Ownership Target: The Chamber of Mines supports the target of 26% Black Ownership and further wishes to propose the following:
- Application of the Modified Flow Through principle for all prospective applications for calculating:
  - o Voting Rights
  - o Economic Interest
- Composition and Treatment of Black Partners: The principle of including ESOPs, Communities and Black Entrepreneurs in the BEE structure is accepted. However, Mining Right holders should be allowed to choose vehicles that will work best in their particular structures.
- There is a need for a wider definition of ESOPS as well as a definition of black entrepreneur.
- It should be understood that ESOPs and all black shareholders are not only entitled to cash-flows through dividend payment, but also capital appreciation of their shares. If there is no dividend paid out (losses), what happens to the beneficiaries? They are still shareholders. The



dividend policy of a company should prevail and the DMR can check if the company has deviated from its dividend policy.

- The Chamber would like to see the introduction of debt (treatment thereof) for shareholders that do not have the funds. The Mining Charter does not cover this and its modalities.
- The concept of profit share as part of a model for ownership should be considered

*The Chamber will be proposing an aligned scorecard for the Ownership element.*

The key positions which the Chamber raised in its court application which are relevant to this topic are the following:

- By virtue of the MPRDA, once the Minister has granted or converted a mining right, the holder is not legally obliged to restore the percentage ownership by historically disadvantaged persons ("HDP") to the 26% requirement in the Original Charter or in the 2010 Charter, and neither Charters requires a holder to enter into further empowerment transactions to address losses in HDP ownership once 26% has been achieved. This also applies in respect of the Reviewed Charter.
- A failure by a holder of a mining right or converted mining right to meet the requirements of the Original Charter and the 2010 Charter and a failure to maintain a 26% HDP ownership level do not constitute contraventions of the MPRDA, and paragraph 3 (which provides for this) of the 2010 Charter is accordingly ultra vires. This also applies in respect of paragraph 2.12 of the Reviewed Charter.
- Any provision in the 2010 Charter which retrospectively deprives holders of mining rights or converted mining rights of:
  - the capacity for offsets to allow for flexibility
  - the recognition of the continuing consequences of all empowerment transactions irrespective of when concluded
  - the right to offset excess empowerment in a particular operation against shortfall in other operations
  - the right to offset the full value of beneficiation against HDP ownership commitments
  - the use of all forms of ownership and participation by HDPs not only those in the definition of "meaningful economic empowerment", including therefore the requirement to choose HDPs (and not



compulsorily to include entrepreneurs, workers and/or communities), is ultra vires the MPRDA and void.

This applies equally to the Reviewed Charter insofar as existing rights are concerned in that it would retrospectively increase the empowerment requirements and thus interfere with existing mining rights which had been granted on the basis of the requirements as they existed on date of grant or conversion having been met.

#### Summary of Issues on Ownership

- **Empowerment ownership principles and measurement**
- Any structure is permissible (avoids micro-management and over-regulation):
  - no requirements for special purpose vehicles
  - no requirements for entrepreneurs, workers or communities
  - no requirements for trusts.
- All good faith transactions whenever concluded and in whatever form, are recognised on an ongoing basis.
- No requirement (whether for existing or new rights) to restore ownership percentage.
- Offset (without limitation) of beneficiation (formula required).
- Offset of excess in one operation against shortfall in other operations.
- No warehousing requirement.
- The measure could be attributable units of production.
- **Existing mining rights**
- Holders of existing rights which on grant or conversion met the 26% requirements are deemed to continue to hold the greater of such 26% and the actual percentage held.
- Holders may attribute the level of ownership percentage across all existing mining rights to each individual mining right.
- By the third anniversary of the commencement date of the Reviewed Charter, holders of mining rights must apply in terms of s102 of the MPRDA for consent to an amendment of the existing mining right to delete the existing clause 17 and annex an Empowerment Ownership Plan which records the deemed ownership level in paragraph 2.1 above, the structure of recognised transactions, and a summary of key terms thereof, which the Minister will approve

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within 6 months for execution and registration of a Notarial Deed of Amendment/Variation within a further 30 days.

- **Pending applications for mining rights**

Pending applications for mining rights will be dealt with under the provisions prior to the Reviewed Charter save that paragraph 212 above will apply.

- **New mining rights**

New mining rights:

- must achieve 26%
- will not be subject to any top-up requirements
- must have attached an Empowerment Ownership Plan.

- **Prospecting rights**

There will be no empowerment requirements for prospecting rights.

- **Disposals and consolidations**

- An acquirer is deemed to have attained the ownership percentage which is deemed to be held by the disposer.
- An application for consolidation in terms of s102 of the MPRDA must be accompanied by a consolidated Empowerment Ownership Plan embodying the deemed ownership percentage for each right which is being consolidated.

- **Acknowledgment letters**

The Minister will from time to time issue to each holder acknowledgment letters acknowledging the holder's empowerment credentials, the empowerment percentage of the holder, and the consequences of previous deals.

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## 2.2 PROCUREMENT, SUPPLIER AND ENTERPRISE DEVELOPMENT

The Mining Charter needs to clarify what is meant by a “BEE compliant enterprise” or a “BEE compliant company” or “small business development”. The Codes of Good Practice do not refer to a “BEE compliant enterprise or company” but rather rates companies according to their levels of compliance to the codes or whether it is a Large Enterprise or an Empowering Supplier or a Qualifying Small Enterprise or an Exempt Micro Enterprise.

The Mining Charter has increased the target under Capital Goods by 20 percentage points, 20 percentage points for consumables and 10 percentage points for services. In addition, the targets also introduced local manufacturing for capital goods and consumables. In alignment with the BBEE codes, the differentiation between capital goods, consumables and services should be removed. If it is retained, clear definitions of these categories need to be provided.

### 2.2.1 Suggestions on the Procurement Element

This is a priority element in terms of the B-BBEE Codes and the Chamber proposes that this should be retained as a priority element within the Mining Charter.

The BBEE Codes measure the denominator against which procurement targets are weighted in terms of the Total Measured Procurement Spend (TMPS). The Charter only makes reference to actual spend. This could affect companies negatively as specific non-procurement items and items procured from foreign domiciles may be included in the value of actual spend which may disadvantage mining right holders if they were to be measured against B-BBEE Codes.

Localisation of competitive supply is fully supported. Targets for local content should, however, be informed by comprehensive studies that indicate local capabilities and will probably differ by types of mining e.g. surface mining, underground coal, underground hard-rock, etc.

BEE compliant companies need to be defined more specifically e.g. Level 4 compliant company according to the B-BBEE Codes.

Targets for small business development should be removed since they interfere with supplier development.

This element now includes criteria previously under the Sustainable Development element of the 2010 Mining Charter of 100% samples analysed at local facilities. This will be problematic for companies as



the DMR has not assessed and confirmed whether there already exists enough processing capacity by local black owned research organisations to meet this requirement. Singling this out as a service is not supported.

The onus should be on suppliers and not with mining right holders to verify local content with the SA Bureau of Standards (SABS).

The existing multi-national supplier levy has been a failure. Mining companies do not have the legal right to collect such funds. All that the levy does is increase the cost of doing business for the mining companies.

Members do not support the Multinational supplier contribution since this contradicts efforts to localise competitive supply. To give effect to this goal a completely different approach than what is included in the Mining Charter will be required. It will probably take about one year to develop a 5-10 year strategy with the requisite targets, incentives, etc. It is proposed that an enabling clause be included in the Mining Charter that will give mining right holders the opportunity to be exempted from this element of the Mining Charter as it stands once a Mining Strategic Sourcing and Supplier Development strategy is developed in consultation with the Dti.

*The Chamber will be making proposals on the revised aligned scorecard for this element.*





## **2.3 BENEFICIATION**

Beneficiation is defined as the transformation of a mineral (or a combination of minerals) to a higher value product, which can either be consumed locally or exported. The term is often used interchangeably with mineral “value-addition” or “downstream beneficiation”.

This element is misplaced as a stand-alone and it is our considered view that this in effect should form part of the criteria under the Ownership element.

Beneficiation is one way of promoting Industrialisation in South Africa and further strengthening the linkages between mining and manufacturing especially black industrialisation. The scorecard is very silent on how the beneficiation initiatives by mining companies will be recognised as this is the means of strengthening the linkages between mining and manufacturing.

### **2.3.1 Suggestions on the Beneficiation Element**

It is necessary for the avoidance of confusion for the Mining Charter to set out clearly the measurement principles to be applied for beneficiation. The Mining Charter allows for the off-setting of the value/percentage achieved through beneficiation against the ownership scorecard, at a maximum of 11%. As mentioned under paragraph 2.1 above, the Chamber submits that the limitation to 11% in the 2010 Charter and now in the Reviewed Charter is ultra vires and that there should be no such limitation.

A proposal will be presented on how beneficiation should be treated to benefit those who are involved in beneficiation initiatives who have achieved the 26% Ownership target, whilst at the same being used as an offset of up to 100% of the 26% reserved for Black people for those mining right holders who have not achieved the required 26% ownership target.



## 2.4 EMPLOYMENT EQUITY

The Chamber and its members remain committed to workplace diversity and equitable representation at all levels to promote social cohesion, transformation and competitiveness of the mining industry. The Mining Charter proposes employment equity targets that are set out in the DTI Codes without any modification. Achieving such targets at core occupational categories remains a challenge and therefore special consideration needs to be given for the mining sector to set stretch targets that are realistic for the conditions in the mining sector.

Whilst the industry has met and in some cases exceeded the targets in the current Mining Charter there are limitations in this area; in particular the promotion of black females in middle, senior management and executive positions. Much of the focus has been on programmes targeted towards meeting the target of 10% women participation (inclusive of white females) for Women in Mining projects. It would assist the industry to utilise provincial EAP targets as per the Employment Equity Act with progressive targets over 5 years. These targets should be more realistic in line with industry workplace profiles and aligned to EAP statistics as reported by the Commission on Employment Equity annually. It would be useful to propose an EAP formula to be used by the mining industry. An important initiative will be the streamlining of Skills Development interventions to ensure a sufficient talent pool for career-pathing.

### 2.4.1 Suggestions on the Employment Equity Element

The following are recommendations to be considered under this element:

- Mining Charter targets to align with the Employment Equity Act five year planning cycle it is proposed that progressive targets be set.
- Accidents affect all employees working at core operations irrespective of their race. South Africa has a serious issue in respect of disabled person's unemployment. For this reason targets for people with disabilities should be inclusive of all races and the mining industry is committed to ensuring that it plays its part in the absorption of those classified as disabled- The target should therefore be 2% of all employees working on surface.
- Clarification is required on the consequences of not meeting the targets and weighting points within the element.

*The Chamber will be making proposals on a scorecard for The Employment Equity element.*



## **2.5 HUMAN RESOURCE DEVELOPMENT**

The Chamber supports the categorisation of this pillar as a ring-fenced (priority) element.

The mining industry is currently experiencing significant economic challenges that have a negative impact on the industry. Protracted low commodity prices, poor commodity demand from international markets, including above inflation labour cost increases have affected employment conditions in the mining industry. These conditions have led to many companies resorting to right sizing and reducing their staff complements. As a "knowledge based industry", mining companies remain committed to training their employees for career growth as well as providing them with skills that will enable them to attain employment outside of mining.

The Mining Charter proposes a target of 5% annual payroll; 5% of this needs to be invested in South African academic institutions, research organisations, Research and Development initiatives and with a further 15% contribution (of the 5% payroll) towards a Ministerial Skills Development Fund. We do not support the establishment of a Ministerial Skills Fund as it is a duplication of the 1% levy currently being paid towards the National Skills Fund.

The mining industry contribution to the skills levy is equal to approximately R1.14bn per annum and the MQA alone received at least R915m in the 2014-2015 Financial year. More than R200m is allocated to the National Skills Fund from the mining sector alone and the latter funds are dedicated towards the training of the unemployed. Research Institutions like Mintek stand to double dip into these funds as they can claim from the proposed Ministerial Trust Fund as well as the 5% mentioned above that is reserved for research institutions.

Of concern is whether the Minister would not be contravening the National Treasury regulations by imposing his own skills levy from the mining industry?

It must further be noted that the Mining Industry is the only industry that is required to invest in community development projects, some of which include expenditure in basic education for the unemployed, and ad hoc scholarship programmes.

The prescriptive manner in which these funds have to be used as well as prescriptive allocations will reduce the training spend on employees who need to be developed for career progression or training in alternative skills in this environment where many are faced with the real threat of retrenchment.



### 2.5.1 Suggestions on the Human Resource Development Element

The Chamber proposes that this element be titled Skills Development to reflect the investment on employees as well as community members to better align with the B-BBEE Codes.

In the spirit of alignment with the B-BBEE Codes, consideration will need to be made for the following key measurement principles in respect of Human Resource Development (HRD):

a) SETA regulations

Approval of Work Place Skills Plans, Annual Training Reports to track training programmes provided by mining companies

b) We recommend the usage of an industry learning programme matrix to determine the value applicable to training programmes, i.e. are internal training programmes weighted equally to external programmes? Are the administration costs of programmes (internal) weighted equally to programmes offered by SAQA/QCTO accredited learning institutions? What is deemed legitimate training expenditure?<sup>2</sup>

c) Legitimate Expenditure: will employees be required to pay back funds expended should they not successfully complete a learning programme?

d) Treatment of mandatory sectoral training- the codes do not recognise this as legitimate training expenditure

e) It is unclear how the Mining Charter will treat the expenditure on non-employee individuals? The Codes allow for 6% of expenditure to be expended on unemployed black people.

The Chamber does not support the 15% Ministerial Skills Fund.

*We will make submissions on a proposed scorecard for this element.*

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<sup>2</sup> A proposed list of courses which will form part of the Learning Programme Matrix will be presented to the DMR



## 2.6 MINE COMMUNITY DEVELOPMENT (MCD)

The MPRDA Preamble articulates that the state is the custodian of the country's mineral resources, the benefits of which should accrue to all the people who live in it.

In principle, labour sending areas are not limited to areas within the borders of South Africa. Does this imply that the activities carried out by the mining sector to redress the economic imbalances of the past regime will be applied to the SADC countries?

The BEE Codes specifically refer to redressing the economic imbalances affecting only South African citizens disadvantaged by the Apartheid legislation.

This definition of Labour Sending Areas is also difficult to interpret as people move around in the country, buy houses, start families and live in different areas from where they originate. The definition is open for different interpretations and causes confusion.

### 2.6.1 Suggestions on the Mine Community Development element

The DMR needs to clarify the term "labour sending areas".

It is suggested that MCD be measured in the same manner as **Socio-Economic Development (SED)** in the B-BBEE Codes as follows:

If a project is implemented, the mine should prove that at least 75% of the beneficiaries are Black as defined. This is possible because a company is supposed to conduct ethnographic assessment through community consultative and collaborative processes to delineate community needs. On that basis 100% of the costs will be taken into account in scoring the mine, taking into account the SED Benefit Factor Matrix.

However, in instances where the black beneficiaries are less than 75%, then expenditure will be recognised on a pro-rata basis. Reference can be made to Annexure 500 (A) of the BEE Codes to assist with the calculation.

Of significant concern under this element is the target setting of 1% Annual Turnover towards a Ministerial Social Development Trust Fund, which is not endorsed by the Chamber. This type of ad



valorem tax is extremely regressive, undermines marginal or loss-making mines and is not supported. Is this similar to the Multi-national Suppliers Contribution towards a Social Fund whose contribution was set a target of 1% Net Profit after Tax (NPAT) and previously included under the Procurement element?

The Chamber does not support the target of 1% Annual Turnover and instead proposes 2% of NPAT towards SED.

It is important to note that non-monetary contributions are not considered under this element. The Chamber further proposes enhanced recognition of technical and capacity building programmes as part of this element as they facilitate municipalities' ability to deliver more effective services. Furthermore, we propose that collaborative endeavours (with other companies, government departments, development finance institutions etc.) also be given enhanced recognition as recognised in the Codes.

The following is proposed as criteria under this element:

- Approved mine and community rural development projects with an annual contribution of 2% NPAT

The following principles will be applied:

- Enhanced Recognition (Multiplier of 1.2) for Collaboration Projects (Government, DFIs etc.)
- All benefits that accrue to contractors and small businesses will be counted under Enterprise Development provided the beneficiary qualifies as per the requirements of B-BBEE.
- Only initiatives that benefit the community, NPOs, NGOs, and Co-Ops will be claimed under SED, 100% of the spend (monetary or non-monetary) will be recognised the moment the black beneficiaries base (BBB %) reaches 75%. If the BBB% is less than 75%, then the spend will be pro-rated.

Measuring MCD projects in terms of money spent is not adequate as it does not demonstrate the real contribution of mining at community level. There should be enough points allocated for both actual spending and also completion of projects. The total points allocated for this element should be commensurate with the amount of money spent on the projects needed to reach compliance stage



and effort by the mines. The aim is to come up with a formula for testing compliance that will adequately measure the progress in improving the legacy issues in the mine communities.

To avoid confusion, there must be a unified agreed definition for the measurement of compliance. Perhaps the mining industry can learn from the BEE Codes. The real intention should be to measure with the aim of demonstrating the contribution of the mining industry towards community development.

It is imperative that there be specific guidelines set on the DMR approval of MCD projects to guard against protracted approvals which unfairly prejudice companies.

*A proposed scorecard will be presented for this element.*



## 2.7 HOUSING AND LIVING CONDITIONS

The Mining Charter has indicated the following as targets under this element:

- a) Maintain the occupancy rate of one person per unit and maintain family units
- b) Contribute towards home ownership options for interested mine employees in consultation with organised labour

The Mining Charter classifies this element as a "ring-fenced" element necessitating 100% compliance for life of mine. The Chamber submits that this should not be a Priority element and should be removed as a Mining Charter target after the three year transitional period. The significance of this element can be reflected through a higher weighting.

### 2.7.1 Suggestions on the Housing and Living Conditions Element

We support the Mining Charter proposal of integrated development as per the Department of Human Settlements Policies and relevant frameworks (Presidential Package, 2009 Revised Housing Standards etc.). In terms of company contributions towards home ownership, each company be allowed self determination to develop an appropriate housing policy which could include housing subsidies, usage of rental stocks etc.

The stipulation that companies should partner with finance institutions to provide guarantees for home ownership on behalf of employees is not supported.

The Chamber would like to propose a complete phasing out of housing allowance as it has created negative unintended consequences. A significant number of employees who receive this allowance still opt to stay in informal structures.

Definitions should be clarified (Family unit, Home, Hostel, Single room). There is a need for a clear definition of "*conversion*" to family units. Old hostels, although "*converted*" to family units, still have shared ablution and the structures of the buildings do not allow for structural changes to add ablution to units.

The following is proposed as criteria under this element:

- a) Provision of adequate and decent housing
- b) Percentage reduction of occupancy rate (progressive targets)
- c) Percentage conversion of hostels into single occupancy and or family units





d) Facilitation of Home Ownership

The Facilitation of Home Ownership options include:

- a) The mine must have an ownership scheme in place including rental, rent to own ; housing policy, proof of implementation of the scheme and housing register will be required as proof
- b) Is there a process to make the scheme affordable? (E.g. indebtedness program, financial training programs)
- c) Proof of a consultative process with internal and external stakeholders (employees, municipalities, traditional leaders, organised labour) – minutes, memos, signed attendance registers

The facilitation of Home Ownership should include rental, rent to own or home ownership in the domicile preferred by the employee.

*Proposals will be made regarding a revised scorecard for this element.*



**IX. PART B: Proposal: Key Measurement Principles and Reporting Requirements**

**2.8 APPLICATION OF THE MINING CHARTER FOR PERMITS/LICENSES GRANTED UNDER THE PRECIOUS METALS ACT, 2005, AND THE DIAMOND ACT, 1986 AS AMENDED**

- As stated in general terms in paragraph 2.8:

- .1 in terms of s6(1)(b) of the Precious Metals Act, 2005:

*“(1) In considering an application for any licence, permit or certificate the Regulator –*

*...*

- (b) must have regard to the requirements of the broad-based socio-economic empowerment Charter developed in terms of section 100 of the Mineral and Petroleum Resources Development Act, 2002 . . .”;*

- .2 in terms of s5(2)(a) of the Diamonds Act, 1986:

*“(2) The Regulator may:*

- (a) when considering an application for any of the licences or permits provided for in this Act, have regard to the broad-based socio-economic empowerment Charter contemplated in section 100 of the Mineral and Petroleum Resources Development Act”.*

The above provision in the Precious Metals Act is peremptory (“*must*”) whereas the above provision in the Diamonds Act is only directory (“*may*”).

- 3 Other than to state that entities which are not holders of rights, permits or permissions in terms of the MPRDA (such as manufacturers of autocatalytic converters and of jewellery) may find difficulty in applying the provisions of the Mining Charter to their activities, the Chamber believes these companies should comply with the DTI Codes.



## **2.9 REPORTING (MONITORING AND COMPLIANCE)**

Section 28 of the MPRDA makes provision for reporting. However, the Chamber is of the view that this pillar is not necessary as an element in the proposed Mining Charter but that the DMR should rather provide guidelines on how reporting should be complied with. We propose that such Guidelines should be developed for independent monitoring and verification. The Chamber accordingly requests that paragraph 2.9 of the Reviewed Charter be deleted.

## **2.10 APPLICABILITY OF TARGETS**

The review of targets should be subject to a stakeholder engagement processes which should consider economic conditions, beneficiary dictates and broader policy shifts as proposed in relation to paragraph 2.13.

The Chamber recommends that the Ownership element be reserved until Judgement is reached on the Chamber's Declaratory Order, but in the meanwhile submits that as stated in relation to paragraph 2.1 above, holders be deemed to hold the greater of 26% or their actual empowerment percentage, and that they not be required to restore any loss of such level.

The Chamber further proposes that there be sub-minimums (40%) on Priority Elements which we recommend to be: Ownership, Procurement, Enterprise and Supplier Development and Skills Development.

## **2.11 TRANSITIONAL ARRANGEMENTS**

The transitional arrangements which allow for a maximum of 3 years to comply with the revised targets are noted but are, as stated in relation to paragraph 2.1 above, not applicable insofar as ownership is concerned. This contradicts the gazetted Notice from the DTI on the development of Sector Codes which states:

*3.1.11 No transitional period shall be provided for the implementation of a Sector Code*



We therefore propose that for each element there be progressive targets, cumulatively from the Mining Charter Targets of 2014. The Chamber further submits that there be a transitional arrangement that allows for a period of 5 years to enable a legitimate industry alignment process.

We recommend that the sentence *"In terms of this Mining Charter performance shall be reported and audited against each element in respect of implementation for the applicable year of the report."* be removed as it is a duplication of Mining Charter paragraph 2.9: Reporting (Monitoring and Compliance).

### **2.12 NON-COMPLIANCE**

For the reasons above, the Chamber submits that paragraph 2.12 should be deleted because the matter of non-compliance falls to be addressed by the MPRDA itself and not by the Mining Charter.

### **2.13 REVIEW OF THE CHARTER**

For the reasons above, the Chamber submits that paragraph 2.13 should be deleted since this aspect needs to be governed by the MPRDA itself and not by the Mining Charter. However, insofar as paragraph 2.13 is nevertheless to be retained, and in the spirit of the Stakeholder Declaration (2010), the Chamber would recommend the following addition:

*Review of the Mining Charter be subject of a consultative multi stakeholder process through the auspices of MIGDETT, the frequency of which to be determined by unanimous decision.*

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**X. CONCLUSION**

The Chamber reiterates its gratitude to the Minister for having afforded to the Chamber the opportunity of commenting on the Mining Charter, and extends an invitation to him for Chamber representatives to meet with the Minister's representatives in order to engage in constructive discussions on these comments and to assist in any way which the Minister might find desirable towards expeditious and beneficial finalisation of the Mining Charter alignment process.

**CHAMBER OF MINES OF SOUTH AFRICA**



**ANNEX 1: CATEGORISATION OF ENTITIES**

Entity	Criteria	Turnover Threshold	BBBEE Code Threshold	Element
Exempt Micro-Enterprise (EME) Emerging Miners	Mining Permit Holder, Prospecting Right Start-Up	<R50 million	<R10 million	1 element Skills Development (HRD)
Qualifying Small Enterprise (QSE) Junior Miners	+R500mil capitalisation	>R50 million <R300 million	R10 million < R50 million	2 Priority elements (Ownership, HRD) and choice of 1 Procurement and or Mine Community Development
Generic Enterprise (GE) Major Miners		>R300 million	> R50 million	All Priority elements (Ownership and Beneficiation, Skills Development and Procurement, Enterprise and Supplier Development) and all other elements in the proposed scorecard.

**ANNEX 2: PROPOSED REVISED MINING CHARTER SCORECARD**

Pillar (Element)	Weighting	Code Series Reference
Ownership and Beneficiation [Priority]	25	100
Management Control (Employment Equity)	19	200
Skills Development (Human Resource Development) [Priority]	25	300
Procurement, Enterprise and Supplier Development [Priority]	40	400
Socio-Economic Development (Mine Community Development)	15	500
Housing and Living Conditions	12	600
<b>Total Points</b>	<b>136 points</b>	

**ANNEX 2.1: OWNERSHIP**

Ownership and Beneficiation	Weighting Points	Industry Target	DMMR Target
<b>Meaningful Economic Participation</b>			
BEE Entrepreneurs	10	26%	26%
Employees			
Community Interest			
<b>Full Shareholder Rights</b>			
BEE Entrepreneurs	15	26%	26%
Employees			
Community Interest			
<b>Bonus Points : Regional beneficiation into the African region</b>	3		11%
<b>Bonus Points : Invest in a refinery</b>	2	N/A	
<b>Total Points (excluding Bonus points)</b>	<b>25</b>		N/A

**NB:** Measurement of ownership to include the recognition of asset sale transactions that benefits or benefited transformation.

For Multinational companies, the basis of measurement be only the South African assets i.e. exclude the foreign asset base.

Recognition of continued consequences provision.

Incorporation of the flow through principles

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**ANNEX 2.2: PREFERENTIAL PROCUREMENT, ENTERPRISE AND SUPPLIER DEVELOPMENT**

<b>Preferential Procurement Enterprise and Supplier Development</b>	<b>Weighting</b>	<b>Industry Target</b>
<b>Preferential Procurement</b>		
Spend from all Empowering Suppliers	5	70%
Spend from Empowering Supplier QSEs	2	10%
Spend from EMEs	2	10%
Spend from 51% Black Owned Empowering Suppliers	8	35%
Spend from 30% Black Woman Owned Empowering Suppliers	4	10%
Spend with 51% Black owned Sample Processors or Local Suppliers	4	2%
<b>Bonus Points: Spend from 51% Black Owned Empowering Suppliers who are designated Groups</b>	2	2%
<b>Bonus Points: Spend from 51% Black Owned Black Industrialists</b>	1	2%
<b>Bonus Points :Spend with 51% black owned suppliers of Core services within the Mining Industry</b>	1	5%
<b>Supplier Development</b>		
Annual value of all Supplier Development Contributions made by the measured entity as a percentage of the target	10	2% of NPAT
<b>Enterprise Development</b>		
Annual value of all Enterprise Development Contributions made by the measured entity as a percentage of the target	5	1% of NPAT
<b>Bonus Points: graduation of one or more ED beneficiaries to SD level</b>	1	Y/N
<b>Bonus Points: creating one or more jobs directly as a result of ESD initiatives by the measured entity</b>	1	Y/N
<b>Total Points (excluding Bonus Points)</b>	<b>40</b>	

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**ANNEX 2.3: BENEFICIATION (PROPOSAL TO BE DEVELOPED SUBJECT TO DETERMINATION OF GUIDELINES AND DEFINITIONS)**

**ANNEX 2.4: Management Control (Employment Equity)**

Criteria	Weighting	Industry Target	DMR Target
<b>Board participation:</b>			
Exercisable voting rights of black board members as a percentage of all board members	2	40%	50%
Exercisable voting rights of black female board members as a percentage of all board members	1	15%	N/A
Black Executive directors as a percentage of all executive directors	1	40%	N/A
Black female Executive Directors as a percentage of all Executive Directors	0.5	15%	N/A
<b>Other Executive Management:</b>			
Black Executive Management as a percentage of all Executive Directors	2	55%	60%
Black female Executive Management as a percentage of all Executive directors	1	15%	30%

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Criteria	Weighting	Industry Target	DMR Target
<b>Senior Management</b>			
Black employees in Senior Management as a percentage of all Senior Management	2	40%	60%
Black female employees in Senior Management as a percentage of all Senior Management	1	15%	30%
<b>Middle Management</b>			
Black employees in Middle Management as a percentage of all middle management	2	60%	75%
Black female employees in Middle Management as a percentage of all Middle Management	1	15%	30%
<b>Junior Management</b>			
Black employees in Junior Management as a percentage of all Junior management	1	70%	88%
Black female employees in Junior Management as a percentage of all Junior Management	0.5	30%	30%
<b>Employees with disabilities</b>			
Black employees with disabilities as a percentage of all employees non-operational (support services)	2	2%(inclusive)	2%
Core and Critical Skills	2	40%	40%
<b>Total Points</b>	<b>19</b>		N/A

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**ANNEX 2.5: SKILLS DEVELOPMENT (HUMAN RESOURCE DEVELOPMENT)**

Criteria	Weighting	Industry Target	DMR Target
<b>Skills Development</b>			
Skills Development Expenditure on Learning Programmes specified in the learning programme matrix for black people as a % of Leivable Amount	10	5%	5%
Skills Development Expenditure on Learning Programmes specified in the Learning programme Matrix for black employees with disabilities as a % of Leivable Amount	2	0.25%	N/A
Learnerships, Apprenticeships & Internships	4	1.5%	N/A
Number of black people participating in Learnerships, Apprenticeships & Internships as a % of total employees	5	1.5%	N/A
Number of black unemployed people participating in training specified in the learning programme matrix as a % of number of employees	2	2%	N/A
Support for Academic institutions and R&D	2	2%	N/A
<b>Bonus Points</b>	5	100%	N/A
Number of black people absorbed into the industry			
<b>Total (excluding Bonus Points)</b>	<b>25</b>		

**ANNEX 2.6: SOCIO-ECONOMIC DEVELOPMENT (MINE COMMUNITY DEVELOPMENT)**

Criteria	Weighting	Industry Target	DMR Target
Approved mine and community rural development projects	15	2% NPAT	1% Annual Turnover
<b>Bonus Points</b>	<b>5</b>		N/A
Implementation of additional projects (due to demand from communities/municipality)	1	0% < 5% target	N/A
	2	5% < 10% target	
	3	10% < 15% target	
	4	15% < 20% target	
	5	20% < 25% target	
<b>Total Points (excluding Bonus Points)</b>	<b>15</b>		N/A

**NB:**

- Enhanced Recognition (Multiplier of 1.2) for Collaboration Projects (Government, DFIs etc.)
- All benefits that accrue to contractors and small businesses will be counted under ED provided the beneficiary qualifies as per the requirements of B-BBEE.
- Only initiatives that benefit the community, NPOs, NGOs, and Co-Ops will be claimed under SED 100% of the expenditure (monetary or non-monetary) will be recognised the moment the black beneficiary base (BBB %) reaches 75%. If the BBB% is less than 75%, the expenditure will be pro-rated.

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**ANNEX 2.7: HOUSING AND LIVING CONDITIONS**

Criteria	Weighting	Target	DMR Target
Provision of adequate and decent housing	2	100%	100%
Percentage reduction of occupancy rate towards 2014 targets	2	100%	100%
Percentage conversion of hostels into family units	2	100%	100%
Facilitation of Home Ownership	6	100%	100%
<ul style="list-style-type: none"> <li>The mine must have an ownership scheme in place, housing policy, proof of implementation of the scheme and housing register will be required as proof</li> </ul>	(2)	100%	
<ul style="list-style-type: none"> <li>Is there a process to make the scheme affordable? (E.g. indebtedness program, financial training programs)</li> </ul>	(2)	100%	
<ul style="list-style-type: none"> <li>Proof of a consultative process with internal and external stakeholders (employees, municipalities, traditional leaders, organised labour) – minutes, memos, signed attendance registers with stakeholder</li> </ul>	(2)	100%	
<b>Total Points</b>	<b>12</b>		

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**ANNEX 3: LEARNING PROGRAMME MATRIX**

Category	Item	Description
A	Bursaries	<ul style="list-style-type: none"> <li>Institutional instruction</li> <li>Institutions</li> <li>Degree, diploma, or certificate</li> </ul>
B	Internships	<ul style="list-style-type: none"> <li>Mixed mode delivery</li> <li>Institutions and workplace</li> <li>Degree, diploma or certificate</li> </ul>
C	Learnerships	<ul style="list-style-type: none"> <li>Structured learning</li> <li>Workplace</li> <li>Registration and licensing</li> </ul>
D	Learnerships or Apprenticeships	<ul style="list-style-type: none"> <li>Institutional instruction and experiential learning</li> <li>Institutional and workplace</li> <li>Professional qualification</li> </ul>
E	Work integrated learning	<ul style="list-style-type: none"> <li>Structured, supervised experiential learning</li> <li>Workplace, institutional as well as ABET</li> </ul>
F	Informal Training	<ul style="list-style-type: none"> <li>Structured information</li> <li>Institutions, conferences and meetings</li> <li>Professional development</li> </ul>
G	Informal Training	<ul style="list-style-type: none"> <li>Informal training</li> <li>Workplace</li> <li>Understanding job/work content</li> </ul>

**ANNEX 3 a): LEARNING PROGRAMME MATRIX TARGETS**

Training Expenditure	Recognised
Category A-E	100%
Category F&G	15% of total skills exp.
Mandatory Training (e.g. Health and Safety)	0%
International Training	100% (meets SAQA requirements)
Incidental Costs (Accommodation, travel, catering)	15% total skills expenditure

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COLUMN DOCUMENT OF PUBLIC COMMENTS RECEIVED ON THE DRAFT REVIEWED MINING CHARTER, 2016.

JUNE 2016

ORGANIZATION	ELEMENTS	COMMENTS	DMR RESPONSE
<p>1. Chamber of Mines (CoM)</p> <p>MRK</p>		<p>I. The Chamber respectfully submits that the process which has been adopted creates confusion, in that it is not possible to develop a Reviewed Charter which is based on concepts contained in the BBBEE Act and Codes, without first procuring an amendment by Parliament to the MPRDA, for example to adopt the definitions from the BBBEE Act and Codes. And that is indeed the solution which the Chamber very respectfully suggests, namely that the present process relating to the development of a Reviewed Charter be terminated, and be replaced by the development of a further MPRDA Amendment Bill which gives effect to the present objectives, and in which the Reviewed Charter will appear as a schedule (Schedule III) to the MPRDA itself, and in which other provisions of the MPRDA (such as definitions) will be amended or replaced in such a way that the Reviewed Charter which appears in such schedule will be harmonized with such other provisions of the MPRDA itself.</p> <p>II. The outcome of the Declaratory Order court application will have major implications on the Reviewed Mining Charter as a whole. It therefore would have been prudent if the court case would have been concluded prior to the conclusion of the Mining Charter alignment process. There is no provision in the MPRDA for amendments to or review of the Mining Charter or for development of a new Charter in substitution of the Original Charter and hence both the 2010 Charter and the reviewed Charter are ultra vires the MPRDA itself. The Chamber is of the view</p>	<p>i. The Charter is reviewed and aligned to the BBBEE Act and the Codes as the overarching regulatory instruments on transformation. The MPRDA will be amended to ensure alignment.</p> <p>ii. The declaratory order is sub-judicare. The Department will not pre-empt the outcomes thereof. However, the Minister will proceed to exercise regulatory powers as conferred by the Act to</p>

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that the above problem needs to be resolved by amendments to the MPRDA itself and not the Charter.

- III. The Reviewed Charter imports definitions from the BBBEE Act which are out of alignment with the definitions in the MPRDA this may create interpretation challenges.
- IV. The Chamber is concerned that the DMR does not provide clarity on when the Mining Charter can be used for purposes of granting mining rights as well as when it can be used for commercial purposes in the economy. The Reviewed Mining Charter creates confusion by introducing BEE Codes assessment ratings for compliance purposes when the Mining Charter score card itself is not properly aligned to that of the Codes. For purposes of the Mining Charter it would be ideal to clearly state how the regulator will apply the provisions of the MPRDA when some or all of the elements of the ring-fenced elements are not met.

review the Charter as contemplated in section 100. The powers review and amend the Charter are implicit the powers conferred to the Minister to Develop the Charter in terms of the Act.

- iii. Refer to point I above.
- iv. The department notes the concerns on misalignment of the Charter Score Card and the Dti Codes, the principles of alignment of the Charter and Dti Codes do not apply to content/measures but confined to definition of terms and concepts... The Department will secure the requisite deviation approval from Dti as contemplated in section 10 of the BBBEE Act where necessary. Noncompliance with any ring-fenced element/s amounts to noncompliance and

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		<p>V. The Chamber is concerned that the Reviewed Charter does not adopt the flexibility of the scorecard contained in the DTI Codes. The DMR scorecard is less flexible.</p> <p>VI. The Chamber recommends that reference to other Acts such as the Companies Act, the Small Business Act etc. especially with regards to definitions, be referenced to specific sections in those Acts to allow for consistency in understanding.</p> <p>VII. The last paragraph on page eight of the Reviewed Charter seems to be defining the net value principle. If this is the case, the Chamber does not agree to the principle of net value being included.</p> <p>VIII. There is no provision in the MPRDA for amendments to, or review of, the Mining Charter or for the development of a new Charter in substitution of the Original Charter and hence both the 2010 Charter and the reviewed Charter are ultra vires the MPRDA itself.</p> <p>IX. The Chamber is of the view that the above problem should be resolved by amendments to the MPRDA itself and not the Charter.</p> <p>X. Reference is made in the last two paragraphs of the Preamble to the Reviewed Charter, of alignment between the MPRDA and Mining Charter on the one hand, and the BBBEE Act and Codes on the other. The Chamber submits that those paragraphs disclose fundamental</p>	<p>the provisions of sections 93, 47, 98 and 99 of the MPRDA will be invoked.</p> <p>- The Department will further improve on the draft Score Card to provide clarity.</p> <p>v. Refer to point IV above.</p> <p>vi. The Department does not support inclusion of citation of specific section from referenced legislation.</p> <p>vii. The net value principle in issue must be read consistent with the definition of meaningful economic participation in the Charter. The Department is also aligned to the Dti Codes which make provision for this principle.</p> <p>viii. Refer to point II above.</p> <p>ix. Refer to point II above.</p> <p>x. Although the Charter is not a sector Code as per the definition of</p>
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		<p>misconceptions in regard to these issues. The Mining Charter was developed by the DMR Minister in terms of s100 (2) (a) of the MPRDA. The Mining Charter is not a code of good practice issued or gazetted by the Minister of Trade and Industry in terms of s9 of the BBBEE Act. It was in fact developed by the DMR Minister in terms of s100 (2) (a) of the MPRDA and gazetted as such furthermore the Mining Charter is also not a transformation Charter for the mining and minerals sector of the economy which was developed by major stakeholders in that sector and gazetted by the Minister of Trade and Industry in terms of s12 of the BBBEE Act. Again, it was in fact developed by the DMR Minister in terms of s100 (2)(a) of the MPRDA and gazetted as such. The need to align the Mining Charter with the BBBEE Act comes from the perceived conflict between the two. There is no such conflict in law.</p> <p>XI. The Chamber proposes that the term "ring fenced" should be substituted with the term "priority element" as per the BEE Codes.</p> <ul style="list-style-type: none"> <li>• There is very limited evidence of alignment of the ownership element in the Mining Charter with the BBBEE Act and Codes. The scorecard does not mention any weighting points related to Ownership and uses "YES/NO" which will not assist in calculating the final weighting points that will lead to calculating the different levels of compliance.</li> <li>• Inconsistent definitions .e.g. BEE Compliant company, effective ownership.</li> <li>• The Charter has adopted the BEE Black definition, however, the ownership scorecard still refers to HDSA ownership.</li> <li>• The issue of Continuing Consequences is yet to be settled in the courts. In the amended Codes, the loss of shareholding mirrors the same number of years that the BEE</li> </ul>	<p>a sector code in terms of the BBBEE Act, there is an obligation on all organs of State to implement transformation objectives in terms of the BBBEE Act.</p> <p>xi. Noted the Department will look into the wording (priority vs. ring-fenced).</p> <ul style="list-style-type: none"> <li>- The concern regarding the definition of terms (BEE Compliant Company, HDSA ownership, effective ownership) is noted.</li> <li>- Consequences of previous deal matter is before the Courts.</li> </ul>
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		<p>shareholder was in existence. The Chamber and its members would prefer that the consequences of previous transactions should be retained in perpetuity.</p> <p><b>XII.</b> The inclusion of a Special Purpose Vehicle to drive ESOPs is a concern as, especially the requirement to incorporate a registered Memorandum of Incorporation (MOI). They introduce a concept of a significant minority block that tends to stifle decision making at Board level. This is also against Company law and JSE Regulations and the Companies Act, 2008.</p> <p><b>XIII.</b> The Mining Charter will result in the unbundling of some existing transactions (some new, others recently re-financed) in terms of S2.11 (transitional arrangements), i.e. existing mining right holders have a maximum of three (3) years to align with the provisions of the charter. The Chamber is concerned as to whether implications of the requirement to restructure past and existing transactions have been considered by the DMR. The implications of the unbundling process and reorganizing BEE deals will result in increased transactions costs, with financial institutions being the main beneficiaries and no impact on the intended black beneficiaries. Furthermore, the beneficiaries will not have access to more diversified portfolios of mine ownership, and may be limited to only one. A company can apply to the Minister for permission to construct a consolidated transaction however the permission is not a fait accompli.</p> <p><b>XIV.</b> The term "Effective Ownership" needs to be adequately defined and clarified to limit room for speculation and confusion within the mining industry.</p> <p><b>XV.</b> There is a need to set clear definitions for the following terms on the Ownership Element, BEE Compliant Company, BEE Supplier, Codes, Meaningful economic participation.</p> <p><b>XVI.</b> The beneficiation offset only benefits those who have not achieved the 26% target and this is unfair to those companies that have invested in beneficiation in various forms and if they already</p>	<p><b>Xii</b> The Department notes the concerns, however this requirement was intended to protect the interests of BEE partners (Esops and communities) and ensure that they actively and meaningfully participate in the empowerment transaction.</p> <p><b>Xiii</b> The highlighted implications are noted as part of the transition. Sufficient mechanisms will be developed to mitigate these implications taking into account the 3 years transitional arrangements provided. A consent to grant consolidation is subject to the terms and conditions of the right, the Act and all relevant considerations, it cannot be a fait accompli as suggested.</p> <p><b>Xiv</b> Noted.</p> <p><b>Xv</b> definitions of BEE Compliant Company, Meaningful economic participation are provided, however it is noted that BEE Supplier, Codes are not defined.</p>
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		<p>have achieved the 26% black ownership target. A workable formula to allow for beneficiation offsets should be developed.</p> <p><b>XVII.</b> Ownership Target: The Chamber of Mines supports the target of 26% Black Ownership and further wishes to propose the application of the Modified Flow Through principle for all prospective applications for calculating voting rights and economic Interest. The principle of including ESOPs, Communities and Black Entrepreneurs in the BEE structure is accepted. However, Mining Right holders should be allowed to choose vehicles that will work best in their particular structures.</p> <p><b>XVIII.</b> The Chamber would like to see the introduction of debt (treatment thereof) for shareholders that do not have the funds. The Mining Charter does not cover this and its modalities. The concept of profit share as part of a model for ownership should be considered.</p> <p><b>XIX.</b> The Mining Charter needs to clarify what is meant by a "BEE compliant enterprise" or a "BEE compliant company" or "small business development". The Codes of Good Practice do not refer to a "BEE compliant enterprise or company" but rather rates companies according to their levels of compliance to the codes or whether it is a Large Enterprise or an Empowering Supplier or a Qualifying Small Enterprise or an Exempt Micro Enterprise.</p> <p><b>XX.</b> The Mining Charter has increased the target under Capital Goods by 20 percentage points, 20 percentage points for consumables and 10 percentage points for services. In addition, the targets also introduced local manufacturing for capital goods and consumables. In alignment with the BBEE codes, the differentiation between capital goods, consumables and services should be removed. If it is retained, clear definitions of these categories need to be provided.</p>	<p><b>XVI</b> Mr Mabuza and Menoe to respond.</p> <p><b>XVII</b> The Comment on the modified flow through principle is noted and will be considered. The Department notes the concern on type of vehicles to be used, however this requirement was intended to protect the interests of BEE partners (Esops and communities) and ensure that they actively and meaningfully participate in the empowerment transaction.</p> <p><b>XVII</b> Debt and funding models are commercial considerations (further consult with Mr Mabuza).</p> <p><b>XIX</b> BEE compliant company is defined, the concept BEE compliant enterprise and small business development will be clarified.</p> <p><b>XX</b> Mr Mabuza and Menoe to respond on this issue.</p>
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	<p><b>XXI.</b> Procurement is a priority element in terms of the B-BBEE Codes and the Chamber proposes that this should be retained as a priority element within the Mining Charter.</p> <p><b>XXII.</b> The BBBEE Codes measure the denominator against which procurement targets are weighted in terms of the Total Measured Procurement Spend (TMPS). The Charter only makes reference to actual spend. This could affect companies negatively as specific non-procurement items and items procured from foreign domiciles may be included in the value of actual spend which may disadvantage mining right holders if they were to be measured against B-BBEE Codes.</p> <p><b>XXIII.</b> Localisation of competitive supply is fully supported. Targets for local content should, however, be informed by comprehensive studies that indicate local capabilities and will probably differ by types of mining e.g. surface mining, underground coal, underground hard-rock, etc. Targets for small business development should be removed since they interfere with supplier development.</p> <p><b>XXIV.</b> The onus should be on suppliers and not with mining right holders to verify local content with the SA Bureau of Standards (SABS).</p> <p><b>XXV.</b> The existing multi-national supplier levy has been a failure. Mining companies do not have the legal right to collect such funds. All that the levy does is increase the cost of doing business for the mining companies.</p> <p><b>XXVI.</b> Members do not support the Multinational supplier contribution since this contradicts efforts to localise competitive supply. To give effect to this goal a completely different approach than what is included in the Mining Charter will be required. It will probably take about one year to develop a 5-10 year strategy with the requisite targets, incentives, etc.</p> <p><b>XXVII.</b> The Beneficiation element is misplaced as a stand -alone and it is our considered view that this in effect should form part of the criteria under the Ownership element. The scorecard is very silent</p>	<p><b>XXI</b> Noted the Department will consider the submission.</p> <p><b>XXII</b> Mr Mabuza and Menoe to assist with a response.</p> <p><b>XXIII</b> Comprehensive study on local capabilities is noted. Small business development is government's policy prerogative.</p> <p><b>XXIV</b> The Department interfaces with the right holder and not the suppliers.</p> <p><b>XXV</b> The Department will create mechanisms to ensure that trust funds are implementable and managed within the prescripts of the law.</p> <p><b>XXVI</b> See point XXV above.</p> <p><b>XXVII</b> Noted (Noted Mr Mabuza and Menoe to advise).</p>
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<p>MK</p>		<p>on how the beneficiation initiatives by mining companies will be recognised as this is the means of strengthening the linkages between mining and manufacturing.</p> <p><b>XXVIII.</b> On Employment Equity, It would assist the industry to utilise provincial EAP targets as per the Employment Equity Act with progressive targets over 5 years. These targets should be more realistic in line with industry workplace profiles and aligned to EAP statistics as reported by the Commission on Employment Equity annually. It would be useful to propose an EAP formula to be used by the mining industry.</p> <p><b>XXIX.</b> It is suggested that Mining Charter targets must align with the Employment Equity Act five year planning cycle and it is proposed that progressive targets be set.</p> <p><b>XXX.</b> It is suggested that targets for people with disabilities should be inclusive of all races and the mining industry is committed to ensuring that it plays its part in the absorption of those classified as disabled- The target should therefore be 2% of all employees working on surface.</p> <p><b>XXXI.</b> Clarification is required on the consequences of not meeting the targets and weighting points within the element.</p> <p><b>XXXII.</b> On the Human Resource Development element we do not support the establishment of a Ministerial Skills Fund as it is a duplication of the 1% levy currently being paid towards the National Skills Fund.</p> <p><b>XXXIII.</b> The Chamber proposes that this element be titled Skills Development to reflect the investment on employees as well as community members and to better align with the B-BBEE Codes.</p> <p><b>XXXIV.</b> On the Mine Community Development element, The DMR needs to clarify the term "labour sending areas".</p>	<p><b>XXVIII.</b> Department of Labour to advise.</p> <p><b>XXIX</b> Department of Labour to advise.</p> <p><b>XXXL</b> Non-compliance with the targets of the charter and the terms and conditions of the right is already provided for in the MPRDA.</p> <p><b>XXXII</b> The development of the Ministerial Skills fund is intended to enhance development of skills in the mining industry.</p> <p><b>XXXIII</b> This element is not only limited to skills development, it also includes support towards South African based academic institutions, research and development.</p>
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		<p><b>XLII.</b> The Chamber submits that paragraph 2.12 should be deleted because the matter of non-compliance falls to be addressed by the MPRDA itself and not by the Mining Charter.</p> <p><b>XLIII.</b> The Chamber submits that paragraph 2.13 should be deleted since the review of the Mining Charter needs to be governed by the MPRDA itself and not by the Mining Charter. However, insofar as paragraph 2.13 is nevertheless to be retained, and in the spirit of the Stakeholder Declaration (2010), the Chamber would recommend the following addition:</p> <ul style="list-style-type: none"> <li>• <i>Review of the Mining Charter be subject of a consultative multi stakeholder process through the auspices of MIGDETT, the frequency of which to be determined by unanimous decision</i></li> <li>• The Chamber proposes a scorecard (see Chamber letter)</li> </ul>	<p>three years transitional period. The suggested 5 years transitional period is not supported.</p> <p><b>XLII</b> The Charter derives from section 100 of the MPRDA. It is a material condition for granting of a mining right in terms of section 23 of the Act, noncompliance therewith is an offense. The Charter reinforces the provisions of the MPRDA relating to non-compliance and does not deviate therefrom.</p> <p><b>XLIII</b> See point ii above. The Department Disagree with the suggested unanimous decision on formulation of review proposals. The Department proceeds to exercise its regulatory function as mandated by the MPRDA.</p>
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<p>2. National Union of Mineworkers (NUM)</p> <p>MK</p>		<p>I. The NUM is calling for the inclusion of "Meaningful consultation" in the definitions section, as we are currently finding it difficult to be meaningfully consulted in the implementation of charter targets and compilation of the mining charter report before submission to the regulator. The definition should read as follows: <i>The extensive consultation conducted by the mining right holders and its stakeholders. These will include the primary stakeholders (which includes employees/workers, organized labour unions and all forums or structures) and Secondary Stakeholders (including relevant local &amp; district municipalities (including their representatives), traditional leaders or authorities).</i></p> <p>II. We propose the following additions in the Objectives section: <i>The Broad Based Black Economic Empowerment Charter for the South African Industry, herein referred as the "Mining Charter", is a government instrument designed to effect sustainable growth and meaningful transformation of the mining industry (through a meaningful consultation process, especially with primary stakeholders).</i></p> <p>III. We call on the Department to have an incremental target for the ownership element, which will be 30% by 2018, 32% by 2020 and 35% by 2022 as a minimum targets.</p> <p>IV. On ESOPS our submission is in line with the above target on ownership, with employee's owning 10% by 2018, 12% by 2020 and 15% by 2022.</p> <p>V. We unreservedly reject the notion of a Special Purpose Vehicle, as its founding objectives that were aligned to the companies act are no longer in place. Thus it will only be used as a tool to frustrate communities and workers. We have seen many transactions in the industry that have become an albatross around our necks, thus we are submitting to own shares directly in the mining right holders and our employing company.</p>	<p>i. The Department supports meaningful consultations between stakeholders in giving effect to the relevant elements of the Mining Charter. Compilation of the report is the prerogative of the right holder and it remains Government's responsibility to evaluate, enforce and monitor compliance with the Charter requirements.</p> <p>ii. The Department notes the suggested proposals to the objects of the Charter and supports same to the extent outlined in point number I above.</p> <p>iii. The Department supports progressive realisation of the Charter targets within the 3 years transitional period. Any suggestion to go beyond the transitional arrangement is not supported. The</p>
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<p>MK</p>		<p><b>VI.</b> We are calling for all employees and community ownership transactions to be ring-fenced and funded by the mining right holder for free or with no obligation on the trust of future repayments or dividends withholding. The Mining Charter should also introduce a new concept of ESOP/Community Trust mandatory rules, namely:</p> <ul style="list-style-type: none"> <li>a. A loan free scheme or employer funded scheme</li> <li>b. Economic interest in the hands of an entity (managed and controlled by participants) or individual employee</li> <li>c. Flow through principle as per 3.3 of the Generic Codes</li> <li>d. Returns, profit sharing or dividends needs to be paid out each time the company declares (85% as per the Generic codes).</li> <li>e. The vesting period needs to be maximum 5 years</li> <li>f. Beneficiary education should be mandatory</li> <li>g. Trustee continuous education is critical</li> <li>h. Significant Employee participation in the scheme</li> <li>i. Equal distribution of shares to all employees, especially Black People</li> <li>j. ESOP Trust representation in Annual General Meetings</li> <li>k. Limited risk to employees</li> <li>l. Trusts need to be independently managed outside the control of Management.</li> </ul> <p><b>VII.</b> We are not sure of the industry's ability to achieve the 60% capital goods target, hence we would in line with other targets propose an incremental approach. That will see the industry starting on 40% locally manufactured goods by 2018, 50% by 2020 and 60% by 2022. The aim to ensure we have achievable targets and we give industry sufficient time to grow the market</p>	<p>Department will consider the proposed increase in targets.</p> <ul style="list-style-type: none"> <li>iv. See response in iii above.</li> <li>v. The Department notes the concerns, however this requirement was intended to protect the interests of BEE partners (Esops and communities) and ensure that they actively and meaningfully participate in the development of mining project/s.</li> <li>vi. Debt and funding models are commercial considerations (further consult with Mr. Mabuza). The Department to study the Dti's report on Management of Trust Instruments and further improve the proposals in the Charter relating to Trusts.</li> </ul> <p><b>VII</b> The Department notes the concern and will reconsider the proposals.</p>
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<p>Mk</p>		<p>for the relevant absorption. The same principle should apply for the consumables, but their incremental targets should be 50% by 2018, 60% by 2020 and 70% by 2022 for consumables.</p> <p>VIII. On Beneficiation The NUM is calling for the fast tracking of the current Amendment Bill in Parliament, in order for the DMR and DTI to fast track the implementation of the Beneficiation Strategy in line with the National Development and Industrial Policy Action Plan.</p> <p>IX. On Employment Equity the reporting scorecard should reflecting the income disparities among those in the same levels, to avoid people being appointed to key positions but are never remunerated equally or lacking relevant decisions making powers.</p> <p>X. On human resource development, the allocation of a percentage of mineral right holder's payroll to skill development, training and research is supported, but we think it's important for it to be aligned to the current 6% in the generic codes of good practice. The money spent should be restricted to actual fees paid for a course or programme and not miscellaneous logistical costs.</p> <p>XI. We would like to call on the Department to revise the Housing and Living Conditions Standards that were gazetted in 2009.</p> <p>XII. We call on the Department of Mineral Resources to strengthen and capacitate the Mineral Regulations branch, as we believe the below compliance with Section 28 (2) (C) of the MPRDA is non-negotiable and compliance should be met with relevant corrective measures.</p> <p>XIII. We would like to again express our concern with the removal of the Sustainable Development element in the draft mining charter.</p>	<p>VIII. The Department notes the concern. The process to finalise the MPRDA Bill is managed by Parliament.</p> <p>IX The Department of Labour to advise.</p> <p>X The Charter 5% proposal excludes the mandatory 1% skills levy as per the Skills Levy legislation. (Verify with Dti).</p> <p>XI The Department notes this concern and will address it accordingly upon finalisation of the Mining Charter.</p> <p>Xii The Department notes this concern and will address it accordingly.</p> <p>Xiii The Department notes this concern and will address it accordingly.</p>

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<p>3. Wits Centre for Sustainability and Industry and Mining (CIMS)</p> <p style="text-align: right;">MK</p>		<p>I. Socio-economic and skills development initiatives associated with the implementation of the Mining Charter should be streamlined. Specifically the Mining Charter makes no mention of the Social and Labour Plans (SLPs). This is a serious oversight and means that contributions to communities will become more fragmented despite increased revenue. The obligation placed on mining companies to contribute a minimum of 1% of turnover to local community development (2.6a) is very similar to the obligation imposed by the SLP. Is this obligation reflecting the same thing? We suggest linking to the SLP in this paragraph to clarify the similarity or difference. Going further, the measures in the draft Reviewed Charter are poorly expressed, specifically for Mine Community Development, but also for other elements of the Charter. We suggest that the measures be reviewed, and that the Scorecard be amended to include measures, as it does in the current (2010) Charter.</p> <p>II. Of additional concern here is the contribution of multinationals to socio-economic development of local communities. Thus the draft Charter states that multinationals must contribute toward "socio-economic development of local communities", but the mechanism proposed is through a single Social Development Trust Fund (SDTF). How is the SDTF going to direct spending to local communities? At best we suggest establishing SDTFs in each of the regions where multi-nationals supply goods. We also note that the trustees of the proposed SDTF do not have to include stakeholders from communities, and suggest that there must be community trustees. Alternatively, multinationals could make their contributions to the SLPs of the mines that they supply, through a transparent, ring-fenced allocation of funds. That would ensure that the funds are closely tied to the communities most affected by the goods that are supplied.</p>	<p>i. The Department will reconsider the relationship between the SLP and the Charter as different legislative requirements to ensure alignment and removal of ambiguities.</p> <p>ii. The Department will develop appropriate mechanisms for management of the Multinational Supplier Trust fund for the benefit of not only communities but all the People of South Africa.</p>
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<p>MK</p>	<p>III. Of equal concern are the proposals for human resource development (Section 2.5). This section establishes a Ministerial Skills Development Trust Fund (SDT). How does the SDT relate to the Mining Qualifications Authority (MQA)? The aim in 2.5(a) is to invest in essential skills development activities and those listed are exactly the remit of the MQA. We strongly suggest that these funds go to the MQA rather than to establish a new entity. If there are reasons why the MQA is not suitable, those reasons should be addressed, rather than creating a duplicate structure. We note that the governance of the SDT is also identical to that of the MQA: organized business, organized labour and government. If the SDT is retained, its relationship to the MQA needs to be clarified.</p> <p>IV. We recommend that guidance and/or a guideline of preferred practice would be a very useful addition to the draft Charter, to promote a beyond compliance approach. This will avoid the pitfalls of ticking boxes only whilst important issues are overlooked or conveniently forgotten. Guidance is suggested in the following areas:</p> <ul style="list-style-type: none"> <li>• For setting up the Memoranda of Incorporation to ensure that all the participants are fairly considered and that the Special Purpose Vehicle (SPV) does not become just a mechanism for one of the parties to take control over the others.</li> <li>• For the establishment of a "conducive environment to ensure diversity". Given the discriminatory past of mining in particular the establishment of a diverse non-racist and non-sexist workplace cannot rely solely on compliance with quotas. We suggest that the draft Charter should provide a guideline on best practice for the advancement of Black individuals and for women of all race groups. The guideline can make clear options for demonstrable initiatives to support the career development of these groups.</li> </ul>	<p>iii. The development of the Ministerial Skills fund is intended to enhance development of skills in the mining industry.</p> <p>iv. The Department will develop a guideline on reporting in respect of all the elements of the Charter. This should facilitate implementation of the Charter requirements.</p>
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<p>11177</p> <p>MK</p>		<ul style="list-style-type: none"> <li>For regional collaboration between private, public and civil society stakeholders in mining regions concerning socio-economic and infrastructure development (including housing), regional mine closure, the mitigation of environmental impacts and environmental rehabilitation.</li> </ul> <p>V. Many of the issues that besiege mining today can only be resolved through collaboration between stakeholders including different mining operations in mining regions. This is expressed in the draft Charter (Section 2.6) but there is no follow through with respect to compliance with this. This is a serious oversight.</p> <p>VI. We suggest re-introducing the objective: "Promote sustainable development and growth of the mining industry". The reintroduction would serve to show a) that the Charter has not forgotten the need for environmental management and improved health and safety performance, and b) that the Charter is of larger value to the nation than just righting past wrongs, important as that is: it is also aiming to grow the wealth of the country.</p> <p>VII. A focus on linkages rather than just beneficiation may be the answer and revising both the objective and the subsequent section of the Charter to this end is appropriate.</p> <p>VIII. The Draft Charter will be strengthened by including a focus on the development and promotion of small scale mining.</p> <p>IX. OWNERSHIP (2.1): Section 2.1b specifies that the community, workers and Black entrepreneurs should share 5% of the 26% allocated to Black persons. There is an issue of clarity, on whether this is 5% each or 5% in total. Beyond this it is unclear why Black entrepreneurs are specifically listed? Entrepreneurs are the natural investors in mining ventures, and would be expected to</p>	<p>V. The Department supports collaboration and will elaborate on these aspects on the review proposals.</p> <p>VI The Department will reconsider this matter.</p> <p>VII. Mr Menoe to respond.</p> <p>VIII. The Mining Charter does not apply to small scale mining in terms of section 27 of the MPRDA.</p> <p>IX The Charter intended to refer to a minimum of 5% to each category to ensure Broad Based and meaningful transformation.</p>
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<p>MK</p>		<p>make up the full 26% if they could. We suggest that only workers and the community be listed explicitly as have minimum allocations within the 26%.</p> <p>X. The requirement that trusts must include representation from traditional authorities is a problem for three reasons: 1) There are regions in the country without traditional authorities, such as parts of the Free State, 2) The legitimacy of traditional leaders is contested in some communities, and 3) Conflict between communities and traditional leaders can easily cripple the effectiveness of the trusts to act, as they become mired in the disputes of their trustees.</p> <p>XI. The mechanism laid down in the draft Charter that every mining right must have an SPV may have an unintended consequence: it ring-fences investment by entrepreneurs or other "real" investors (as opposed to communities and workers who are gifted their stake in the company as recognition of the costs that they bear). That ring-fencing will create a form of second-class shareholder. While this will ensure that Black shareholding has some permanence, it is not a freely tradable share in the company, which is therefore a poor investment.</p> <p>XII. PROCUREMENT (2.2): The text is unclear in the sections on capital goods and consumables on whether 60% of capital goods must be manufactured locally, or whether 60% of locally manufactured goods must be from BEE compliant suppliers. If it is the second, then there is no regulation in the draft Charter of procurement of goods that are manufactured outside South Africa. We recommend that these regulations be made clear, and explicitly take into account local and foreign manufacture.</p> <p>XIII. BENEFICIATION (2.3): As discussed above, we strongly urge that the Charter give more weight to side-stream linkages and also consider up-stream linkages, and rename this section LINKAGES.</p>	<p>Entrepreneurs refers to Black entrepreneurs and these are essential to ensure Broad Based and meaningful transformation.</p> <p>X The Department notes the concern and will consider expanding on trust representation.</p> <p>XI The Department notes the concerns regarding SPV's and will reconsider the proposals and provide alternative mechanisms to structure the 26% BEE shareholding.</p> <p>XII They must both be from BEE compliant and locally manufactured. The definitions of these terms are provided.</p> <p>XIII Mr Menoe to respond.</p>
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<p>MK</p>		<p><b>XIV.</b> EMPLOYMENT EQUITY (2.4): A “conducive environment to ensure diversity” is not created by quota alone. We suggest that the draft Charter should provide a guideline on best practice for advancement of Black individuals and women of all race groups.</p> <p><b>XV.</b> The draft Charter does not deal adequately with gender equity, but regards it as a subcategory of race equity, which it is not. Targets for gender equity should be set in the first instance for all women. Specific targets for Black female representation can then also be set. The present targets at executive management level do not do justice to the significant contribution that all women can make in South Africa at a senior level.</p> <p><b>XVI.</b> HOUSING AND LIVING CONDITIONS (2.7): This objective, as drafted, presents no further change to the previous version of the Charter. In fact, the housing objectives as stated here were reached, and the discussion in the sector has now moved on into further issues related to housing. We have two suggestions:</p> <p>There are many situations in which home ownership is not the desire of mine workers. Therefore, we suggest strengthening the recommendations on what mechanisms are needed to provide robust rental options for mineworkers.</p> <p>Home ownership options are closely tied to local development, so we suggest a need for meaningful consultation and cooperation within the region of mining companies and local government to plan housing and community development.</p> <p><b>XVII.</b> REPORTING (MONITORING AND COMPLIANCE) (2.9): We urge that the DMR increase its capacity to oversee, rather than simply monitor and evaluate, the levels of compliance with the Charter.</p> <p><b>XVIII.</b> A number of definitions are missing from the Charter, or are problematic:</p>	<p><b>XIV</b> Empowerment of Black persons is National government policy and the Charter seeks to give effect to same.</p> <p><b>XV</b> Empowerment of Black persons is National government policy and the Charter seeks to give effect to same.</p> <p><b>XVI.</b> The reviewed Charter already provides for integrated Housing Development in line with the DHS policies on integrated human settlements including home ownership options.</p> <p><b>XVII</b> Submission is noted.</p> <p><b>XVIII</b> The Department notes the suggestions on definition of terms and concepts and will consider same in the review process.</p>
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- The current definition of stakeholders only includes affected parties. We suggest it also include interested parties, as that it is part of the usual definition of a stakeholder.
- The word "Black" is defined in the document, and is sometimes used as defined, with a capital letter, but it is also used with a small letter, "black", leading to a suggestion that it refers to a different concept. To avoid confusion, we suggest using "Black", the defined term, throughout.
- The term "Black Entrepreneur" is used without definition in 2.1b. This is concerning as the definition of "Entrepreneur" is very wide and open to mis-interpretation.
- There needs to be explicit recognition that many mineworkers are foreign national migrants.
- It is not clear in the document whether "Labour sending areas" includes or excludes areas outside of South Africa. We suggest that this be made explicit. In particular, parts of the draft Charter suggest spending in labour sending areas. Can this spending be in neighboring countries? This needs to be made clear.
- The phrase "enterprise development" is used in the draft Charter, without definition.
- The section on Procurement, (2.2), uses the phrases "small business development which are BEE compliant" and "BEE compliant enterprise development". These two phrases need to be defined and the difference between them explained.
- The definition of "Community" excludes foreign migrant workers, who are a major part of many near-mine communities. How does the Charter recognise these workers?
- Core skills are defined with a list of examples that are all engineering and technical related. In the context of the draft Charter, mines require core skills in many areas,

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<p>MKS</p>		<p>particularly in community development and wellbeing. We suggest that the definition of core skills be extended to include all professional skills required in mining, including but not limited to geology, ventilation, finance, community development and wellbeing, occupational hygiene and health. We also suggest a further need for development of skills related to community development such as business mentorship.</p> <p><b>XIX.</b> The paragraphs on Employment Equity all use the phrase "Employment Active Population". The way that EAP is used is incorrect, so it would make more sense to remove it. For example, the Employment Active Population is about 88% black, 44% black female. To justify specifying that, for example, executive directors should be 25% black female is not in line with the EAP. We suggest the phrase be removed throughout.</p> <p><b>XX.</b> In the section on procurement, 2.2, neither "multinational" nor "local mining companies" are defined. As written, it may allow London-based companies operating in South Africa to avoid making the specified contribution.</p> <p><b>XXI.</b> At many places in the document, but particularly in 2.2 and 2.5, there are words like "60% Black, of which 30% is black females". This implies that 18% (60% x 30%) of the total should be black females, which is presumably not the intent. To add to the confusion, in 2.5c, it is the intent (15% x 5%). We suggest defining these percentages of percentages or being explicit through words such as "60% Black, 50% of whom are black females making up 30% of the total".</p> <p><b>XXII.</b> In 2.1, 2.1b only mentions "workers", while clause 2.1j mentions "black workers" as being the same group. For consistency, one of the two must be changed, or an explanation added.</p> <p><b>XXIII.</b> The last sentence of 2.1 on page 3 is unclear because it suggests that at any time a rights holder whose BEE participation drops below 26% may have three years to restore the situation. We</p>	<p><b>XIX</b> The Department of labour to advise.</p> <p><b>XX</b> Noted the submission will be considered in the review process (page 19 second last paragraph).</p> <p><b>XXI</b> Submission is noted and further clarity to be provided. In consultation with the Department of Labour.</p> <p><b>XXII</b> Noted reference to Black in 2.1 (j) will be deleted.</p>
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<p>MK</p>		<p>suggest: "For a mining right holder that, at the time of publication of the Charter review, has experienced a loss of BEE participation to below 26%, for whatever reason, that mining right holder must review its empowerment credentials within the three year transitional period from the date of publication of the amended 2016 Charter.</p> <p><b>XXIV.</b> In 2.5, it needs to be clear that while 15% of the 5% goes to the Ministerial Skills Development Trust Fund, the mining industry has to manage the remaining 85%.</p> <p><b>XXV.</b> At the end 2.5, there is reference to a mechanism for companies to offset ownership requirements by undertaking beneficiation. The mechanism for this is not clear, and beneficiation is not present on the scorecard. We suggest that this be clarified or removed.</p> <p><b>XXVI.</b> In 2.6, as well as local municipalities, the Charter also needs to mention Integrated and Local Development Plans (IDPs) in 2.10, we suggest that the compliance process should occur more often than annually. We suggest that reporting may be annual, but that monitoring should be at least twice annually. (LDPs).</p> <p><b>XXVII.</b> Please give further reference information on other Acts and documents. The Charter refers to other Acts and documents. In some cases it gives a complete reference, for example in paragraph 2.9, there is a reference to S28(2)c of the MPRDA. However, in many other places, the reference is vague or absent.</p>	<p><b>XIII</b> Clarity regarding the correct interpretation of the three years transitional period will be clarified.</p> <p><b>XXIV</b> This is implied in the Charter provision.</p> <p><b>XXV</b> Mr Menoe to respond.</p> <p><b>XXVI</b> The annual reporting requirement is sufficient. Inspectors are empowered to conduct inspections as and when the need arises.</p> <p><b>XXVII</b> The Department notes the submission and will consider it in the review process.</p>
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<p>4. Webber Wentzel</p> <p>MK</p>	<p>General,</p>	<p>I. The development of the draft Mining Charter, like the 2010 Mining Charter, is beyond the scope of section 100 (2) (a), the empowering provision, and thus is <i>ultra vires</i>. In our view, the intention of the parliament in not endowing the Minister with the power to amend the draft Mining Charter was deliberate and designed to promote regulatory certainty within the mining industry.</p> <p>II. We are of the view that section 100(2)(a) of the MPRDA must be amended to give the Minister the requisite authority to amend the draft Mining Charter, before clause 2.13 of the draft Mining Charter can be enforced furthermore clause 2.13 of the draft Mining Charter must be amended so as to avoid vagueness and the consequent bestowal of such a wide discretion upon the Minister.</p> <p>III. When considering whether the draft Mining Charter could be applied by the Minister to mining rights granted under the Original Mining Charter or the 2010 Mining Charter, the first important consideration is that neither of the Charters are legislative provisions. Neither of the two Charters was subject to the usual parliamentary processes, and thus cannot be simply accepted as having the force of legislation. It would be a most anomalous position for the draft Mining Charter to apply, either retrospectively or retroactively, to rights which were granted with reference to the Original Mining Charter or the 2010 Mining Charter. The effect of this would be that a guideline, in the form of a charter, has the effect amending national legislation (the MPRDA). Such an interpretation would certainly be unconstitutional, for the simple reason that laws cannot be amended by way of guidelines published through a consultative process with the mining industry. The only manner of changing legislation is by promulgation of new legislation through the prescribed parliamentary process.</p>	<p>I. The powers to amend the Charter is implied from the powers conferred on the Minister in terms of section 100 (2) (a) to develop the Charter.</p> <p>(II) See comment (I) above, the MPRDA Bill proposes amendments to section 100(2) (a) to clarify any ambiguities.</p> <p>(III) The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. The Charter derives from section 100 and cannot be said to be ultra vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act.</p>
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<p>MKS</p>		<p>IV. The second consideration is that the draft Mining Charter does not state that it applies retrospectively. There is therefore no basis for the Minister to impose the requirements of the draft Mining Charter in relation to a right granted under the Original Mining Charter.</p> <p>V. The final and most fundamental issue is that once mining rights are granted, there is no basis for the Minister to re-consider the decision to grant the right. The Minister is <i>functus officio</i> and can only cancel the right in the limited circumstances prescribed in section 47 of the MPRDA.</p> <p>VI. The definition of "BEE Compliant Entity" does not specify what is meant by "compliant" in the context of the Codes of Good Practice on Black Economic Empowerment, 2013 (the "Codes"). The definition of the term "black people" in the draft Mining Charter matches the definition of this term in the Codes. While this is a positive development, we submit there must some form of grand fathering of the analogous definition previously used such "Historically Disadvantaged South African" ("HDSA") and the term "Historically Disadvantaged Person", which continues to be used in the MPRDA itself.</p> <p>VII. Effective ownership" is defined under the draft Mining Charter as "the meaningful participation of black people in the ownership, voting rights, economic interest and management control of mining entities". The term has been used in clause 2.1 (ownership) of the draft Mining Charter: "[e]ffective ownership is a requisite instrument to effect meaningful integration of black people into the mainstream economy." The language of the definition of "meaningful economic participation" regarding the financing by third parties of BEE transactions should be brought into line with the language of the Codes and the concept of "net value" espoused therein.</p> <p>VIII. We submit that the phrase "BEE shall have full shareholder rights..." is unintelligible. We submit that a noun should be inserted after "BEE" in order to rectify this error. We further submit,</p>	<p>(IV) Refer to point (III) above.</p> <p>(V) Refer to point (III) above.</p> <p>(VI) The Department notes the suggestions on definition of terms and concepts and will consider same in the review process. The Charters principal object is to align with the BBBEE Act and the Dti Codes. <i>BEE compliant means 100% Black owned or 50+1</i> (Dti to advise of BEE complaint Entity).</p> <p>(VII) Dti to advise on the relationship between concept[t of net value and meaningful economic participation.</p> <p>VII The Department notes the concern on reference to "beneficiaries". It is the intention of the Charter that there must be share capital.</p>
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<p>11179</p> <p>MRK</p>		<p>however, that this word should not be 'beneficiaries' as this would lead to an untenable situation in which all BEE beneficiaries would be eligible for shareholders' rights, despite the fact that they may not be members of a company with share capital.</p> <p><b>IX.</b> The draft Mining Charter needs to be amended to include definitions of the following terms in order to promote regulatory certainty, and prevent these clauses being taken on judicial review as a result of the wide and unguided discretion given to the administrator as a result of such vague clauses:</p> <ul style="list-style-type: none"> <li>• "services" and "consumables"</li> <li>• "core and critical skills"</li> <li>• "material constraints".</li> </ul> <p><b>X.</b> It is concerning that the holder of a mining right must establish a Special Purpose Vehicle ("SPV") for each mining right held by it. This will not only be a costly exercise, but will also increase the administrative burden on empowerment partners. It is unclear whether the aforementioned requirements are applicable to the holders of prospecting rights.</p> <p><b>XI.</b> Clause 2.1 requires mining companies to "consolidate the empowerment transactions". No further explanation is given in clause 2.1 as to the reason or the meaning of this requirement.</p> <p><b>XII.</b> Clause 2.1 also requires mining companies to "align BEE transaction(s) concluded prior to the coming into operation of the amended mining charter 2010 with the reviewed mining Charter 2016". This requirement will severely impact the current BEE shareholders and their funding arrangements. We submit that the abovementioned aspects of this clause be rephrased in clearer language so as to promote regulatory certainty.</p>	<p><b>IX.</b> The Charter defines core and critical skills, The Department will consider the definitions of services and consumables. Material constraints are determinable on a case by case basis and thus difficult to define.</p> <p><b>(X)</b> The Department notes the concern regarding a SPV per Mining Rights and will reconsider the proposal. The Charter applies to certain prospecting rights as per section 17 (4) of the MPRDA.</p> <p><b>XI</b> Consolidation in terms of section 102 process.</p> <p><b>XII</b> The Charter is clear that the existing right holders are to revise their empowerment credentials to align with the new requirements within the 3 years transitional period provided.</p>
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<p>M.K.</p>		<p><b>XIII.</b> We note that the draft Mining Charter disregard the concept of "once empowered always empowered" by requiring mining companies to maintain a 26 per cent BEE shareholding at all times. This very question is the subject of court proceedings and it is inappropriate for the DMR to unilaterally dictate this matter.</p> <p><b>XIV.</b> We also note that the "continuing consequence" principle has been done away with. The "continuing consequence" principle (as it is articulated in the Original Mining Charter and the 2010 Mining Charter) deals with the question of whether empowerment transactions which were previously implemented can be relied upon for the purposes of demonstrating that a further mining right should be granted to the applicant.</p> <p><b>XV.</b> Clause 2.1 requires that the SPV must issue shares to an ESOP and the union must have representation on the Trust and SPV board. This is a key concern as not all mining operations have proper trade union representation. It is therefore unclear how smaller mining companies will comply with this ring fenced element.</p> <p><b>XVI.</b> We note that ownership is intended to extend to "workers". There is a clear negative production impact in instances of mine or workplace stoppages either as a result of instructions in terms of section 54 of the Mine Health and Safety Act, 1996 ("MHSA"), employees exercising their rights in terms of section 23 of the MHSA or in the aftermath of workplace incidents and fatalities. These have historically been supported by, or at the very least had little push back from, employees and employee representatives. This dynamic will change in the event that employees will personally feel the effects of workplace stoppages and the regulator must be in a position to address these issues.</p>	<p><b>XII</b> The Court process is note, however the Minister is not precluded from exercising regulatory functions in terms of the Act.</p> <p><b>XIV</b> The Charter proposes that right holders should be BEE compliant at all times irrespective of whether the BEE partner has existed, sold shares to non-BEE entity.</p> <p><b>XV</b> The Department notes the concern and will relook at the SPV proposals including Trust representation.</p> <p><b>XVI.</b> DMR disagrees health and safety of employees at mines remains paramount.</p>
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<p>MK</p>		<p>effect of this is that strict compliance with the draft Mining Charter in the absence of this assistance (which we propose should be provided by the applicable regulator or Government Agency) is that a scenario is created in terms of which the supplier is placed at risk of criminal sanction for failing to meet the obligations of section 21 of the MHPA and/or the supplier will not receive the necessary business from the surrounding operations on the basis that the health and safety criteria are not met, and thus small businesses will fail.</p> <p><b>XXI.</b> The definition of a "mine community" is not sufficiently clear to enable mining companies to accurately determine who they are dealing when seeking that elusive "social licence to operate". It is also not clear who would become the voice of the relevant community given that there is a hardly consensus regarding leadership in certain communities. Assuming the community (and its representatives) are sufficiently identifiable and there is meaningful consultation and engagement with the relevant community, should that result in some form of written agreement between the mining company and the community? This aspect should be clarified.</p> <p><b>XXII.</b> There are currently four policy documents that regulate housing and living conditions in the mining sector, being (i) the current Mining Charter, (ii) the Housing and Living Standards, 2009 ("H&amp;LS") (iii) SLP Guidelines and (iv) Mining Codes. Whilst, in some respects, there are consistencies between these policy documents, there are also inconsistencies. The draft Mining Charter does not cure this inconsistency.</p> <p><b>XXIII.</b> The draft Mining Charter also sets out eight elements with which a mining company is required to comply, including an element entitled "Housing and Living Conditions". A weighted scorecard accompanies the revised Mining Charter, but there is no weighting in regard to Housing and Living</p>	<p><b>XX</b> Noted (MR Mokhonoana to assist, does the MHPA apply to suppliers?).</p> <p><b>XXI</b> The definition of mine community is clear. The DMR, COGTA and the National house of traditional leaders to collaborate to iron out issues with mine communities.</p> <p><b>XXII</b> The Department will revise all the mentioned policy documents to ensure that there is alignment.</p> <p><b>XXIII</b> The Housing and living conditions element is a priority element which requires 100% compliance at all times hence the yes</p>
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<p>MK</p>		<p>Standard requirements, merely a "yes" or "no" requirement. Thus, the DMR may require strict compliance. Where measurable deliverables are not clearly set out determination on whether there has been compliance becomes purely a subjective exercise on the part of the Minister and goal posts may shift from time to time. That is not ideal in an industry severely plagued, in part, due to regulatory uncertainty.</p> <p><b>XXIV.</b> It is questionable whether Employment Equity targets are realistic and achievable considering the current economic and market circumstances facing the industry as well as the lack of properly trained and experienced candidates from a HDSA background.</p> <p><b>XXV.</b> The targets are also much higher than in any other industry. The targets in relation to black female representation are equally unrealistic particularly at the level of Engineers and technical personnel at senior level required in the Mining Industry. It would need to be accompanied by appropriately timed program.</p> <p><b>XXVI.</b> In respect of Human Resources Development ("HRD") mining companies are now required to pay 5 per cent of their annual payroll towards essential skills development. Such contribution is in addition to the existing mandatory skills levy (2 per cent of annual payroll paid in terms of the Skills Development Act, 2008). Although mining companies are obtaining rebates in relation to the mandatory skills levy it is not clear whether there will be any additional Government assistance to mining companies in respect of skills development. A more coordinated approach in the mining sector SETA regarding skills development training is required.</p> <p><b>XXVII.</b> Under the 2010 Mining Charter, white women are included within the definition of "Historically Disadvantaged South Africans" and are therefore recognized as beneficiaries for the purposes of</p>	<p>and no requirement in terms of the score card.</p> <p><b>XXIV</b> The Department of Labour to advise. The Charter has removed reference to HDSA and substituted same with Black people.</p> <p><b>XXV</b> The Department of Labour to advise.</p> <p><b>XXVI</b> The determination of rebates is a function of the Department of Finance (treasury).</p> <p><b>XXVII</b> The Department of labour to advise.</p>
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<p style="text-align: center; font-size: 2em;">MK</p>		<p>broad based black economic empowerment initiatives. This is in alignment with the provisions of the</p> <p>the Employment Equity Act, 55 of 1998 ("the EEA"). However, the draft Mining Charter excludes white women from the minimum participation thresholds. Application of the thresholds may, therefore, be in conflict with the EEA and also result in a constitutional challenge to the draft Mining Charter as it currently stands.</p> <p><b>XXVIII.</b> Employers will be required to employ 2 per cent of black employees with disabilities as a percentage of all employees. This does not however appear to consider the various regulatory obligations set out in the MHSa and the Chief Inspector of Mines' mandatory code of practice for minimum standards of fitness to perform work at a mine.</p> <p><b>XXIX.</b> In order to legally achieve these targets while not increasing any risks to health or safety of employees at mines, this will require an assessment and update to the guideline as to what positions may be held by persons with disabilities at mines, the various levels of disabilities that may be regarded as "fit to perform work" and the restrictions that should be placed on various employees who have disabilities but who may be regarded as fit for certain tasks.</p> <p><b>XXX.</b> The most concerning proposal, however, from a health and safety compliance perspective is the apparent explicit requirements that persons with core and critical skills be "fast tracked". This is directly contradictory to the requirements of the MHSa relating to competency in general and the criteria of experience in particular.</p> <p><b>XXXI.</b> Section 47 of the MPRDA grants the Minister the authority to cancel or suspend any reconnaissance permission, prospecting right, mining right, mining permit or retention permit. There is no mention of the draft Mining Charter in section 47. Thus, the ability of the Minister to enforce will need to be assessed.</p>	<p><b>XVIII</b> Mr Mokhoanana to assist.</p> <p><b>XXIX</b> Mr Mokhoanana to advise.</p> <p><b>XXX</b> Mr Mokhoanana to assist.</p> <p><b>XXXI</b> Compliance with the requirements of the Charter is a material terms and conditions of a mining right. The term "this Act" is defined to include any regulation and terms and</p>
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			conditions of a right granted in terms of the Act.
5. Black Business Council (BBC)  MK		<p>I. The Beneficiation in the current Mining Charter is very thin on details how this will unfold. It is the view of the Black Business Council that under Beneficiation the overarching goal should be clear on the ways in which the mining sector can promote sustainable development; through the following: Backward linkages: the local and/or regional purchases of different required inputs. The prospects for the production of capital goods, supplies and services needed for investments and operations (e.g., transportation services) will be enhanced through the mineral venture's demand for these inputs. Forward linkages: downstream activities, such as processing, refining and fabricating the crude ores and concentrates. Since the extracted ores often have to pass a number of transformation stages before final use, the forward linkages can be significant. Final-demand linkages: the income that employees at the mine and their households spend on goods and services in the local community or the adjacent region. For instance, an employment multiplier of 3 would imply that for every job created in the mining industry, there will be an additional two jobs created in other sectors in the region. Fiscal linkages: the tax and royalty revenues used by regional governments to develop infrastructure and/or to purchase goods and services. The benefits of infrastructure investments (e.g., roads, electricity grids etc.) will typically not only be appropriated by the mining company but will also spill over to other companies as well as to households.</p> <p>II. The revised new targets for black people, black women and black disabled employees should be set to be in line with EAP (Economically Active Population) targets, to avoid over representation; The talent pool, has to be identified and fast tracked to ensure high level operational exposure in</p>	<p>(I) Mr Menoe to assist.</p> <p>(II) DMR agrees.</p>

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<p>MKS</p>		<p>terms of career path programs. Positions occupied in Mining Companies had to demonstrate related quality of relevance and not become window dressing; and Occupied positions had to demonstrate ongoing development of candidates as managers and as executives.</p> <p>III. Maximisation of local procurement where possible by actively encouraging procurement officers to engage with local suppliers and explore opportunities offered by local markets. As part of meeting their local procurement percentage, mining companies must increase supplier development initiatives and further introduce simpler terms and conditions of payment that would accommodate the needs of small and medium enterprises. It is critical to financially empower the HDSA to enable them to have the expertise to supply capital goods. Prescription of local contents of local goods and services will avoid HDSAs being simply middlemen, but encourage production and participation in these goods and services. Support for local production of imports - Government must have explicit policies and programs to create capacity among HDSA to support local production of imported inputs. Location of decision making is crucial to procurement and the benefit of local suppliers. If decision making rests with corporate offices, which are usually far from the mine operation, then it is highly unlikely that the local procurement objectives would be realised.</p> <p>IV. the Mine Community Development aspect of the Charter must clearly state that mining companies must work with local black businesses to help them in understanding how to do business with extractives companies, including how their bidding processes work, the standards of quality and safety required, and steps to acquire international certification.</p> <p>V. Surely the South African mine community development aspect of the Mining Charter should adopt a notion of the entrepreneurial state that promotes institutional modes of coordination</p>	<p>III DMR agrees.</p> <p>IV The DMR play a contributory role in supplier development and small business development, these are however prerogatives of the Dti and Dept of small business development. The community development element in the Charter is sufficient.</p>
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		<p>between the public and private sector to shape industrial capabilities for generating and absorbing new technologies in the process of economic development.</p> <p>VI. On HRD, the BBC is proposing that MQA's skills development interventions aimed at the alleviation of skills shortages which focus mainly on the development of HDSAs. This must include Management development of HDSA and entails the development of the technical competencies required in management positions (and thus places a focus on the development of professional skills), as well as the subsequent development of managerial skills. Environmental skills - The importance of skills that will support sustainable natural resource use and environmental conservation and rehabilitation is critical. As these skills are likely to become increasingly important in the future, they need to be incorporated into the skills development priorities and interventions of the Mining Charter. Training and development of retrenched employees. The training of employees who have already been retrenched or who stand to be retrenched must be a priority aspect of the new Mining Charter. It is important to start the training for positions outside mines for the workers as early as possible before retrenchment, while the workers are still in employment. The main aim would be to provide these employees with skills for life beyond mining, which are in demand in other sectors.</p>	<p>V see point iv above.</p> <p>VI These issues are addressed in the SLP requirements and not subject of the Charter. They will be considered in detail in the SLP review process.</p>
<p>6. South African Institute of International Affairs (SAIIA)</p>		<p>I. Clause 1.(e) states that the Charter seeks to 'promote beneficiation of South Africa's mineral commodities', with beneficiation defined as per the MPRDA. This objective stands unqualified in the Draft insofar as the draft does not indicate which version of the MPRDA is relevant, and the level of downstream beneficiation to be achieved remains unspecified, both in the revised Charter and in the MPRDA. Downstream beneficiation is desirable only where it makes optimal economic</p>	<p>I. Mr Menoe to advise.</p>

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<p style="text-align: center;">MS</p>		<p>sense, and evidence suggests that it should not be viewed as a panacea for growth or employment uptake in the South African economy.</p> <p>II. Regarding ownership, it is a little-recognised fact that financial institutions, including pension funds, own the majority of mining shares, the owners of which are - in the case of state pension funds - mostly black South Africans. This is not reflected in the discussion of transformation in company ownership or the related targets.</p> <p>III. The preamble of the draft states that "interests of mineworkers and communities are typically held in nebulously defined Trusts, which constrain the flow of benefits to intended beneficiaries". However, clauses (c)-(e) of section 2.1 maintain an emphasis on trusts as a vehicle to manage the interests of empowerment beneficiaries. The draft Charter should more clearly define the specific shortcomings of trusts and provide detailed guidance on how these shortcomings may be addressed.</p> <p>IV. Section 2.1 (e) should provide more detail on exactly what kind of representation is required by specific stakeholder groups. It should be noted that the inclusion of traditional authorities in community trusts and questions around benefit sharing and decision-making power with regard to mineral resources remains controversial and has contributed to numerous conflicts.</p> <p>V. Offsetting against the particular ownership requirements is permitted through the value of beneficiation "as provided for by Section 26 of the MPRDA". However, questions around the definition and requirements related to beneficiation outlined in Section 26 of the amendments to the MPRDA (passed through the National Assembly in 2014) informed the decision by the President to send the Bill back to Parliament for further engagement. Concerns have been expressed that the MPRDA's requirements with regard to beneficiation may violate South Africa's</p>	<p>II. The funding of BEE transactions through pension funds in empowerment transactions is not meaningful and broad based ownership as envisaged in the Charter.</p> <p>III. Noted and Trust management issues to be clarified in the review process.</p> <p>IV. The definition of mine community is clear. The DMR, COGTA and the National house of traditional leaders to collaborate to iron out issues with mine communities.</p> <p>V Mr Menoe to advise.</p>
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<p>2114 MK</p>		<p>commitments under World Trade Organization regulations. Until there is clarity over this legislation and the relevant definition of beneficiation in law, it may be premature to build offset targets into the draft Charter.</p> <p><b>VI.</b> If clause 2.1 of the draft were to remain, given “strained financial circumstances, it would be profoundly damaging to those investors [existing shareholders] and to SA’s reputation as an investment destination.</p> <p><b>VII.</b> It is apparent that the requirements outlined in sections 2.1 and 2.10 calling for empowerment targets to be continually maintained may have significant negative unintended consequences, and may indeed work against the stated principle of empowering historically disadvantaged South Africans. It is therefore recommended that these requirements be revisited.</p> <p><b>VIII.</b> The draft requires that ‘a mining right holder must procure a minimum of 60% locally manufactured capital goods from BEE compliant manufacturing companies... a minimum of 70% of locally manufactured consumables from BEE compliant manufacturing companies... a minimum of 80% services from BEE compliant and locally based companies.’ It is not clear that these requirements are either economically plausible or internationally congruent with WTO regulations on trade and competition policy, to which South Africa is subject. They may also violate South Africa’s own Competition Act, one of the aims of which is to “provide for markets in which consumers have access to, and can freely select, the quality and variety of goods and services they desire”.<sup>9</sup> The draft has not built in any qualifying criteria such as whether the prescribed procurement is affordable or meets appropriate standards. It may also inadvertently lead to the exclusion of local suppliers who are not BEE-compliant but who nevertheless do employ South African workers.</p>	<p><b>VI</b> Broad based and meaningful transformation of the mining industry is a government imperative, the Charter will be reconsidered where necessary to provide requisite clarity.</p> <p><b>VII</b> Broad based and meaningful transformation of the mining industry is a government imperative, the Charter will be reconsidered where necessary to provide requisite clarity.</p> <p><b>VIII</b> Transformation is Government’s policy imperative and fall under the WTO exceptions. (Dti to further advise). The Charter provides for quality (local content) verification by the SABS.</p>
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		<p>IX. The Charter should include clear and transparent timelines for evaluation, rather than the current formulation permitting review "as and when the need arises". This will promote a more stable and predictable regulatory environment</p>	<p>IX The Department will consider prescribing the review timelines to create regulatory certainty.</p>
<p>7. SOUTH AFRICAN CHAMBER OF COMMERCE AND INDUSTRY (SACCI)</p> <p>MK</p>		<p>I. SACCI believes that the objectives of the mining charter are commendable but queries whether the beneficiation of South Africa's mineral commodities is the role of mining companies or whether it should rather be a downstream function.</p> <p>II. SACCI notes the statement that where a BEE partner or partners have exited, BEE contract has lapsed or the previous BEE partner has transferred shares to a non-BEE company the mining right holder must within the three years transitional period from the date of publication of the Charter review its empowerment credentials consistent with the amended 2016 mining Charter. SACCI queries if it is intended that only a review will be needed within 3 years, or will a new dispensation need to be implemented by then? SACCI believes that a review would be acceptable, but given the circumstances facing the industry, a new round of empowerment could place a great strain on finances and impact negatively on investment and even on continued profitability of mining companies.</p> <p>III. The new provisions will make it desirable for mining companies to structure new deals differently. An unintended consequence could be to add a dimension to the deal that ensures that those who are empowered retain that status in preference to losing it after a period. Alternatively, the sale of equity could only be to another black entity. This could result in the creation of a two-tier share market, with BEE shares being worth substantially less than standard shares, for which the market is infinitely larger. This outcome will hamstring entrepreneurs.</p>	<p>I. Mr Menoe to advise.</p> <p>II. The Charter requires a review of the existing targets within the three years transitional period. After the three years, all mining right holders (existing and new) must comply with the new dispensation.</p> <p>III. The department notes the concerns raised regarding the unintended consequences of the current proposal and will review same.</p>

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<p>M/S</p>	<p>IV. SACCI notes the provision that mining rights holders must verify local content for capital and consumer goods with the South African Bureau of Standards (SABS). SACCI questions why it should be the responsibility of the mining company to verify the content of capital and consumer goods with the SABS. It would be to the advantage of the supplier to obtain the certificate which can be provided to the mining company. Assuming more than one mine uses the same supplier, the SABS verification would have to be obtained by each mine, whereas if the supplier gets it, it would only need to be done once. This will save time, costs and red tape.</p> <p>V. SACCI queries what would happen if the facilities for the testing of mineral samples are not available in South Africa or verification from a second facility is deemed necessary, but there is not one in the country. SACCI seeks clarification on whether the Minister's written consent will be required each time this occurs, if consent would be given for a number of operations, or if it would be given once - to expire when facilities are established in South Africa.</p> <p>VI. SACCI believes that by making mining companies responsible for beneficiation it is encouraging vertical integration of the sector. SACCI recalls extensive debate that took place in the liquid fuels industry where participation of the oil companies in service stations was frowned on. SACCI proposes that the benefits and disadvantages of this provision be carefully studied before mining companies are r... It is noted that up to 11% of the 26% ownership requirement can be allocated to beneficiation. SACCI believes that instruments such as the Manufacturing Competitiveness Enhancement Fund, the Black Supplier Development Programme, Incubation Support Programme, Small Enterprise Finance Agency and National Empowerment Fund should also be tapped for support. required to undertake beneficiation.</p>	<p>IV. The Department interfaces with the mining right holder. The proposal is to place an obligation to furnish proof of verification on the Mining right holder. (DMR to consider revising wording to capture the correct intention).</p> <p>V. Ministerial consent will be granted on a case by case basis if no local facilities exist.</p> <p>VI Mr Menoe to advise.</p>
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<p>MK</p>		<p>VII. SACCI recognizes the need for women to be empowered. However, the targets must be considered in the light of the number of women who voluntarily become interested and follow careers in the mining industry. Between 650-700 women, of which 230 -300, are black are currently studying mining engineering at universities in South Africa. Careers in the sector have only relatively recently been taken up by women. SACCI believes that given the relatively small number of woman with expertise required for the achievement of the targets, be it for senior or middle management, mining companies will face challenges in meeting them.</p> <p>VIII. Regarding the employment of persons with disabilities it must recognized that there are many occupations in the industry that place severe constraints on the employment of persons with disabilities due to a number of factors, not least the dangerous nature of the operations. This will place a restriction on the available positions that can be filled by persons with disabilities.</p> <p>IX. On HRD, While the need to improve the skills levels of not only employees in the mining sector, but in the country as a whole, is an imperative, the cost of skills development must be seen in the light of the current operating environment. Added to the 1% of total payroll paid in respect of the Skills Development Levy, the additional 5% called for in the draft Charter in respect of the Ministerial Skills Development Fund makes the total contribution to skills development 6% of total payroll. The 5% can be construed as an additional tax payable, albeit for a predetermined cause. SACCI believes that cognisance must be taken of the current global situation, the decline in the commodity markets and the fall in local production. This increase in "operating costs" as commendable as it may be, could have a serious negative impact on the continued sustainability of the operations of some mines.</p>	<p>VII Department of Labour to Advise.</p> <p>VIII Mr Mokhoanana to advise.</p> <p>IX The DMR notes the concern.</p>
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MK		<p>X. On Mine Community Development, It is an imperative to improve the environment and living conditions of South Africans, be it in mining communities or elsewhere in the country. An anomalous outcome of improved conditions, however, is that the area becomes a magnet for migration of people seeking improved standards and jobs. This often results in the growth of informal settlements where living conditions are unsatisfactory. This scenario becomes a vicious circle of improvements in the environment and living conditions, migration into the area, development of informal settlements, improvements in the environment and living conditions. Such a situation is unsustainable. There is therefore a great need for local government to be involved in seeking and implementing solutions to the dilemma.</p>	<p>X The department agrees with the suggestion and supports integrated and sustainable mine community development.</p>
		<p>XI. Oh Housing and living Conditions, obviously housing subsidies are or will be part of the employment packages offered to employees. SACCI trusts that the beneficiaries will be treated by SARS in the same way as those in other organisations where similar benefits are considered taxable fringe benefits.</p>	<p>XI the Department agrees.</p>
		<p>XII. SACCI believes it will be onerous qualifying small enterprises that have a metal usage value of 1,5kg – 5kg per annum at a value of R1million to R3,8 million to comply with the procurement, employment equity and human resource development requirements if the company is not owned by black people.</p>	<p>XII. The Regulator to advise on exemption of these qualifying small enterprises.</p>
		<p>XIII. While the charter requires 100% compliance at all times and ring fences these elements, and while the mining company can provide the housing and good living environment, it cannot, and should not be required to, interfere with the private lives of employees in order to ensure that the facilities are kept in good condition.</p>	<p>XIII There Charter does not have a requirement to interfere with private lives of employees.</p>

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	<p><b>XIV.</b> SACCI notes that mining rights holders must align existing target cumulatively from the mining charter 2014 within three years to meet the revised target. SACCI queries what is meant by “cumulatively”.</p> <p><b>XV.</b> SACCI calls for all extenuating circumstances to be taken into account when compliance is considered. The sanctions provisions in the MPRDA are substantial and if applied have the potential to bring a mining company to its knees. They could also have a damaging impact on South African mining sector, and therefore on South Africa, as a desirable investment destination. South Africa desperately needs investment, and everything possible should be done to encourage it.</p> <p><b>XVI.</b> SACCI believes that the reviewing of the charter by the Minister of Mineral Resources as and when the need the need arises could lead to uncertainty in policy. One of the main deterrents to investment is policy uncertainty. Business needs to know what will take place and when. SACCI proposes that in order to improve predictability, a time frame should be defined such as every five years.</p> <p><b>XVII.</b> While the Charter shows a firm stance on an obligation of mining companies and their suppliers to cut down on debt incurred by employees and the issuing of garnishee orders, SACCI points out that neither mining companies nor their suppliers should be held responsible for debt incurred by employees.</p> <p><b>XVIII.</b> SACCI is concerned that the draft charter was published without prior consultation with stakeholders. SACCI fears that there could be a backlash from mining communities given the strong stance and vociferous demands that they be included in decisions relating to mining operations that they made in the Berea Declaration – the Declaration by the Coalition on the</p>	<p><b>XIV</b> It means progressively.</p> <p><b>XIV.</b> Clause 2.9 states that the Department shall monitor and evaluate implementation of the Charter taking into account the impact of material constraints which may result in not achieving the targets.</p> <p><b>XVI</b> The Department will consider prescribing the review timelines to create regulatory certainty.</p> <p><b>XVII.</b> The Charter does not create any obligations for mining right holder and suppliers to take up employee’s debt.</p> <p><b>XVIII</b> The Charter was gazetted to solicit public views and the Department is open to further meaningful and progressive engagements on the Charter.</p>
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		MPRDA – 26 March 2015 Berea Johannesburg. The industry can ill-afford any repercussions from communities.	
<p>8. Anglo American Mining</p> <p>MK</p>		<p>I. in respect of mining rights contained in section 2(g) of the MPRDA, it is essential that the of the Reviewed Mining Charter apply retrospectively to Existing Mining Rights with the view to withdrawing the relevant provisions from the Reviewed Mining Charter; and unequivocally and explicitly confirming in the Reviewed Mining Charter that the ownership requirements set out in paragraph 2.1 of the Reviewed Mining Charter are not applicable to Existing Mining Rights.</p> <p>II. The principle of "transformation in a sustainable manner" is also eroded by the proposals in sub-paragraphs (a) - (i) of paragraph 2.1 of the Reviewed Mining Charter which prescribe a "one-size-fits-all" empowerment structure in respect of each mining right in order to achieve the ownership target. No regard is given for the circumstances relevant of a particular mining company or its empowerment partners, or the fact that this prescribed model may in some instances constrain the extent to which the transformation objectives of the mining industry can be achieved by that mining company.</p> <p>III. The requirement of a minimum target of 26% ownership by Black People per mining right in paragraph 2.1(a) has the effect of unfairly and irrationally excluding BEE mining companies that have any level of direct or indirect participation by persons other than Black People from participating in empowerment transactions ignoring indirect participation by Black People in mining companies; and ignoring the indirect participation of Black People via pension funds and collective investment schemes.</p> <p>IV. The requirement for a guaranteed dividend flow to the empowerment partners throughout the term of the investment in order for there to be "meaningful economic participation" of</p>	<p>i. The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. The Charter derives from section 100 and cannot be said to be ultra vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section.</p> <p>ii. The Department notes the submission and will reconsider the type(s) of vehicles to be used to effect transformation. However the minimum 5 % allocation each to communities, ESOPS and</p>

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<p style="text-align: center;">MK</p>		<p>Black People in a mining company is commercially unsound and ignores the provisions of the Companies Act, which prescribe the basis upon which a company may legally and validly make distributions to its shareholders.</p> <p>V. The requirement for a minimum 5% holding by certain categories of shareholders in sub paragraph (b) of paragraph 2.1 of the Reviewed Mining Charter is unlikely to be appropriate under all circumstances and once again ignores the commercial realities and differing circumstances of both mining companies and BEE parties.</p> <p>VI. The presumption that it is always optimal and correct that empowerment partners participate in a single structure; and empowerment partners with differing interests can nevertheless always speak with a single voice will in many instances unreasonably and unfairly restrict the meaningful participation of Black People in empowerment structures.</p> <p>VII. We note that the Reviewed Mining Charter no longer provides for the continued recognition of empowerment transactions concluded prior to the promulgation of the MPRDA in calculating offsets against the ownership target, which was permitted under the Original Mining Charter and is presently permitted in the Current Mining Charter. Albeit for a prescribed period, the recognition for the conclusion of previous transactions is provided for under the DTI Codes and we can see no justifiable basis for the deletion of this provision from the Reviewed Mining Charter.</p> <p>VIII. Furthermore, we note that the Reviewed Mining Charter does not provide for the recognition of disposals by mining companies which have resulted in the transfer of a mine or an interest in a mine to HDSAs or Black People. We can see no justifiable basis for such transactions not to be recognised for purposes of an offset against the ownership target. We respectfully request that</p>	<p>Entrepreneurs will be maintained to ensure broad based and meaningful transformation of the mining industry.</p> <p>III The objective of the Charter is to achieve direct, meaningful and effective participation by Black People in the mining industry.</p> <p>IV The Charter does not require a guaranteed dividend flow to the empowerment partners but requires that whenever a dividend is due part must service the debt and the other part should serve as cash flow to BEE partners.</p> <p>V The 5% minimum is to give effect to the notion of broad based and meaningful transformation of the Industry.</p> <p>VI. The differing positions of parties will be resolved through an agreed MOI between the SPV parties which includes a dispute resolution mechanism.</p>
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this be considered by the Minister with a view to including the appropriate provisions in the Reviewed Mining Charter together with a calculation methodology to facilitate the measurement of the offset.

IX. As far as we are aware, the proposals made in paragraph 2.1 of the Reviewed Mining Charter are not supported by a Regulatory Impact Assessment which justifies and balances the need for additional and substantial cost to be incurred by mining companies in order to meet the ownership requirements, and the impact that such cost will have on the furtherance of the transformation objectives. Furthermore the proposals are not underpinned by an assessment of the long-term impact on the sustainability of mining companies or of the viability of such measures to ensure that the mining industry remains globally competitive. We believe that the category-based procurement targets in paragraph 2.2 of the Reviewed Mining Charter do not successfully drive transformation, local economic upliftment or job creation as they have been proposed in an unclear manner and seemingly without regard for their impact on the mining industry and the stakeholders who are intended to benefit from the setting thereof.

X. The targets do not recognise the development by mining companies of small businesses into sustainable high-revenue businesses, but rather promote the unsustainable rotation of suppliers. This is contrary to the national economic development aims of local industrialisation and job creation, as well as the national transformation objectives. To illustrate this point, if a mining company has developed a small business in the past, once such a business reaches a certain threshold a mining company is inadvertently prevented from continuing to support such a business because it will need to redirect its spend to a smaller business with a lower threshold. This is counter-productive and is contrary to the objective of growing black industrialists.

VII. Transformation is not an event but a process. The continued consequences in respect of empowerment transaction concluded prior to the promulgation of the MPRDA cannot be made to apply perpetually but must be appropriately timed taking into account the nature of the transactions concluded.

VIII. See point VII above.

IX. The Department has done a detailed SEIAS (a cost benefit analysis) with the support of DPME.

X. Dti to advise on supplier development (Measurement and scorecard).

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<p>MK</p>		<p>XI. We believe that the proposed targets for all categories, including the associated targets for small business and enterprise development, would be unachievable for the mining industry given, amongst other things, the limited scale of local suppliers, and are therefore irrational. If category-based targets are to be stipulated in the Reviewed Mining Charter, the targets must be reconsidered following a Regulatory Impact Assessment that takes into account the financial and economic impact thereof.</p> <p>XII. The targets for the development of "BEE compliant" enterprises and small business participation are ambiguous. For locally manufactured goods, it is not clear if 30% the above 60%" equates to 30% of all procurement or 30% of procurement from 30% of BEE compliant companies" (i.e. 18% of total procurement).</p> <p>XIII. The proposed definition of a "BEE compliant company" is also not clear. Under the DTI Codes generic scorecard, a company with a score of more than 10% (or more than 40 points equating to Level 8 or above) is deemed to be compliant with the DTI Codes. It is therefore not clear if a "BEE compliant company" is simply a company that has been verified as anywhere from a Level 1 to Level 8 Contributor in terms of the DTI Codes. If this is the intended definition, the result is a material departure from the requirements under the procurement and enterprise development element of the Current Mining Charter that are set in relation to "BEE entities", which have been defined as entities having a minimum of 25%+1 vote of share capital directly owned by HDSAs as measured using the flow through principle. We do not believe that this will have the desired effect of contributing towards the socio-economic development of the areas in which mining companies operate.</p>	<p>XI Noted, the Department will relook into the submission.</p> <p>XII Mr Menoe to advise.</p> <p>XIII. Noted, the Department will reconsider the submission.</p>
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<p>MKS</p>		<p><b>XIV.</b> It is not clear if the definition of "locally manufactured" in respect of capital goods is meant to apply to all areas of capital expenditure. For example, would capital project expenditure to build infrastructure be recognised?</p>	<p><b>XIV No.</b></p>
		<p><b>XV.</b> The targets and metrics in paragraph 2.2 of the Reviewed Mining Charter have not been fully translated under the scorecard for the Reviewed Mining Charter for measurement purposes. For example, the scorecard does not provide for reporting of spend towards small businesses or spend reserved for enterprise development. We are concerned that the proposed imposition of targets in respect of local content for capital and consumable goods and, to some extent, services may place South Africa at risk of being in violation of its international trade law obligations.</p>	<p><b>XV</b> The Department will consider measuring all targets (small business, enterprise development etc). Transformation is Government's policy imperative and fall under the WTO exceptions. (Dti to further advise).</p>
		<p><b>XVI.</b> The proposed requirement that mining right holders utilise South African facilities for the analysis of 100% of each mineral sample (unless consent is secured from the Minister) is impractical. In many instances, global standards require samples to be tested independently in specific laboratories outside of South Africa, and it is standard practice for grading analyses to be conducted in respect of exported minerals prior to them being offloaded in a different country.</p>	<p><b>XVI</b> The Charter provides for Ministerial Consent for exemption on a case by case basis.</p>
		<p><b>XVII.</b> In relation to the proposed target regarding multinational suppliers contributing 1% of annual turnover generated from local mining companies into a Social Development Trust Fund, we are concerned that the target will unreasonably penalise locally-based multinationals, and will deter them from investing in developing manufacturing capabilities in South Africa. Additionally, the target will inevitably be factored into supplier pricing, translating to an additional cost for mining companies and, therefore, further impacting profitability and sustainability of mining companies.</p>	<p><b>XVII</b> The Department will create mechanisms to ensure that trust funds are implementable and managed within the prescripts of the law.</p>
		<p><b>XVIII.</b> The levies proposed for Social Development Trust Fund need to be considered, and the implementation thereof developed, in consultation with National Treasury to the extent that such</p>	<p><b>XVII</b> The Department will create mechanisms to ensure that trust funds are implementable and managed within the prescripts of the law.</p>

<p>MK</p>		<p>a consultation has not already taken place. Until such time as the requisite processes have been concluded and the necessary legislation passed, multinational suppliers cannot be obliged to make contributions to the proposed Social Development Trust Fund.</p> <p><b>XIX.</b> As with the Original Mining Charter and the Current Mining Charter, the Reviewed Mining Charter does not provide guidance on how Beneficiation should be quantified, and as such how this might be translated into a percentage offset.</p> <p><b>XX.</b> Similar to health and safety (which is regulated by the Mine Health and Safety Act) and environmental management (which is regulated by, amongst others, NEMA) employment equity is regulated by the Employment Equity Act. Furthermore, similar to the Mine Health and Safety Act and NEMA, non-compliance under the Employment Equity Act is subject to the levying of a severe penalty by the Department of Labour. We therefore have difficulty in understanding the need to duplicate this compliance function in the Reviewed Mining Charter and believe this to be unnecessary and irrational.</p> <p><b>XXI.</b> The proposed 1% of annual turnover target to be contributed towards local community development and labour sending areas would be unachievable for the mining industry and would further weaken the sustainability of mining operations, placing current employment levels and transformation initiatives at risk.</p> <p><b>XXII.</b> As the performance of mining companies against the commitments made in relation to community development is already monitored in SLPs, we believe that the DMR is creating an unnecessary duplication of functions in seeking to impose obligations in relation to mine community development that must also be complied with in the Reviewed Mining Charter. It would be more appropriate for the Reviewed Mining Charter to provide a framework for how</p>	<p><b>XIX</b> Mr Menoe to advise.</p> <p><b>XIX.</b> Employment Equity is not a preserve of the Department of Labour, the DMR as part of government collective has a contributory role to play in addressing the historical imbalances in the mining industry.</p> <p><b>XXI</b> The 1% will be maintained as it is a uniform percentage applying to all operations irrespective of the size and nature of the operation.</p> <p><b>XXII</b> The Department will reconsider the relationship between the SLP and the Charter as different legislative requirements to ensure alignment and removal of ambiguities.</p>
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MK		<p>mine community development can be achieved in accordance with the provisions of the SLP attached to the mining right.</p> <p><b>XXIII.</b> It is unclear whether "local community" is intended to refer to "mine community" as defined in the Reviewed Mining Charter. However, assuming that it does, this definition is not sufficiently clear to enable a mining company to determine what its obligations are under this proposal. For example, would a "local community" be the community that falls within the local municipality in which a mining company operates, or is it only that portion of a community that falls within a certain radius of the mining company's operations? We propose that this not be defined for all mining rights in the Reviewed Mining Charter, but that it be determined per mining right and included in the associated SLP.</p> <p><b>XXIV.</b> The term "labour sending areas" read together with the requirements under paragraph 2.6 of the Reviewed Mining Charter, require mining companies to contribute to developing areas within the entire Southern Africa, and not just within the borders of South Africa. This requirement would exceed what is envisaged under sections 100(2)(a) and (b) of the MPRDA and we assume that this is not the intention of Government.</p> <p><b>XXV.</b> It is unclear whether the provisions of paragraph 2.7 of the Reviewed Mining Charter are intended to replace those under the Housing Standards. It is further unclear which of these documents is to take precedence in the event of a conflict between the provisions if the provisions of the Housing Standards are intended to continue to apply.</p> <p><b>XXVI.</b> For the avoidance of doubt, our representations in respect of the proposed retrospective application of the ownership requirements under the Ownership element apply equally to any proposal to retrospectively impose the ownership requirements on existing licences or permits</p>	<p><b>XXIII</b> Noted, the Department will reconsider aligning the definitions.</p> <p><b>XXIV</b> Noted, the Department to provide a response later.</p> <p><b>XXV</b> The Department will reconcile the documents to ensure alignment.</p> <p><b>XXVI</b> The submission on thresholds is noted and The Department acknowledges the presumption against retrospective application</p>
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<p>MR</p>		<p>issued in terms of the Precious Metals Act or Diamonds Act (whichever is applicable). The thresholds applicable to the diamond industry need to be clarified as this is not immediately clear from the table on page 10 of the Reviewed Mining Charter</p> <p>XXVII. We would like to highlight certain commercial considerations relating to industries regulated by the Precious Metals Act below which make the imposition of targets of the Reviewed Mining Charter impractical and, in many instances, commercially unachievable:</p> <ul style="list-style-type: none"> <li>• the majority of the processing undertaken for third parties within the refineries in Anglo Platinum are undertaken for BEE producers without their own facilities thereby eliminating a commercial barrier;</li> <li>• the configuration of a refinery is primarily specific to the producer who commissioned it and is not all always suitable for third parties given the specialised nature of processing operations. It is therefore not always a commercially viable investment for a BEE partner</li> <li>• in many instances, as is the case for Anglo American Platinum, there is no external market for the processed product produced in the volumes produced by Anglo American Platinum. The vast majority is processed for the Anglo American Group and its joint venture partners;</li> <li>• refineries and processing plants are capital intensive and have a low level of return, therefore empowerment ownership is not always optimal because of high capital required and low returns made on such investments; and</li> <li>• increasing energy costs make BEE investments into processing assets on a stand-alone basis unattractive.</li> </ul>	<p>of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect.</p> <p>XXVI Noted, the submission to be discussed with the SADPMR.</p>
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		<p><b>XXVIII.</b> Section 100 of the MPRDA does not authorise the Minister to extend the scope of sections 47, 93, 98 or 99 of the MPRDA as the Reviewed Mining Charter seeks to do. Furthermore, the provisions of the MPRDA do not empower the Minister to revisit his decision to grant a mining right with a view to suspending, revoking, cancelling or terminating it on the basis of non-compliance with the provisions of the Reviewed Mining Charter.</p> <p><b>XXIX.</b> We note that the Reviewed Mining Charter contains very little guidance in paragraph 2.9 as to the methodologies to be applied by mining companies when determining their performance against the targets in the Reviewed Mining Charter for the purpose of reporting on this to the DMR We would welcome a discussion with the DMR to develop such methodologies once the concerns we have raised in our Submission have been considered.</p>	<p><b>XXVII</b> Compliance with the requirements of the Charter is a material terms and conditions of a mining right. The term "this Act "is defined to include any regulation and terms and conditions of a right granted in terms of the Act. The powers to amend the Charter is implied from the powers conferred on the Minister in terms of section 100 (2) (a) to develop the Charter.</p> <p><b>XXIX</b> The submission is noted, the Department will consider development of a guideline.</p>
<p>9. Bulelani Mkonto</p> <p>MR</p>		<p>I. I just want to state it clear that the black community would like far more than 26%. Black people are approximately 89% of the population, Coloureds, Indians and Whites sharing the remaining 11%. That means that should be the percentage you should make amendments in proportion to. 26% is an insult to our democracy- because democracy means the majority shall rule, however your Department of Mineral Resources, is counter-revolutionary.</p> <p>II. Your department should learn alot from the SABC....we want 90% across the board. That mean in terms of ownership, skills development, enterprise development, black representation at executive level and black representation on all boards (directorship), organisations, charters and councils.</p> <p>III. I wish our concerns will be considered by you! We demand 90% and not 26%. Thank you for being conscious driven.</p>	<p>I. The suggested 26% is a minimum, there is nothing that precludes a mining company from going beyond this minimum target. The Department is open to alternative proposals to help drive meaningful, broad based Black Economic transformation.</p> <p>II. See point I above.</p> <p>III. See point I above.</p>

<p>10. AFRISAM</p> <p style="text-align: right; font-size: 2em; font-weight: bold;">MK</p> <p style="text-align: right; font-size: 2em; font-weight: bold;">1030</p>	<p>I. AfriSam recommends that the Ownership element be reserved until judgment has been reached on the Declaratory Order (on the "once empowered, always empowered" issue). It seems likely that companies will lock-in BEE partners for the life of mine to safeguard the 26% and (which in AfriSam's view goes against equity and empowerment). In AfriSam's view, new acquisitions should retain the 26% ownership requirement. AfriSam requires clarity on what the implications will be if the BEE partner in question exits prior to the end of a particular assessment period, and cannot be replaced prior to the end of that assessment period.</p> <p>II. The creation of trusts provisions, in AfriSam's view, create an additional administrative burden on the mining right holder in respect of the registration and administration of the trusts to be created and may also lead to additional costs. Who will be responsible for the administration of the Trusts (that is, the SPV or the mining right holder)?</p> <p>III. In AfriSam's view, the empowerment transaction should only be at Group level. In AfriSam's view, Ownership ought to be consolidated at Group level, as opposed to "per mining right". This will avoid the unbundling and the resultant different ownership structures.</p> <p>IV. AfriSam requires clarity on "consolidation." Does this mean the consolidation of all transactions at Group level?</p> <p>V. AfriSam requires clarity on the status of the Public Investment Corporation SOC Limited (representing the interest of the Government Employees Fund) as a major shareholder having regard to its status as a BEE Facilitator in terms of the B-BBEE Act.</p> <p>VI. BEE transactions are in our view rather complex (especially where third party financing is required) and finalising such transactions within 3 (three) years seems in our view not be practical.</p>	<p>I. The Department acknowledges the court case but the Minister is not precluded from exercising regulatory powers as conferred by the legislature. The BEE transactions should be structured in such a manner that exit and entry of BEE partners occurs simultaneously.</p> <p>II. The trusts will be created and registered by the Trustees of the respective empowered BEE partners. The concern regarding the costs and administrative burden will be carried by the trust.</p> <p>III. The concern is noted and the Department must formulate a position (Mr Mabuza).</p> <p>IV Yes.</p> <p>V The Dti to advise.</p> <p>VI the Department disagrees, the 3 years transitional period is sufficient.</p>
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		<p><b>VII.</b> On capital goods, the requirement for 30% reservation for SME's and a further 10% for ED is onerous on AfriSam, due to the type of capital goods purchased by AfriSam. Most are engineering equipment manufactured to specifications or imported.</p> <p><b>VIII.</b> On consumables, The requirement for 30% reservation for SME's and a further 10% for ED will be very onerous upon AfriSam.</p> <p><b>IX.</b> What form of local content verification would be acceptable and how is this proof to be submitted, and will a supplier's statement of SABS compliance of its products be adequate?</p> <p><b>X.</b> AfriSam does not support the Multinational supplier contribution of 1% turnover and instead propose 1% Net Profit after Tax (NPAT) as per the previous Charter.</p> <p><b>XI.</b> AfriSam will require clarity on the tracking Social development Trust Fund. That is, will the DMR track this requirement, or will the onus be on AfriSam to advise the DMR? AfriSam notes further that the Trust Fund has not been set up by the DMR to date. Further, if no trust fund is set up, can companies create a fund and utilise the money for SED?</p> <p><b>XII.</b> It would be preferable for DMR to develop guidelines on how the off-setting of 11% of the shares towards beneficiation will be calculated and measured. For example, will the DMR requirements/calculation for beneficiation be the same or different than the royalty tax calculation? It would also, in our view, be preferable for beneficiation to be calculated at a Group level (and not at the level of each mining right holder</p> <p><b>XIII.</b> On Employment Equity, in relation to AfriSam's current Board position, 50% are black people and 33% are black females. However, an increase of 25% in target does not, in AfriSam's view, seem realistic from an industry perspective, and it may be challenging for AfriSam to sustain this target percentage.</p>	<p><b>VII</b> The Department to consider introducing a provision for exemptions with the Ministers consent to import the requisite equipment.</p> <p><b>VIII</b> Refer to pint VII above.</p> <p><b>IX</b> The statement will not be sufficient, the Department requires a certificate of the extent of local content from the right holder as provided by the supplier.</p> <p><b>X</b> Treasury has advised that turnover is the suitable option.</p> <p><b>XI</b> The Department maintains the 1 % turn over and will develop the necessary tools (create the trust) to implement same.</p> <p><b>XII</b> Mr Menoe to advise.</p> <p><b>XIII</b> The said compliance levels are commendable, the increase of 25 percent can be progressively realised within the 3 years transitional period.</p>
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- XIV.** In relation to AfriSam's current Exco and SML position, 38% are black employees and 20% are black females. An increase of 50% in target does not, in AfriSam's view, seem realistic. In AfriSam's circumstances, the targets will be a challenge to meet, especially in this employment category due to low staff turn-over at both Exco and SML Levels. The slightest turnover of black employees in this level will have a huge negative impact (for example, YTD AfriSam has had a 3% turnover in black employees in the SML and this has resulted in a major drop with regards to representation). The targets are especially challenging due to the industry in which AfriSam operates being in decline (which makes it especially difficult to attract and retain black female employees). The inclusion of provincial EAP targets will be another challenge to AfriSam, as we operate in different provinces, and the use of national EAP targets may make it even more difficult for AfriSam to achieve these targets. In particular, attracting engineers to the industry in which AfriSam operates is challenging due to the competition for these scarce resources.
- XV.** In relation to AfriSam's current Middle Management position, 45% are black employees and 36% are black females. An increase of 88% in target does not, in AfriSam's view, seem realistic.
- XVI.** In relation to AfriSam's current Junior Management position, 58% are black employees and 16% are black females. A 120% increase in target, in AfriSam's view, does not seem realistic.
- XVII.** On Human Resources Development, the minimum target for Skills Development as contained in the revised BBBEE Codes is 6%. In our view, 6% therefore should be the target. In addition, the stated 5% in the Mining Charter, 2016 is in line with the previous Mining Charter targets. In AfriSam's view, alignment between the BBBEE Codes and the Mining Charter is important in order to ensure that companies can record their full investment into Skills Development. AfriSam is of the view that 5% of annual payroll on core and critical skills, bursaries and learnerships. AfriSam

**XIV** refer to point XIII above.

**XV** refer to point XIV above.

**XVI** refer to point XIV above.

**XVII** To confirm with Dti whether their 6% includes or excludes the mandatory 1% Skills levy. The concern about the 15% percent of the 5 percent is noted.

		<p>does not, however, support the 15% stipulated as it is an addition to the 1% skills levy that is already paid to the National Skills Fund. In effect, only 0.25% annual payroll will go towards up-skilling of employees.</p> <p><b>XVIII.</b> On Mine Community development, AfriSam will require clarity on whether this requirement is per mining operation. AfriSam is of the view that this requirement ought to be assessed on a corporate level and be allocated (perhaps based on revenue), to each mining operation.</p> <p><b>XIX.</b> On Housing and Living Conditions, the affordability aspect in relation to AfriSam subsidising its employees' purchase of houses is a concern. In addition, AfriSam is not in support of the suggestion in relation to guarantees.</p>	<p><b>XVIII</b> The suggestion is noted, the Department to formulate a position.</p> <p><b>XIX</b> The Department disagrees.</p>
<p><b>11. Association of Black Securities and Investment Professionals (ABSIP)</b></p>	<p>General, Ownership, Reporting</p>	<p>i. To place more emphasis on BBBEE (rather than BEE alone) we believe that additional incentives or credits should be given to broad based employee, broad based community schemes and the percentage of Black peoples' proportionate share held via retirement funds. Mining companies should be encouraged to look through retirement funds ultimate beneficiaries for BBBEE ownership. Black People and Black Women are slowly holding a greater proportion of retirement funds assets. This will in the longer term contribute to a significant reduction in the inequality gap in South Africa.</p> <p>ii. ESOP's and Community Trusts must be represented by fiercely independent fiduciaries that will look after the interests of a broad base Black People who are the intended beneficiaries.</p> <p>iii. The mining charter should also place explicit obligations on mining companies and its suppliers on reducing the amount of emolument attachment orders ("garnishee orders") of its employees and contract workers that may have been obtained by less than acceptable ethical practices.</p>	<p>i. The Department does not regard Black people's participation in the retirement funds as meaningful transformation within the Charter context.</p> <p>(ii) The Department agrees.</p> <p>(iii) The Department would support interventions by mining companies and their supplier to assist their debt trapped</p>

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		<p>iv. Every mining company must report its level of compliance with the Mining Charter annually, as provided for by Section 28(2) (c) of the MPRDA. However in addition to this requirement, this report must be made publically available on the company's website and easily available within six months of the relevant reporting period and verified by a Sanas approved verification agency. Reporting should disclose the detail progress on each element of the Mining Charter.</p>	<p>employees, however this cannot be prescribed in the Charter.</p> <p>(iv) The Department notes the suggested proposals.</p>
<p>12. Centre for Applied Legal Studies (CALs)</p> <p>MLK</p>	<p>General, Mine Community Development, Procurement, Employment Equity</p>	<p>I. Opportunities for public participation in the draft Reviewed Mining Charter appear to have been less than adequate. First, the Department of Mineral Resources (the DMR), when it published the draft Reviewed Mining Charter on Friday 15 April 2016 in the Government Gazette, did not upload the bill on the website. As a result the bill was inaccessible to much of the public who do not enjoy ready access to a government gazette. This is likely to disproportionately exclude mine-affected communities, workers as opposed to well-resourced groups and individuals. For many stakeholders, therefore, the month period cannot be regarded as commencing from 15 April. Further, given the significant barriers experienced by members of directly affected groups such as mine-affected communities in relation to resources, location and language, and the need for a charter to reflect their needs and priorities, it is vital that more extensive public participation be undertaken than a mere 1 month notice and comment period on a finished draft</p> <p>II. It is apparent from reading the obligations set out in the draft Reviewed Mining Charter that the interests of communities are still not accorded central priority. This is illustrated by the failure to include community development expenditure as one of the targets for which anything short of 100% compliance is non-compliance. The benefits conferred by the Charter are still not commensurate with the sacrifices they undergo in order for mining to occur. A far larger share than a portion of 5% (designated for communities and workers) should go to community development.</p>	<p>I. The Department submits that the 30 days period for public comments was sufficient and is open to further engagements on the draft Charter before it is gazetted for implementation.</p> <p>II. The communities are allocated stake in the ring fenced ownership element as part of the comprehensive benefits including the 1% community development requirement. The said percentages</p>

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<p style="text-align: right; font-size: 2em; font-weight: bold;">MK</p>		<p>III. There are community calls for effective and independent grievance mechanisms for rights violations and failure to meet social obligations by mining companies and an independent capacity development fund to assist communities in accessing the economic planning, ecological and legal (etc) knowledge enabling communities to make informed decisions and participate in decision-making on an equal footing with companies.</p> <p>IV. The draft Reviewed Mining Charter, under the <i>'mine community development'</i> section provides that mining companies contribute 'a minimum of 1% of their annual turnover to towards local community development and labour sending areas. Reading the draft Charter does not yield certainty as to whether this 1% is to constitute SLP expenditure or is required over and above SLP expenditure. If the former interpretation is correct, the use of actual (as opposed to projected) turnover is problematic as lower than projected turnover could result in SLP expenditure being revised downwards.</p> <p>V. There is no reference at all to SLPs in the draft reviewed mining charter. We therefore call for the clarification, in legislation and policy, of the respective roles of the Charter and SLP systems and for their alignment.</p> <p>VI. In CALS' preliminary research on the implementation of the SLP system, a persistent theme echoed across a variety of role players in community organisations, local government and in the mining sector is of a lack of effective communication and co-ordination. The draft Reviewed Mining Charter does not indicate the mechanisms for co-ordination or provide guidance on how this should be achieved. In this regard, the development of a new Charter represents a missed opportunity.</p> <p>VII. The Charter does not recognise the need to compensate for environmental losses as a result of mining. The lack of attention to environmental justice is also reinforced by the removal of sustainable development from the objectives of the Charter.</p>	<p>are just minimums and a mining operation is not precluded from going beyond the stated minimum percentages.</p> <p>III. Communities are welcome to approach the Department for assistance with the challenges regarding mining operations.</p> <p>IV. The Department will consider reconciling the Charter and SLP to remove any ambiguities. The 1% is intended to create certainty and the Department supports actual expenditure.</p> <p>V. The Department will consider reconciling the Charter and SLP to remove any ambiguities.</p> <p>VI. Refer to point V above.</p> <p>VII Compensation is regulated in terms of section 54 of the MPRDA read with NEMA and MHSA. The Department will consider</p>
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	<p><b>VIII.</b> We welcome what appears to be a new requirement that the procurement targets for capital goods and consumables must be manufactured in South Africa. This is critical as if the ultimately goes offshore to purchase goods, for example from developed countries, the desired impact of stimulating domestic industrial development and job creation is largely negated. However, the effect of this is blunted by the ambiguity of the wording used which, in both cases of capital goods and consumables refers to 'a minimum of...of locally manufactured consumables from BEE compliant manufacturing companies,' If read literally, this would mean, rather than requiring a specific percentage of goods that are both procured from BEE compliant companies and are locally manufactured, that instead only those goods that are manufactured locally need to be from BEE compliant companies. To achieve what seems to be the purpose of the provision, this ambiguity should be removed</p> <p><b>IX.</b> There should be a requirement that companies, where possible, procure a proportion of goods and services from local BEE compliant companies based within the area surrounding the mine or the municipality and for companies to report on this.</p> <p><b>X.</b> Our concerns regarding the Social Development Trust Fund (SDTF) are that provisions do not indicate how spending will be directed to communities. Furthermore communities are excluded from list of stakeholders who must be trustees. We suggest that multinationals should be required to contribute to the SLPs of the mines they supply, 'through a transparent, ring-fenced allocation of funds.'</p> <p><b>XI.</b> It is important that the charter regulates the composition of the board of trustees for the community trusts. However, by only requiring traditional leadership to serve as community representatives on the board, the effect is to entrench the power of traditional leaders and undermine the self-determination of members of traditional communities. There is a pattern of community members alleging that traditional authorities are usurping the community share for their own benefit. It is</p>	<p>reinstating the sustainable development element.</p> <p><b>Viii.</b> The concern is noted, the Department will reconsider the wording used.</p> <p><b>IX</b> The Department disagrees.</p> <p><b>X</b> The Department will consider broadening the scope of representation in the Trusts to include communities. Management of trust moneys will be governed by the trust instrument.</p> <p><b>XI</b> Refer to point X above.</p>
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<p style="text-align: center;">MK</p>		<p>therefore critical that democratically elected community organisations should also be accorded a right to be represented on the board. It is critical that communities are able to choose their representatives.</p> <p><b>XII.</b> The draft Reviewed Mining Charter represents an improvement in that there are gender specific targets (for black women) representation at various levels of the company. It is not clear whether the targets refer to the percentages of the share of the positions to be held by black people or a percentage of all positions. If the former is the case, these targets are very low. For example, the draft Reviewed Mining Charter provides for a minimum of 50% Black executive directors, '25% of which must be black female.' The literal meaning of this would be that 25% of 50% of executive directors are to be black women, i.e. 12.5%. This would be a very low target. The other interpretation would be 25% of directors would be black women.</p> <p><b>XIII.</b> The Amended Charter still fails to respond to the manner in which the externalised costs of mining fall predominantly on women. These costs include the loss of economic autonomy, where many women in rural areas lose access to arable land. Where agriculture is replaced by mining, relatively few women, in practice, are employed on the new mines with the result that the economic marginalisation of women is exacerbated.</p> <p><b>XIV.</b> Further the Charter does not address barriers to the advancement of women in the workplace. It does not provide for measures to address harassment and gender-based violence on mines. It does not set a deadline for all mines to have equipment for women, separate bathrooms and sanitation needs for women. It does not require a timeframe for on-site childcare facilities for parents working on the mine.</p>	<p><b>XII</b> The submission is noted, the Department will rework the wording and percentages used.</p> <p><b>XIII.</b> The MPRDA provides for compensation in terms of section 54.</p> <p><b>XIV</b> This is addressed in the Mine Health and Safety Act, 1996.</p>
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<p>13. GOLD ONE GROUP LIMITED</p> <p>MK</p>	<p>General</p>	<p>The Draft Mining Charter 2016:-</p> <ol style="list-style-type: none"> <li>I. is a nullity in law,</li> <li>II. Retrospective in its application, therefore a violation of the rule of law and the principle of legality, thus violating section of the Constitution.</li> <li>III. An arbitrary deprivation of property, thus violating section 25(1) of the Constitution.</li> <li>IV. Prescriptive regulatory instruments unjustifiably interfering with commercial agreements.</li> <li>V. Impacts negatively on foreign direct investments thereby negating some of the objects of the MPRDA.</li> </ol>	<ol style="list-style-type: none"> <li>(i) The Department does not agree, the Charter derives from section 100(2) of the MPRDA and gives effect to its objects in section 1 and the requirements of section 23.</li> <li>(ii) The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. The Charter derives from section 100 and cannot be said to be ultra vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act.</li> <li>(iii) See point ii above.</li> <li>(iv) See point ii above.</li> <li>(v) See point ii above.</li> </ol>
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<p>14. South Africa China Economy and Trade Association (SACETA).</p> <p><i>MK</i></p>	<p>General, Transitional period, Procurement, Ownership,</p>	<ol style="list-style-type: none"> <li>I. The Charter gives the Minister broad a discretion to amend it as and when the need arises, it would be preferable if the requirements of the charter were to be incorporated in the principal Act and thus only amendable through the normal legislative process.</li> <li>II. The three year transitional period is inadequate.</li> <li>III. We are happy to comply with the procurement provisions provided that there are sufficient local companies to procure from, in the absence of such companies we recommend that exemption be granted to companies to source good offshore.</li> <li>IV. Instead of the requirement of 1% on Multinational Companies we suggest that mining companies be offered tax incentives to procure locally.</li> <li>V. The 1% levy on turnover is unaffordable in the current investment climate.</li> <li>VI. The charter must impose an obligation on BEE entities to only exit empowerment transactions by selling to other BEE entities.</li> <li>VII. The requirement of an empowerment transaction per mining right is impractical, in that a company with 10 mining rights would have to enter into 10 empowerment transactions.</li> <li>VIII. It gives rise to difficulties to force BEE parties (communities, workers and entrepreneurs) into one SPV.</li> <li>IX. The Draft Charter is retrospective and thus unconstitutional for violating the rule of law.</li> </ol>	<ol style="list-style-type: none"> <li>I. The Department does not agree, the Charter derives from section 100(2) of the MPRDA and gives effect to its objects in section 1 and the requirements of section 23. The Department will consider prescribing the review timelines to create regulatory certainty.</li> <li>II. The Department disagrees, the 3year period is sufficient to allow for progressive/cumulative transition into the new dispensation.</li> <li>III. The Department will consider providing room for exemptions with prior written consent of the Minister.</li> <li>IV. The determination of tax incentives is competency of National Treasury. The Department will keep the 1% from Multinationals and create the</li> </ol>
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<p>MMK</p>			<p>requisite mechanisms for implementation.</p> <p>V. The Department notes the submission. Clause 2.9 of the Charter addresses this challenge.</p> <p>VI. The Department notes the submission and will address it in the review exercise.</p> <p>VII. The Department notes the submission and will address it in the review proposals.</p> <p>VIII. See note VII above.</p> <p>IX. The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. The Charter derives from section 100 and cannot be said to be ultra</p>
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			vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act.
<p><b>15. Institute of Race Relations (IRR)</b></p> <p><i>MR</i></p>	<p>General, Ownership, Procurement, Employment Equity, Human Resource Development, Mine Community Development, Housing and Living Standards, Scorecard</p>	<p>I. The use of the concept "Black People" also contrary to Section 9 of the Bill of Rights, which bars any form of racial discrimination by either the state or private persons.</p> <p>II. When BEE investors 'exit' an ownership deal, a mining company must do whatever additional deals might be needed to keep BEE ownership at 26% overall (and at 5% for each of the three categories of BEE beneficiaries identified in the draft charter). These obligations will require mining companies to keep diverting scarce capital into ever more ownership deals, which in turn will inhibit the sustainability and development of many mines.</p> <p>III. Requirements to set up and establish trusts for employee and community stakes in particular ways will add to compliance costs, both direct and indirect. Having to establish an SPV for each BEE transaction will also be complex and costly, and will have major tax implications which seem not to have been considered. Already, the financing of a BEE deal costs some 30% of the total amount, and the additional complexity required under the draft charter is likely to add significantly to these costs.</p> <p>IV. Particularly damaging is the demand that all mining rights holders should re-do all the BEE ownership deals they have already concluded so as to bring them into line with the new requirements. Retrospective rule-making of this kind is contrary to the rule of law. Yet the Constitution stresses the 'supremacy' of the rule of law and makes it clear that it cannot simply be ignored.</p>	<p>I. Section 9 (2) allows for positive discrimination meant to redress the past imbalanced. The objects of the Charter are to give effect to this provisions.</p> <p>II. The Department disagrees, the intention is for mining companies to have 26% BEE transaction in place for the life of the mine. If a BEE partner exists it must be replaced with another BEE partner or if it sells it must sell to another BEE partner or to the Empowering Company.</p> <p>III. The Department will reconsider the proposed SPV model taking into account alternative models. Trusts will also be reconsidered in</p>

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<p>MMK</p>		<p>V. Many of the draft charter's provisions in this sphere are also vague and difficult to interpret. This further contradicts the rule of law, which requires that laws and regulations be certain and precise. What does the draft charter mean, for instance, when it says that mining rights holders must 'consolidate the empowerment transactions' (see Clause 2.1(i))? And what does it mean when it states that 'the mining rights holder must...review its empowerment credentials', in the final paragraph of Clause 2.1? The wording of the draft charter provides no clear answer.</p> <p>VI. On procurement, the increase from 40% to 60% for capital goods is a major shift, which may not be realistic and could add significantly to input costs, as many local manufacturers are less competitive than global ones. The expectation that 30% of this 60% should come from small businesses is particularly unreasonable.</p> <p>VII. The DMR should be wary of imposing additional financial burdens on multinational companies with a wide range of faster-growing countries in which to operate. The international trade law implications of the provision imposing a 1% levy on turnover of multinational companies generated from South African mining companies are significant and seem to have been overlooked.</p> <p>VIII. The targets on the Employment Equity element, like the Employment Equity Act of 1998 (the EE Act) on which they are based, assume that, because black South Africans make up 77% of the economically active population (EAP), they should make up 77% of executive, senior, and middle managers too. But the EAP includes all those between the ages of 15 and 64 who either work or wish to be employed. Given the youthfulness of the black population – more than half of black people are under the age of 25 – the EAP includes many black teenagers who have never obtained a matric or worked at any job at all.</p>	<p>line with the trust Report commissioned by the Dti.</p> <p>IV. The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect.</p> <p>V. The current wording of the Charter will be refined to provide clarity.</p> <p>VI. The Department will maintain the current percentages/targets. Consideration will be given to provide for exemptions with Ministerial consent in respect of Capital goods imports. The Charter also provides for supplier</p>
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<p>MK</p>		<p>By contrast, executive, senior, and middle managers must have appropriate experience and skills. In 2015, only 40% of blacks fell within the 35-64 age cohort that might be considered eligible for such management posts. In addition, though degrees or diplomas are often necessary or advisable for such jobs, only 5% of the black population then held any kind of tertiary qualification. This means that the pool of black people from which such managers can realistically be drawn is far smaller than the draft charter assumes.</p> <p>IX. On Core and Critical Skills, the draft charter adds that mining rights holders 'must ensure that a minimum of 40% black people are represented in the mining company's core and critical skills by diversifying their existing pools. To this end, it says, the rights holder must 'identify and fast track their existing pools', while 'the abovementioned fast tracking of pools must be a proportional representation of the workforce'. These requirements, particularly the last one, are so badly phrased as to be virtually unintelligible.</p> <p>X. On Human resource development, the draft charter requires the mining industry to 'invest 5% of annual payroll' in essential skills development activities, 'such as artisanal, bursaries, literacy and numeracy' (sic). It indicates that this allocation must be 'reflective of the proportional representation' (sic). Again, this provision is poorly drafted and difficult to understand. Mining companies should have the choice of spending the full amount of the levy on in-house training, or support for academic institutions, both of which are likely to be more effective in meeting their training needs.</p> <p>XI. The target of 1% on turnover for mine community development should be based on net profit after tax, rather than on annual turnover.</p>	<p>development by the mining right holder.</p> <p>VII. The Department disagrees the 1% requirement from Multinational suppliers to be retained and implementation tools provided.</p> <p>VIII. The Department of Labour to assist with verification of the figures.</p> <p>IX. The wording of the Draft Charter will be refined to provide clarity.</p> <p>X The Department disagrees the requirements of tis element are clear and will be maintained.</p> <p>XI Treasury has advised that turnover is the appropriate text to use in this instance.</p>
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<p>MK</p>		<p><b>XII.</b> The draft charter fails to recognise the difficulties that mining companies may have, in practice, in helping to provide employee housing where the necessary land or infrastructure has not been made available by municipalities or other organs of state.</p> <p><b>XIII.</b> It is unreasonable to expect companies to maintain 100% compliance with costly housing and skills development obligations during periods of limited or no profitability.</p> <p><b>XIV.</b> Given the magnitude of the increases in many of the targets, a three-year transitional period is far too short.</p> <p><b>XV.</b> The scorecard provided in the draft charter is also intrinsically vague. Though each target is supposedly now to be weighted, and each mining right holder will earn a score between 0 and 100, the scorecard does not set out the points attainable on each element. Thus, though it identifies 26% as the 'minimum target for HDSA (sic) ownership', it does not say how many points mining companies will score for meeting this target. Likewise, it sets out the targets for procurement on capital goods, consumables and services, but it does not say how many points will be available for full (or partial?) compliance with this element. This makes it impossible to determine how points will be allocated, which in turn makes it impossible for scores to be computed.</p>	<p><b>XII</b> The Department supports integrated development (co-operation with local government and municipalities) and its doors remain open at all times to address challenges experienced by mining operations in delivering on their transformation commitments.</p> <p><b>XIII</b> Clause 2.9 states that the Department shall monitor and evaluate implementation of the Charter taking into account the impact of material constraints which may result in not achieving the targets.</p> <p><b>XIV</b> The Department disagrees the proposed 3 years transitional period is sufficient for progressive realisation of the charter targets.</p> <p><b>XV</b> The Draft scorecard will be revised to address the identified loopholes. (Mr Menoe to assist).</p>
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<p><b>16. Thabacheu Mining</b></p>	<p>General, Ownership, Employment Equity, Beneficiation, Human Resource Development, Mine Community Development, Housing and Living Conditions.</p>	<p>I. Companies which have sold shares to BEE partners, mostly at a discount, which have been traded afterwards cannot be held non-compliant if they do not sell further shares to other BEE partners.</p> <p>II. It seems that the charter does not cater for small mining operations.</p> <p>III. Some small scale mining operations have no workers but rather contractors.</p> <p>IV. The elements should be linked to the company owning the mining rights/s rather than linking them to an operation.</p> <p>V. The revised employment equity targets will be difficult to meet as the skills pool is limited.</p> <p>VI. Unions should not necessarily represent workers in the SPV, as there could be better qualified workers to undertake this task.</p> <p>VII. The methodology of the offsets of beneficiation are not clear.</p> <p>VIII. The requirement of an empowerment transaction per mining right is burdensome. In our company there are 4 mining rights, therefore we must set up 8 trusts (4 for the workers and another 4 for the community), did the Minister check that the CIPC can handle the administration.</p> <p>IX. The rules on procurement are complicated, cumbersome and impractical. It is impossible to keep track of where what was purchased, it places a huge administrative burden on companies.</p> <p>X. SABS is not geared to certify local content.</p>	<p>I. The Department notes the submission and will consider it in the review process.</p> <p>ii. The Charter does not have a differentiated approach to operations by virtue of their size. It applies to all mining right holders without exception.</p> <p>iii. The Charter does not apply to small scale miners (Holders of mining permits in terms of section 27 of the MPRDA). Section 1 of the MPRDA defines employee to include contractors. Section 101 of the Act obliges the right holder to be responsible for contractors.</p> <p>iv. The Department disagrees, a decision to be made on whether the Charter must apply at right level or at company/holding level.</p> <p>v. The Department of labour to advise.</p>
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- XI. If mineral sampling are to be done by South African companies the ministerial approval process must be simplified.
- XII. The requirement of 50% black representation at board level is unacceptable.
- XIII. The demographics of where the mine is situated must be used.
- XIV. The 5% on turnover to be used for human resources development is simply unaffordable.
- XV. The 1% on turnover for community development is also unaffordable and a duplication since the community will have shares in the operation.
- XVI. The prescriptions on housing and living conditions are vague and unclear.
- XVII. The three year transitional period is too short.
- XVIII. The concept of ring fenced elements is disturbing since 100% compliance at all times is impossible.

- vi. Union representation is a more structured and formal forum for worker representation.
- vii. Mr Menoe to advise.
- viii. The Department disagrees, a decision to be made on whether the Charter must apply at right level or at company/holding level.
- IX The Department notes the submission and will take it into account in the review process.
- X The Department disagrees.
- XI The Ministerial approval is not required for mineral sampling locally.
- XII The Department disagrees.
- XIII The Charter makes provision for Employment Active Population (EAP) and not demographics.
- XIV The Department notes the submission. This is not a new target.
- XV 1 % represents the Companies social license to operate and should be delinked from the ownership element.

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			<p><b>XVI</b> The Department notes the submission and will revise the Housing and living Standards to ensure that there is alignment.</p> <p><b>XVII</b> the Department disagrees.</p> <p><b>XVIII</b> The Department disagrees.</p>
<p><b>17. Serudumo Sa Rona Community Based Organization (CBO)</b></p>	<p>General,</p>	<p><b>I.</b> Serodumo acting on behalf of its members wishes to exercise the right to equally voice the concerns on the draft reviewed Mining Charter. However, given the time period allocated for making submissions, it is not practical for the CBO to adequately brief its members residing in the far flung rural areas and engage meaningfully on these important issues.</p> <p><b>II.</b> We plead for a sixty (60) days extension for the "meaningful participation" to indeed take place within our communities and constituency.</p>	<p>The Charter was gazetted for a 30 days period as defined in the MPRDA to solicit public comments on same. The Department is open to further meaningful and progressive proposals on the draft Charter.</p>
<p><b>18. Zurel Bros SA</b></p> <p><i>MMK</i></p>	<p>Procurement, beneficiation</p>	<p><b>I.</b> The mining Charter provides for a mechanism for companies to offset up to 11 percentage of the 26% of the ownership reserved for black people. how this 11% can be calculated, what amount of procurement or HR development is needed?</p> <p><b>II.</b> Why does mineral beneficiation fall under the mining charter in the first place? I know the mining charter is mentioned in the Diamond Amendment Act No 29 of 2005 and the regulations, as well as the Precious Metals Act of 2005 and its regulations, but surely that is a mistake? In section 6 of the precious metals act, it even goes as far as giving the SADPMR authority to consider the application for a licence or permit if the mining charter is not met.</p>	<p><b>I.</b> The 11% offset for beneficiation relates exclusively to the ownership element and does not apply to procurement and HRD.</p> <p><b>II.</b> Mr Menoe to advise.</p>

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<p>MR</p>		<p>III. The mining charter is clearly for mines and mining, all the wording ("Mining rights holders") is set around these core operations, however mineral beneficiation is roped into it. We trying to understand why this is, is it maybe because we are working with minerals that are mined? But with that reasoning, the metal industry, motor cars etc should also fall under the mining charter as the metal used to make cars and engines come from mining, also the building industry should fall under the mining charter as the bricks and cement are a result of mining.</p> <p>IV. In our opinion, the diamond and jewellery industry should not be part of the mining charter, sure transformation must be a factor, but why can't the SADPMR not rather request a BBBEE score as a minimum requirement, example level 4 or 5 compliant? With the BBBEE score card, there is room to score points on different categories to assist the companies that score low on other categories? Also, when we are dealing with other companies and government departments, they request anyway our BBBEE certificate and don't recognise the mining charter score card. Just the other day the DTI requested our BBBEE certificate and we told them that we fall under the mining charter and we have a mining charter scorecard, they didn't accept it, we had to swear an affidavit of our BBBEE status.</p> <p>V. The mining charter talks to mining community development, housing and living conditions and it even gives mines points for beneficiating their products locally, how can this be for us (diamond and jewellery shops and factories)? Furthermore our concern is that)? It's clearly meant for mines only as how do we get those points on the scorecard, we can't beneficiate our product, it has already been beneficiated from a mine in South Africa? Most diamond and jewellery factories and shops are small businesses, but their turnover exceed the R3.8M as its costly to buy the raw product, and once sold</p>	<p>III The Charter does not apply to beneficiators but to mines who chose to beneficiate. The Department to further consult with the SADPMR regarding PART B of the draft Charter.</p> <p>IV The Department to further consult with the SADPMR regarding PART B of the draft Charter.</p> <p>V The Department to further consult with the SADPMR regarding PART B of the draft Charter.</p>
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		<p>the profit margins are low but they all add up when it comes to turnover, for example my turnover can be R4M but only approximately 20% of that was actual profit.</p> <p>VI. Our concern is that the SADPMR will enforce as the DMR requires as they are an agency of the DMR. Diamond and jewellery companies must apply and renew diamond licences and jewellery permits with the SADPMR and that is where the mining charter requirements are being checked for compliance, if we not compliant, no licence or permit and hence no more business. This is very important to our existence, the industry has already shrunk to record lows because of the availability of economically viable rough diamonds to purchase and cut in South Africa. The remaining companies really cannot survive another blow.</p>	<p>VI The Department to further consult with the SADPMR regarding PART B of the draft Charter.</p>
19. SAMBCO	Ownership	<p>I. According to the Definition of the BBBEE Act's first two Objectives:</p> <ul style="list-style-type: none"> <li>➤ The number of Historical disadvantaged people must be increased in Management, Ownership, Control of Enterprises or Co-Operatives and Productive assets.</li> <li>➤ B. Facilitating Ownerships and Management of enterprises and Productive Assets by Communities, Workers, Co-Operatives and other collective enterprises.</li> </ul> <p>At SAMBCO we believe that the Two Primary objectives of the BBBEE Act can be easily achieved in the Mining Charter through Mining and Beneficiation Co-Operatives. Co-Operatives have proven to be inclusive in Nature and can benefit a larger portion of the Nation/population taking into account the poorest of the poor.</p> <p>At SAMBCO we believe that "Meaningful Economic Participation" can only be achieved through BEE Transactions with Co-Operatives in the form of Community Co-Operative, ESOP's Co-Operatives and Workers Co-Operative, such Co-Operatives will be able to divers into Services Co-Operatives, Consumables Co-Operatives and Capital Goods Co-Operatives, Housing Co-Operatives and Health Co-Operatives.</p>	<p>I. The Department will consider alternative models to give effect to broad based and meaningful transformation of the mining industry.</p>

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	<p>According to the Mining Charter's first two Objectives:</p> <ul style="list-style-type: none"><li>➤ Promote equitable access to the Nation's Minerals resources to all the people of South Africa.</li><li>➤ Substantially and meaningfully expand opportunities for black people to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources.</li></ul> <p>At SAMBCO we have seen Mining Co-Operatives benefiting their communities in BRICS member countries like Brazil, China and India. Black people opportunities are more increased in the form of Co-Operatives through Tax Incentive, Grants and Soft Loans. SAMBCO is also partnered to a number of International and Local Educators in Mining and Beneficiation, to insure on the success of our Co-Operatives</p> <p>At SAMBCO we see ourselves as partners in the BBBEE Act as the poorest of the poor and the BBBEE Act recognizes Co-Operatives as an alternative for the poorest of the poor.</p> <p>II. We Request the Mining Charter to give a minimum of 10% ownership per Mining Right unto Co-Operatives to enable the growth of Co-Operatives or Artisanal Small-Scale Miners and a Minimum of 26% were there is no BEE partner or the Miner is struggling to find suitable BEE partners.</p> <p>III. It is requested the DMR to empower Co-Operatives with the 6 152 Abandoned Mines, We also request that the mining Dumps be given to Co-Operatives, The dumps are terrorizing communities with illegal miners or Zama-Zamas and Co-Operatives in the form of Communities, un-employed women and youths will eradicate the Zama-Zamas from the face of our economic landscape.</p>	<p>II. Refer to point I above.</p> <p>III. The suggestion is noted.</p>
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20. SADC YOUTH IN MINING	Definitions	<p>I. <b>“Broad-Based Black Economic Empowerment”</b>, we submit that sub section (b) should also specifically include the youth.</p> <p>II. <b>“Meaningful economic participation”</b>, we submit that BEE transactions shall only be acceptable and compliant if concluded with clearly identifiable partners in the form of BEE entrepreneurs, youth, workers and communities.</p> <p>III. <b>“Ministerial Skills Development Trust Fund”</b>, we submit that the Ministerial Skills Development Trust Fund shall dedicate a minimum of 40% of its expenditure to skills development for youth beneficiaries.</p> <p>IV. <b>“Social Development Trust”</b>, we submit that the Social Development Trust shall dedicate a minimum of 40% of its expenditure to enterprise and supplier development for youth beneficiaries.</p> <p>V. <b>“Youth”</b>, for the purposes of the Mining Charter shall mean South Africans between the ages of 22 and 35 years and whose racial composition shall reflect the national racial demographics of South Africa.</p>	<p>(i) The submission is noted.</p> <p>(ii) The submission is noted.</p> <p>(iii) The submission is noted.</p> <p>IV The submission is noted.</p> <p>V The age of majority is legislated. (18 to 35).</p>
	Objectives	<p>I. We submit that there should be an additional objectives of the charter as follows: (f) Facilitate mainstream participation of the youth in the mining industry to achieve sustainable development, seamless succession and value creation throughout the entire spectrum of the mining industry.</p>	The submission is noted.
	Ownership	<p>We submit that the 26% BEE ownership stake will only be acceptable and compliant if a minimum of 5% thereof is owned by a youth. Where a BEE partner or partners exit or BEE contract has lapsed, the BEE shares may only be acquired by another qualifying BEE partner to avoid non-compliance with the 26% BEE ownership target, 5% of which shall be held by youth.</p>	The submission is noted.
	Procurement	<p>We submit that:</p>	The submission is noted.

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	Beneficiation	Beneficiation should be used to create additional opportunities for the youth in downstream linkages. the department of mineral resources should adopt a policy that progressive increases local beneficiation of south african mined commodities.	The submission is noted.
	Employment equity	<p>We submit that:</p> <ul style="list-style-type: none"> <li>➤ <b>Executive Management (Board):</b> A minimum of 5% must be youth.</li> <li>➤ <b>Senior Management (EXCO):</b> A minimum of 5% must be youth.</li> <li>➤ <b>Middle Management level:</b> A minimum of 10% must be youth.</li> <li>➤ <b>Junior Management level:</b> A minimum of 20% must be youth.</li> <li>➤ <b>Core and Critical Skills:</b> Mining right holders must ensure that a minimum of 10% youth is represented in the mining company's core and critical skills by diversifying their existing pools.</li> </ul>	The submission is noted.
	Human Resources Development	We submit that 40% of all Human Resources Development target expenditure shall be dedicated to youth beneficiaries.	The submission is noted.

21. PETA Attorneys	Definitions	The term BEE Transactions should be defined.	Noted, the Department will consider defining the concept.
	Ownership	We suggest that a paragraph (h) should be added, which will include the definitions differentiating between BBBEE transactions versus an empowerment transaction.	Noted, the Department will consider defining the concepts.
	Procurement	It is suggested that the percentage which should be given to small business development, should be given to majority black owned/HDSA enterprises as opposed to merely BEE complaint.	Noted, the Department will consider the suggested proposal.
22. Mamokgethi Molopyane and Gargi Mishra Creative Voodoo Consulting & Mining Innovation	Part B: Reporting (Monitoring and Compliance)	It is our view that the MPRDA be amended to ensure that non-compliance with the provisions of both the Charter and the Act is severely penalized. Mining companies need to file compliance report annually.	This is already provided for in the MPRDA and the Charter. The MPRDA Bill which is currently before parliament proposes increased penalties linked to a percentage of annual turnover of a mining operation.
23. SEESA	Scope of Application	There is no scope of application provided to indicate which entities will be subject to this sector code. It is suggested that the Mining Sector Code should be applicable to the bigger mining companies and not your small sand washers who also have a mining license. These types of businesses will also not be able to comply with this sector code seeing as they do not have the infrastructure to sustain this scorecard and its requirements.	The Charter does not have a differentiated approach to operations by virtue of their size. It applies to all mining right holders without exception.
	General comment/suggestion	It will also be more effective if the Mining Sector fall under the DTI for verification purposes. Then accredited B-BBEE certificates can be issued under SANAS or IRBA. This will ensure that all Mining Sector Codes that are issued is done so by an accredited verification agency. This will give the B-BBEE certificate also more weight as being verified by an accredited B-BBEE verification agency. Therefore the fact that the Mining Sector is not	The suggestion is noted however the Regulator is responsible for monitoring compliance and evaluation.

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	part of DTI and that there is no accredited B-BBEE verification agencies to issue certificates creates a big problem for entities who fall under this sector code.	
Ownership Scorecard	It is suggested that the trust as part of Ownership structure must comply with the requirements as set out in the Codes of Good Practice. To ensure that the trust is managed correctly and to ensure that the trust is not circumventing any of the requirements of the B-BBEE Act.	All the trust proposals will be revisited in line with the detailed Trust Report commissioned by the Dti.
Procurement, Supplier and Enterprise Development	There is no mention of Empowering Supplier status in this scorecard. If a B-BBEE certificate is issued in terms of the Mining sector the entity will not be able to use this certificate in the sense that their clients will not be able to use it for procurement purposes. The first problem is that this is not an accredited B-BBEE certificate and secondly the Mining Entity will not be measured as an empowering supplier.	The Department interacts with mining operations not suppliers. Suppliers account to Dti. Further consultation with Dti will be done to clarify this matter.
Employment Equity	Clarification needs to be provided whether the EAP targets are going to be applicable to this element and also the calculation method needs to be provided.	The Department of labour to assist.
Housing and Living Conditions	It is suggested that there should be an alternative scorecard for Mining Entities who does not have any accommodation for workers. Like for instance in smaller mining entities whose employers have their own living arrangements and accommodation and who lives in town?	This element is a priority element and operations must endeavour to comply with all its requirements including provision of subsidies, guarantees etc.
Part B – Application of the mining charter	It is suggested that the brackets for determining whether an entity is an EME or a QSE must be amended to be in-line with the Codes of Good Practice. Below is the list of how the codes of good practice measures its entities : <ul style="list-style-type: none"> <li>➤ EME – Turnover below R10 million;</li> <li>➤ QSE – Turnover between R10 – R50 million;</li> <li>➤ Large – Turnover more than R50 million;</li> </ul>	The Department to further consult with the SADPMR.

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	Reporting (monitoring and compliance)	Clear indication should be provided as to what's the consequences if an entity does not comply with the scorecard or in the alternative not reach the set targets.	Provisions of sections 93, 47, 98 and 99 of the MPRDA will be invoked.
	Applicability of targets	Ownership, Housing and living conditions and human resources development elements are classified as ring fenced which require 100% compliance at the time.  Therefore it is suggested that there should be a provision which enable mining entities to obtain pro-rata points on these elements.	The Department disagrees with the suggestion.
MK	24. IVANPLATS The Timing of the Reviewed Mining Charter	Since the global mining industry is currently experiencing a particularly difficult time, with low commodity prices exacerbated by a global recession, an extreme shortage of capital for mining, especially for green fields mining projects, growing political uncertainty and increased production costs. We believe that potential providers of capital to the South African mining industry will be focused on the practical costs of implementing the Reviewed Mining Charter, and thus, we would suggest that the Regulator consult with the industry as to the cost of each proposed change so as to better appreciate the balance between a particular change's costs and benefits. We submit that such an approach is consistent with the Reviewed Mining Charter's goal of "sustainable transformation and growth of the mining industry". Furthermore we would wish the Minister to discuss the cost of doing business in South Africa, in the mining industry in particular, how this compares to the cost of mining in other jurisdictions and the expectations of investors, so that the Reviewed Mining Charter can incorporate those initiatives that will best incentivise new investment in the South African mining industry.	The Department has done a cost benefit analysis (SEIAS) with the support of DPME.
	The Mining Charter in relation to the B-BBEE Act and Codes	We note that the Reviewed Mining Charter explicitly deviates from the B-BBEE Act and the Codes in a number of important respects, such as the setting of employment equity targets which far exceed the targets set by the Codes, and the explicit rejection in the Reviewed Mining Charter of the so-called "once empowered, always empowered" principle, whereas the Codes allow measured entities to retain ownership credits for	Alignment process relates mostly to use of terms and concepts, the Department is allowed to deviate and set its own targets with the approval from the Minister Dtl.

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	shares sold or lost by black shareholders under normal circumstances. If the Reviewed Mining Charter could be aligned with the Codes, it would be a vast improvement on the current draft.	
Procurement	<p>The Platreef Mine which Ivanplats is constructing near Mokopane, in Limpopo Province, is not a typical, South African underground mine. The planned mechanised underground mining method necessitates the use of hi-tech equipment operated by highly skilled employees. In this context, the requirements in relation to procurement of capital goods, under section 2.2 of the Reviewed Mining Charter, will be extremely difficult to meet. A significant portion of capital goods to be procured by Ivanplats will be hi-tech, underground mining vehicles and machinery for primary development. There is no South African manufacturer of such vehicles and machinery; in fact, Ivanplats would have to import nearly all of the relevant equipment from countries such as Sweden or Australia, which are the leading countries for producing such equipment. By this Ivanplats find itself in the position that it is extremely difficult, if not impossible, for it to comply with the abovementioned provisions, simply because its ore body is different and the local, South African market is not set up to cater for highly mechanised underground mining. Furthermore, the Reviewed Mining Charter cannot be reconciled with the supply of such expensive equipment by a "small enterprise", as defined.</p> <p>Another problematic provision is the requirement that mining right holders must utilise South African based facilities for the analysis of 100% of each company's mineral samples across the value chain. In our experience, there are not enough South African-based facilities available to do this, which has resulted in unacceptable delays in decision-making and reporting.</p>	The Charter provides for Ministerial Consent for exemption on a case by case basis. The Department will consider introducing an option for exemption in relation to Capital goods.
Employment Equity	The new proposed targets in respect of employment equity, especially in relation to the proportion of black employees to be employed in junior- and middle management positions, are extremely high and will be difficult to comply with during the proposed transitional period of three years. It is suggested that either the	The Department disagrees, the proposed 3 years transitional period is sufficient in respect of both EE targets and targets for women.

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		<p>targets be changed, or the transitional period be extended until the education system is capable of catching up and fulfilling the demand.</p> <p>The target percentages of women to be employed in mining companies. Whereas the Charter previously required 10% women in mining (including in core critical mining activities), the philosophy now appears to be that black women should roughly comprise half of the total black staff complement at all levels. In our experience, there simply are not enough black female candidates to fill positions, and the shortage is more acute in respect of core critical mining. This aspect should be considered and negotiated with the industry and labour. We would suggest that the employment equity targets postulated in the Reviewed Mining Charter cannot be met within a three year transitional period and are not aligned with those of the B-BBEE Act, the Codes, and/or the National Development Plan, 2030. While it is a laudable goal that employment should broadly reflect the demographics of the country, this should, to some extent, be allowed to happen over time, and not be forced upon an industry regardless of the cost of such compliance, otherwise the net result may be fewer jobs for all in the South African mining industry.</p>	
MK	Ministerial consent provisions	<p>In a number of instances, the draft Reviewed Mining Charter contains provisions which require ministerial consent or ministerial determinations for certain actions. These include:</p> <ul style="list-style-type: none"> <li>➤ ministerial consent for consolidation of empowerment transactions (clause 2.1(i));</li> <li>➤ ministerial consent for conducting sample analyses using foreign-based facilities (clause 2.2 point (c) under the heading "Services");</li> <li>➤ Possible ministerial exemption from the requirement to invest 15% of the 5% payroll levy in the Ministerial Skills Development Fund "...in the event of having partnered and supported State owned entity (e.g. Mintek) in respect of research and development".</li> </ul>	The Department will consider development of a consent guideline to outline the process, timeframe and requirements for Ministerial consent.

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	<p>We respectfully submit that ministerial consent and determination provisions should be deleted altogether, or at least, should be amended to set out clearly the parameters for those decisions, so that everyone is clear about the rules.</p>	
<p>Specific comments on provisions</p>	<p><b>Definition of "effective ownership":</b></p> <ul style="list-style-type: none"> <li>➤ We believe that the term "meaningful participation" in the definition is vague, in that there is no objective measure for what "meaningful" participation entails. This should be clarified in order to remove vagueness and uncertainty, and to provide an objective measure for determining whether there is effective ownership. This may be achieved by linking this definition to the definition of "meaningful economic participation". Which we discuss below.</li> </ul> <p><b>Definition of "meaningful economic participation":</b> in using the words "...includes, inter alia, the following key attributes...", this definition leaves open room for introducing additional "attributes" of what meaningful economic participation entails. These additional attributes should be specifically listed and included in the definition, or the term "meaningful economic participation" should be limited to the attributes already mentioned in the definition. We are of the view that a failure to do so leads to unacceptable uncertainty about the "compliance" of empowerment transactions, and/or gives the Regulator an unacceptable level of discretion in adjudicating these transactions. This increases the scope for arbitrary decision-making and reduces transparency and investor confidence.</p> <p><b>Definition of "Ministerial Skills Development Trust Fund" read with clause 2.5:</b></p> <ul style="list-style-type: none"> <li>➤ We do not support the establishment of such a fund. Mining companies already contribute to the relevant sector education and training authorities ("SETAs"). Many SETAs are currently unable to spend their budgets and end up returning large sums of money to the national treasury. Government</li> </ul>	<p>The Department will reconsider the definition of meaningful participation by removing the word "include" and prescribing the relevant BEE partners alternatively delete the definition and prescribe the BEE partners in the substantive provisions of the Charter.</p> <p>The Department disagrees with the submission.</p>

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<p>MR</p>		<p>should look at increasing the effectiveness of the SETAs instead of imposing what is essentially a new "tax" on mining companies. Moreover, the Reviewed Mining Charter is not clear about the nature and structure of the trust, how the trustees will be elected and/or appointed, how the beneficiaries will be selected, and the manner in which the trustees are to exercise their fiduciary duties. In its current form, this provision is too vague to be enforceable and there is a risk that dishonest trustees may abuse the funds in the trust.</p> <p><b>Definition of "Social Development Trust" read with clause 2.2:</b></p> <ul style="list-style-type: none"> <li>➤ To the extent that this fund has not yet been established, we do not support its establishment, for substantially the same reasons as set out in relation to the "Ministerial Skills Development Trust Fund".</li> </ul> <p><b>Empowerment Trusts (clause 2.1(d)):</b></p> <ul style="list-style-type: none"> <li>➤ It is unclear what is meant by the requirement that these trusts must "report" to the South African Revenue Services and the Department of Mineral Resources. What level of detail and/or content would this reporting entail?</li> </ul> <p><b>The effect of traditional authority representation as referred to in clause 2.1(e):</b></p> <ul style="list-style-type: none"> <li>➤ The requirement for traditional authority representation on a community trust has the potential to be highly problematic in certain situations. Over the years, the mining industry has noticed that the involvement of traditional leadership in empowerment transactions can lead to a proliferation of internal political strife within communities. We submit that traditional representation should not be</li> </ul>	<p>The Department disagrees with the submission.</p> <p>The Department will reconsider proposals on trusts in line with the Trust Report commissioned by the Dti.</p> <p>These differences will be provided for in the MOI's which includes dispute resolution mechanisms.</p>
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a strict requirement for effective and substantial ownership change – instead, mining companies should be allowed the latitude to reach agreement with communities on terms that are acceptable to both the mining company and to the majority of members of that community.

**The meaning of the term “enterprise development” (clause 2.2):**

- The term “enterprise development” is used a few times in this clause, and it apparently has a very specific meaning, which differs from “small business development”. We respectfully submit that the Reviewed Mining Charter will benefit from a clear definition for this term.

**Verification of local content for capital and consumer goods (clause 2.2):**

- The draft Reviewed Mining Charter stipulates that “Mining right holders shall before submitting the annual mining charter report to the Department verify local content for capital and consumer goods as provided for above with the South African Bureau of Standards (SABS).” This provision seems highly impractical and/or speculative, at least for the foreseeable future, as we are not aware of any process for verifying local content of goods with the SABS.

**Multinational supplier contributions to Social Development Trust Fund (clause 2.2):**

- This provision appears rather odd, in that it places an obligation on suppliers to the mining industry, as opposed to mining companies themselves. To the extent that mining companies themselves might be expected to “enforce” compliance with this provision, it places an unfair obligation on mining companies, who are not in control of such multinational companies’ expenditure. Moreover, the provision in its current form is vague: it is not clear which entities would qualify as “multinational

The Department will reconsider the use of this term and definition thereof.

The Department to consult with SABS/Dti on this submission.

The Department will consider defining Multinationals, the Department interfaces with right holders and they have a duty to account for their suppliers.

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		<p>suppliers", what the level of supply should be before this provision becomes applicable, and how exactly the "1% of annual turnover" would be calculated.</p> <p><b>Beneficiation:</b></p> <ul style="list-style-type: none"> <li>➤ There should be clear provisions stipulating how beneficiation credits can be achieved and how many credits will be awarded for varying levels of beneficiation.</li> </ul> <p><b>Non-Compliance (Clause 2.12):</b></p> <ul style="list-style-type: none"> <li>➤ From a legal perspective, the Reviewed Mining Charter is not legally enforceable in the same way as legislation, and hence non-compliance does not automatically equate to contravention of the MPRDA. This provision should be deleted and compliance with the provisions of the MPRDA should be measured against the provisions of the MPRDA itself.</li> </ul> <p><b>Review of the Charter (Clause 2.13):</b></p> <ul style="list-style-type: none"> <li>➤ The Minister is not empowered by the MPRDA to review the Mining Charter. Furthermore, any review should be based on concurrence by all relevant stakeholders.</li> </ul>	<p>Mr Menoe to advise.</p> <p>The Charter derives from section 100 and cannot be said to be ultra vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act.</p> <p>Refer to the reply above.</p>
<p>25. Empowerdex (Pty) Ltd.</p>	<p>overarching provisions that have not been addressed in this Charter:</p>	<p>i. The clarification notice 408 of 2015 (gazette 38766) issued by the Ministry of Trade and Industry on 6th May 2015 which detailed specific procedures to develop and gazette transformation charters. In this regard, it is a requirement for the relevant industry body and its Line Ministry (the DMR in this instance) to apply to the Dti in writing for such charter, in addition to that, they must provide evidence of compliance with S12 iv of the B-BBEE Act. The Constitution and MPRDA alone do not satisfactorily address the objectives set forth in</p>	

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this document to address the process of redressing the past inequalities in the economic participation of South African citizens.

- We recommend that the Charter document in the first paragraph of the preamble make specific reference to the alignment process required of an industry charter as set out in the B-BBEE Act, the B-BBEE Codes.

II. The Charter document makes no reference to the empowering supplier provisions<sup>1</sup>, which in terms of the Codes are the ticket to trade and non-compliance with these provisions results in non-compliance of the scorecard for entities.

III. We recommend that stylistically; reference to other Acts such as the Companies Act, the B-BBEE Act, etc. especially with regards to definitions, be referenced to specific sections in those acts rather than being spelled out in the document. This is because, when the specific Acts referenced are amended for any reason, it will become necessary to amend this Charter as well, whereas, if reference is made to specific sections, then any amendments to those sections will be effective without necessitating an amendment to this Charter document.

IV. In respect of the preamble, the last paragraph on page 8 of this document seems to be defining the net value principle, if this is the case, we recommend that reference is made to Code Statement 100 of the Codes with a formula which allows measured entities to calculate the proportion of debt free equity that is allocated to black people and thus the benefit that flows to black people as a result of this.

V. This Charter will result in unbundling of some existing transactions (some new, others recently re-financed) in terms of S2.11 (transitional arrangements), i.e. existing mining right holders have a maximum of three (3) years to comply with the provisions of the charter. Have the implications of the requirement

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to align been carefully considered by the DMR, is this not going to perpetuate the theme of the ultimate beneficiaries of B-BBEE continuing to be the deal makers and funders of these transactions rather than true empowerment for the beneficiaries? The implications of the unbundling process and reorganizing BEE deals will result in increased transactions costs –with financial institutions being the main beneficiaries – and no impact on the black intended beneficiaries. Furthermore, the beneficiaries would not have access to more diversified portfolios of mine ownership, and may be limited to only one. We are aware that a company can apply to the Minister for permission to construct a consolidated transaction, however, the permission is not fait accompli.

- VI. The fronting provisions in terms of the B-BBEE Act have not been referenced in this Charter. It is a requirement of a valid Charter to refer to the Act in this instance.
- VII. In November 2015, the mining sector was afforded a temporary reprieve from the requirement to align to the Codes, the BBEE Act has a trumping effect in respect of any other law that is contradictory to the provisions of this Act. Section 3 (2) provides that in the event of any conflict between this Act and any other law in force immediately prior to the date of commencement of the Act, this Act prevails if the conflict specifically relates to a matter dealt with in this Act.
- VIII. "The exemption is intended to avoid creating uncertainty for the mining and upstream petroleum industries as to the application of the BBEE Act, the DTI Codes, the MPRDA and the Mining Charter. The classification of the mines into EMEs (small), QSEs (medium) and Generic (big), has been aligned to the National Small Business Act. The Act defines the entities in terms of sectors, number of employees and the turnover per annum. This definition proved to be ineffective and thus the Codes came up with their criteria for classifying or categorizing entities. We would recommend a process similar to that applied in Section C (or whatever the correct section is where reference is made to Diamond Act).

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<p>MR</p>	<p>Definitions</p>	<p><b>BEE Compliant Company</b></p> <ul style="list-style-type: none"> <li>➤ Whereas this Mining Charter defines a B-BBEE compliant company as one that complies with the B-BBEE Act and the Codes, a mining rights holder and/or mining entity complying with this Charter will not in terms of the Codes be deemed to have satisfied the requirements set out in the Codes as critical measurements are not accounted for in this Charter, such as the Empowering Supplier Provisions.</li> </ul> <p><b>Calendar Year</b></p> <ul style="list-style-type: none"> <li>➤ Clarity is sought in this regard to determine if reference to a calendar year in this charter relates to the measurement period of mining rights holders / mining companies? The Codes (draft verification manual) require that a measured entity's measured period be aligned to its financial year end, the Charter is therefore misaligned as some Charter participants may not complete their measurement periods on the basis of a calendar year, but rather on the basis of a financial year which may not match the calendar year. The misalignment of the period may result in increased costs of the verification and increased risk in respect of the credibility of data used to determine the scores for the mines where management accounts rather than audited financial results are used.</li> </ul> <p><b>Effective Ownership</b></p> <ul style="list-style-type: none"> <li>➤ The Codes measure and define effective ownership in terms of the provisions of Statement 100 of the Codes which specifically measures voting rights, economic interest and Realisation in the hands of black people. The Charter on the other hand falls short significantly in determining the appropriate vehicles that may be used to carry out the objectives for ownership in particular, The term 'meaningful' is used instead, with no measurement criterion linked to it.</li> </ul>	
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		<p><b>Level of management</b></p> <ul style="list-style-type: none"> <li>➤ There is reference to applying the EE Commission's Economically Active Population (EAP) Targets to the Board and Executive Management levels of the Charter Scorecard. This may prove impractical simply because of the numbers of individuals who form part of boards. If alignment is the envisaged end goal, we recommend that application of the EAPs be limited to the senior, middle and junior management levels of management rather than the board and executive management levels.</li> </ul> <p><b>Meaningful Economic Participation</b></p> <ul style="list-style-type: none"> <li>➤ This definition is difficult to measure as "meaningful" as opposed to meaningless participation by black people in the economy is not defined. The definition does not give rise to capital appreciation on assets / mining rights for participants, which is an essential measure of ownership as opposed to 'leasing'. It limits the participation of black people in the ownership of interests in the mining sector to voting rights and economic interest in the form of dividend flows and not specifically to the capital appreciation earned by black people through the servicing of any debts raised to acquire their interest. It also does not cater for the participation of black people who do not require up front funding, nor for those structures which are vendor funded with no upfront debt to the black shareholders. In essence, it is prescriptive, and may not achieve the desired outcomes.</li> </ul> <p><b>Ministerial Skills Development Trust Fund</b></p> <ul style="list-style-type: none"> <li>➤ Does this fund already exist, if yes, what are its current objectives, how is it governed? Do the Santiago principles in respect of sovereign funds apply? Is there not a risk that the establishment of such fund</li> </ul>	
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		<p>may be seen as a duplication of efforts by participants in the sector as they are already carrying out initiatives aimed specifically at improving and increasing the skills quality and levels of the labour force in the sector? Is this not an additional tax burden on the mining companies, is the National Treasury one of the key stakeholders for this fund from a governance perspective?</p> <p><b>Social Development Trust</b></p> <p>➤ Does this fund already exist, if yes, what are its current objectives, how is it governed? Do the Santiago principles in respect of sovereign funds apply? Is there not a risk that the establishment of such fund may be seen as a duplication of efforts by participants in the sector as they are already carrying out initiatives aimed specifically at improving lives of members of communities where the mines are located? Is this not an additional tax burden on the mining companies, is the National Treasury one of the key stakeholders for this fund from a governance perspective?</p>	
	Objectives	<p>It is necessary to obtain clarity as to whether the Charter's objectives are limited to the issuance of mining rights by the DMR specifically as the scorecard in the Charter, although mentioned to be aligned, still proves quite difficult to match to those issued for non-mining companies, i.e. With the absolute nature of the weightings in the mining sector scorecard, proportional achievements will not be taken into consideration, whereas the Codes allow for proportional weighting with appropriate points allocated to each of the scorecard areas. Is the DMR expecting mining companies to still produce generic codes certificates for other procurement processes with the private sector and other government agencies and departments?</p>	
	Ownership	<p>I. Alignment to the Codes has not been achieved in respect of the ownership provisions as the following critical facets of the Codes have not been addressed:</p>	

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- Sale of Assets provisions,
- Continuing consequences provisions,
- Exclusion of South African Mandated Investments from the value of the equity
- The Exclusion of Foreign operations from the value of the equity
- The consideration of equity equivalency participation for foreign multinationals
- Application of the Modified Flow Through Principle

All the above are currently viewed as allowable enhancements to the measurement of equity held in the hands of black people, however the charter makes reference to compliance with its ownership provision as the absolute attainment of 26% direct equity in the hands of black people (split between individuals, ESOPS and BBOS equally. The charter does not make provisions for the indirect provisions catered for in the Codes

II. Vehicles which may be utilised to house shares held for the economic benefit of black people other than SPV's unless it is intended to structure the SPVs to house all forms of juristic persons as allowed in terms of the companies Act. a. This Charter requires there to be an SPV for each mining right which may result in some black shareholders never realising any benefit from their participation if the particular mine to which they hold rights is not profitable for the life of the mine.

III. Consolidation of the mining rights is only permissible with the express permission of the Minister, it is quite possible for the requirement to require the participation of black people at specific mining properties to render the transactions unattractive for some investors (and even funders), as a consolidated operation of more than one operation may be more profitable than one specific property.

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Procurement,  
Supplier and  
Enterprise  
Development

- I. The Codes measure the denominator against which procurement targets are weighted in terms of the Total Measured Procurement Spend (TMPS). This Charter on the other hand only makes reference to actual spend. This is misaligned to the Codes as specific non-procurement items and items procured from foreign domiciles may be included in the value of "actual procurement" which may disadvantage the mining entities under measurement for B-BBEE performance. We recommend that in the spirit of alignment with the Codes, the principles for measurement be considered.
- II. Specific reference is made to enterprise development and its measurement, i.e. ( check the table on page 7&8 of the document). Is the charter intending on spending 10% of procurement in supplier development? The above targets, if interpreted correctly, will be taxing for the mining houses. The Mining Charter uses the word "preferably", and the question to be asked is: Does this make it is optional for mining houses to support Enterprise and Supplier development in the Reviewed Mining Charter? What is "BEE compliant Enterprise development"? This needs to be defined, to guide against ambiguous terms being used in the Charter. Additionally, this is a priority elements in terms of the Codes which needs to set out exactly how the mines should foster supplier development and enterprise development within the mining industry. These significant issues and definitions need to be adequately covered by the Charter, to fully align to the Codes.
- III. Multinational suppliers are required to contribute 1% of their annual turnover generated from local mining companies to a Social Development Trust fund to be established by the Minister of Mineral Resources.
  - Does this fund already exist, if yes, what are its current objectives, how is it governed? Do the Santiago principles in respect of sovereign funds apply?

	<ul style="list-style-type: none"> <li>➤ Is there not a risk that the establishment of such fund may be seen as a duplication of efforts by participants in the sector as they are already carrying out initiatives aimed specifically at improving lives of members of communities where the mines are located?</li> <li>➤ Is this not an additional tax burden on the mining companies, is the National Treasury one of the key stakeholders for this fund from a governance perspective?</li> </ul>	
Beneficiation	<p>1. Beneficiation is defined as the transformation of a mineral (or a combination of minerals) to a higher value product, which can either be consumed locally or exported. The term is often used interchangeably with mineral "value-addition" or "downstream beneficiation". It is necessary for the avoidance of confusion for the Charter to set out clearly the measurement principles to be applied for beneficiation. This Charter allows for the off-setting of the value/percentage achieved through beneficiation against the ownership scorecard, at a maximum of 11%. However, guidance is required in terms of the following:</p> <p>Calculation methodology based on the following possible examples in the Codes:</p> <ul style="list-style-type: none"> <li>➤ Cost of sales,</li> <li>➤ Sale of assets,</li> <li>➤ Equity equivalents</li> </ul>	
Employment Equity	<p>i. There is reference to applying the EE Commission's Economically Active Population (EAP) Targets to the Board and Executive Management levels of the Charter Scorecard. This may prove impractical simply because of the numbers of individuals who form part of boards.</p>	

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	<p>II. If alignment is the envisaged end goal, we recommend that application of the EAPs be limited to the senior, middle and junior management levels of management rather than the board and executive management levels.</p> <p>III. The core and critical skills requirements are likely better placed with the Human Resource Development provisions rather than the Employment Equity provisions.</p>	
Human Resource Development	<p>I. In the spirit of alignment with the Codes, consideration will need to be made for the following key measurement principles in respect of Human Resource Development (HRD):</p> <ul style="list-style-type: none"><li>➤ SETA regulations</li></ul> <p>Approval of Work Place Skills Plans, Annual Training Reports and Pivot Reports to track training programmes provided by mining entities</p> <ul style="list-style-type: none"><li>➤ The use of a learning programme matrix to determine the value applicable to training programmes, i.e. are internal training programmes weighted equally to external programmes?, are the administration costs of programmes (internal) weighted equally to programmes offered by SAQA accredited learning institutions?, what is deemed legitimate training expenditure? etc.</li><li>➤ Where employees are required to pay back the funds expended if they have not successfully completed a learning programme, is this still deemed to be legitimate expenditure by the company (claw-back policies?)</li><li>➤ Treatment of mandatory sectoral training- the codes do not recognise this as legitimate training expenditure?</li></ul>	



		<ul style="list-style-type: none"> <li>➤ How will the Charter treat the expenditure on non-employee individuals? The Codes allow for the 6% of expenditure to be expended on black employees, unemployed black people and black people employed by other companies.</li> </ul> <p>II. The Minister intends to establish a Ministerial Skills Development Trust fund</p> <ul style="list-style-type: none"> <li>➤ Does this fund already exist, if yes, what are its current objectives, how is it governed? Do the Santiago principles in respect of sovereign funds apply?</li> <li>➤ Is there not a risk that the establishment of such fund may be seen as a duplication of efforts by participants in the sector as they are already carrying out initiatives aimed specifically at improving appropriate skills development initiatives for employees of the mining companies?</li> <li>➤ Is this not an additional tax burden on the mining companies, is the National Treasury one of the key stakeholders for this fund from a governance perspective?</li> </ul>	
	Mine Community Development	<p>The Charter requires that mining entities spend a minimum of 1% of annual turnover on local community development. This target is quite steep in comparison to the target on socioeconomic development set out in the Codes, i.e. 1% of Net Profit after Tax. This target may prove to be unattainable for mining houses.</p> <ul style="list-style-type: none"> <li>➤ Is this not an additional tax burden on the mining companies, will the National Treasury be consulted to weigh in on the matter of deemed taxed levied on companies?</li> </ul>	
	Recognition levels	<p>Please advise on the compliance levels as level 1 is above 100%, and since there are no points for the different pillars, or bonus points, what is the relevance of the levels. If they intend using this for procurement purposes only, it should be clarified. Then also clarify how mining houses are to be measured for their suppliers other than DMR.</p>	

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	Non-compliance	What does non-compliance mean and what does it mean in relation to a level 5? If a mine has anything less than a level 5, will that be viewed as non-complaint? Will the provisions of the Charter and the MPRDA kick in, rendering the mining company in breach of the MPRDA and subject to the provisions of Section 47 read in conjunction with Section 98 and 99 of the Act?	
26. the Centre for Environmental Rights (CER)	General comments	<p>I. While we recognise that section 100(2)(b) of the mining charter provides that: "The Charter must set out, amongst others how the objects referred to in section 2(c)1, (d),2 (e),3 (f)4 and (i)5 can be achieved", we submit that the language of section 100 does not preclude the charter from dealing with other objects such as one referred to in section 2(h) – "give effect to section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic developments." This is particularly so if the object in question is on line with the stated mission of the mining charter, which is to promote transformation and give effect to section 9 of the Constitution in the context of mining.</p> <p>II. The disregard by the draft mining charter of the promotion of an environment that is not harmful to health or wellbeing, as guaranteed by section 24 of the Constitution, reflects a failure to recognise the reality of the disproportionate burden of environmental impacts borne by communities near mining operations. It is well established that the air and water pollution caused by mining results in detrimental health impacts on communities living around the mines, which are mostly black. The failure of the draft mining charter to address these disproportionate environmental and health impacts borne by communities is contrary to the requirements of section 9 (right to equality) of the Constitution, which provides that everyone in South Africa is entitled to benefit from the extraction of mineral resources; instead, the environmental and health costs are only limited to largely black communities living near and around the mine.</p>	

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	<p>III. This inequality may be addressed by introducing, through the mining charter, programmes that will promote environmental compliance. These programmes could include training of community members on public participation processes to facilitate meaningful consultation, and compulsory stakeholder forums so that communities are given an opportunity to express their environmental concerns to mining companies on a regular basis. This inequality can also be address by compulsory rehabilitation programmes to be undertaken by mining companies of historical environmental impacts caused by mining affecting communities.</p>	
Objectives	<p>I. The draft mining charter proposes to remove “promote sustainable development and growth of the mining industry” as an objective of the mining charter. We content that this removal is contrary to the vison of the mining charter which is “to facilitate sustainable transformation, growth and development of the mining industry”.</p> <p>II. Sustainable development is development that meets the needs of the present, without compromising the ability of future generations to meet their own needs<sup>6</sup>. Sustainable development is a principle that is introduced by the Constitution and more specifically when dealing with the use of natural resources (which include mineral resources). The principle was further entrenched and expanded upon in the National Environmental Management Act, 1998. The National Framework for Sustainable Development in South Africa, published by the then Department of Environmental Affairs and Tourism in July 2008, states that sustainable development is about enhancing human well-being and quality of life for all time, in particular those most affected by poverty and inequality.</p> <p>III. The preamble of the MPRDA recognises “...that minerals and petroleum are non-renewable natural resources”. Sustainable development is clearly an important principle that must not only be observed but</p>	

<p>MK</p>		<p>XI. We believe that the proposed targets for all categories, including the associated targets for small business and enterprise development, would be unachievable for the mining industry given, amongst other things, the limited scale of local suppliers, and are therefore irrational. If category-based targets are to be stipulated in the Reviewed Mining Charter, the targets must be reconsidered following a Regulatory Impact Assessment that takes into account the financial and economic impact thereof.</p> <p>XII. The targets for the development of "BEE compliant" enterprises and small business participation are ambiguous. For locally manufactured goods, it is not clear if 30% the above 60%" equates to 30% of all procurement or 30% of procurement from 30% of BEE compliant companies" (i.e. 18% of total procurement).</p> <p>XIII. The proposed definition of a "BEE compliant company" is also not clear. Under the DTI Codes generic scorecard, a company with a score of more than 10% (or more than 40 points equating to Level 8 or above) is deemed to be compliant with the DTI Codes. It is therefore not clear if a "BEE compliant company" is simply a company that has been verified as anywhere from a Level 1 to Level 8 Contributor in terms of the DTI Codes. If this is the intended definition, the result is a material departure from the requirements under the procurement and enterprise development element of the Current Mining Charter that are set in relation to "BEE entities", which have been defined as entities having a minimum of 25%+1 vote of share capital directly owned by HDSAs as measured using the flow through principle. We do not believe that this will have the desired effect of contributing towards the socio-economic development of the areas in which mining companies operate.</p>	<p>XI Noted, the Department will relook into the submission.</p> <p>XII Mr Menoe to advise.</p> <p>XIII. Noted, the Department will reconsider the submission.</p>
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<p>MKS</p>		<p><b>XIV.</b> It is not clear if the definition of "locally manufactured" in respect of capital goods is meant to apply to all areas of capital expenditure. For example, would capital project expenditure to build infrastructure be recognised?</p>	<p><b>XIV No.</b></p>
		<p><b>XV.</b> The targets and metrics in paragraph 2.2 of the Reviewed Mining Charter have not been fully translated under the scorecard for the Reviewed Mining Charter for measurement purposes. For example, the scorecard does not provide for reporting of spend towards small businesses or spend reserved for enterprise development. We are concerned that the proposed imposition of targets in respect of local content for capital and consumable goods and, to some extent, services may place South Africa at risk of being in violation of its international trade law obligations.</p>	<p><b>XV</b> The Department will consider measuring all targets (small business, enterprise development etc). Transformation is Government's policy imperative and fall under the WTO exceptions. (Dti to further advise).</p>
		<p><b>XVI.</b> The proposed requirement that mining right holders utilise South African facilities for the analysis of 100% of each mineral sample (unless consent is secured from the Minister) is impractical. In many instances, global standards require samples to be tested independently in specific laboratories outside of South Africa, and it is standard practice for grading analyses to be conducted in respect of exported minerals prior to them being offloaded in a different country.</p>	<p><b>XVI</b> The Charter provides for Ministerial Consent for exemption on a case by case basis.</p>
		<p><b>XVII.</b> In relation to the proposed target regarding multinational suppliers contributing 1% of annual turnover generated from local mining companies into a Social Development Trust Fund, we are concerned that the target will unreasonably penalise locally-based multinationals, and will deter them from investing in developing manufacturing capabilities in South Africa. Additionally, the target will inevitably be factored into supplier pricing, translating to an additional cost for mining companies and, therefore, further impacting profitability and sustainability of mining companies.</p>	<p><b>XVII</b> The Department will create mechanisms to ensure that trust funds are implementable and managed within the prescripts of the law.</p>
		<p><b>XVIII.</b> The levies proposed for Social Development Trust Fund need to be considered, and the implementation thereof developed, in consultation with National Treasury to the extent that such</p>	<p><b>XVII</b> The Department will create mechanisms to ensure that trust funds are implementable and managed within the prescripts of the law.</p>

<p>MK</p>		<p>a consultation has not already taken place. Until such time as the requisite processes have been concluded and the necessary legislation passed, multinational suppliers cannot be obliged to make contributions to the proposed Social Development Trust Fund.</p> <p><b>XIX.</b> As with the Original Mining Charter and the Current Mining Charter, the Reviewed Mining Charter does not provide guidance on how Beneficiation should be quantified, and as such how this might be translated into a percentage offset.</p> <p><b>XX.</b> Similar to health and safety (which is regulated by the Mine Health and Safety Act) and environmental management (which is regulated by, amongst others, NEMA) employment equity is regulated by the Employment Equity Act. Furthermore, similar to the Mine Health and Safety Act and NEMA, non-compliance under the Employment Equity Act is subject to the levying of a severe penalty by the Department of Labour. We therefore have difficulty in understanding the need to duplicate this compliance function in the Reviewed Mining Charter and believe this to be unnecessary and irrational.</p> <p><b>XXI.</b> The proposed 1% of annual turnover target to be contributed towards local community development and labour sending areas would be unachievable for the mining industry and would further weaken the sustainability of mining operations, placing current employment levels and transformation initiatives at risk.</p> <p><b>XXII.</b> As the performance of mining companies against the commitments made in relation to community development is already monitored in SLPs, we believe that the DMR is creating an unnecessary duplication of functions in seeking to impose obligations in relation to mine community development that must also be complied with in the Reviewed Mining Charter. It would be more appropriate for the Reviewed Mining Charter to provide a framework for how</p>	<p><b>XIX</b> Mr Menoe to advise.</p> <p><b>XIX.</b> Employment Equity is not a preserve of the Department of Labour, the DMR as part of government collective has a contributory role to play in addressing the historical imbalances in the mining industry.</p> <p><b>XXI</b> The 1% will be maintained as it is a uniform percentage applying to all operations irrespective of the size and nature of the operation.</p> <p><b>XXII</b> The Department will reconsider the relationship between the SLP and the Charter as different legislative requirements to ensure alignment and removal of ambiguities.</p>
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<p>MR</p>		<p>issued in terms of the Precious Metals Act or Diamonds Act (whichever is applicable). The thresholds applicable to the diamond industry need to be clarified as this is not immediately clear from the table on page 10 of the Reviewed Mining Charter</p> <p>XXVII. We would like to highlight certain commercial considerations relating to industries regulated by the Precious Metals Act below which make the imposition of targets of the Reviewed Mining Charter impractical and, in many instances, commercially unachievable:</p> <ul style="list-style-type: none"> <li>• the majority of the processing undertaken for third parties within the refineries in Anglo Platinum are undertaken for BEE producers without their own facilities thereby eliminating a commercial barrier;</li> <li>• the configuration of a refinery is primarily specific to the producer who commissioned it and is not all always suitable for third parties given the specialised nature of processing operations. It is therefore not always a commercially viable investment for a BEE partner</li> <li>• in many instances, as is the case for Anglo American Platinum, there is no external market for the processed product produced in the volumes produced by Anglo American Platinum. The vast majority is processed for the Anglo American Group and its joint venture partners;</li> <li>• refineries and processing plants are capital intensive and have a low level of return, therefore empowerment ownership is not always optimal because of high capital required and low returns made on such investments; and</li> <li>• increasing energy costs make BEE investments into processing assets on a stand-alone basis unattractive.</li> </ul>	<p>of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect.</p> <p>XXVI Noted, the submission to be discussed with the SADPMR.</p>
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		<p><b>XXVIII.</b> Section 100 of the MPRDA does not authorise the Minister to extend the scope of sections 47, 93, 98 or 99 of the MPRDA as the Reviewed Mining Charter seeks to do. Furthermore, the provisions of the MPRDA do not empower the Minister to revisit his decision to grant a mining right with a view to suspending, revoking, cancelling or terminating it on the basis of non-compliance with the provisions of the Reviewed Mining Charter.</p> <p><b>XXIX.</b> We note that the Reviewed Mining Charter contains very little guidance in paragraph 2.9 as to the methodologies to be applied by mining companies when determining their performance against the targets in the Reviewed Mining Charter for the purpose of reporting on this to the DMR We would welcome a discussion with the DMR to develop such methodologies once the concerns we have raised in our Submission have been considered.</p>	<p><b>XXVII</b> Compliance with the requirements of the Charter is a material terms and conditions of a mining right. The term "this Act "is defined to include any regulation and terms and conditions of a right granted in terms of the Act. The powers to amend the Charter is implied from the powers conferred on the Minister in terms of section 100 (2) (a) to develop the Charter.</p> <p><b>XXIX</b> The submission is noted, the Department will consider development of a guideline.</p>
<p>9. Bulelani Mkonto</p> <p>MR</p>		<p>I. I just want to state it clear that the black community would like far more than 26%. Black people are approximately 89% of the population, Coloureds, Indians and Whites sharing the remaining 11%. That means that should be the percentage you should make amendments in proportion to. 26% is an insult to our democracy- because democracy means the majority shall rule, however your Department of Mineral Resources, is counter-revolutionary.</p> <p>II. Your department should learn alot from the SABC....we want 90% across the board. That mean in terms of ownership, skills development, enterprise development, black representation at executive level and black representation on all boards (directorship), organisations, charters and councils.</p> <p>III. I wish our concerns will be considered by you! We demand 90% and not 26%. Thank you for being conscious driven.</p>	<p>I. The suggested 26% is a minimum, there is nothing that precludes a mining company from going beyond this minimum target. The Department is open to alternative proposals to help drive meaningful, broad based Black Economic transformation.</p> <p>II. See point I above.</p> <p>III. See point I above.</p>

<p>10. AFRISAM</p> <p>MR</p> <p>107.57</p>	<p>I. AfriSam recommends that the Ownership element be reserved until judgment has been reached on the Declaratory Order (on the "once empowered, always empowered" issue). It seems likely that companies will lock-in BEE partners for the life of mine to safeguard the 26% and (which in AfriSam's view goes against equity and empowerment). In AfriSam's view, new acquisitions should retain the 26% ownership requirement. AfriSam requires clarity on what the implications will be if the BEE partner in question exits prior to the end of a particular assessment period, and cannot be replaced prior to the end of that assessment period.</p> <p>II. The creation of trusts provisions, in AfriSam's view, create an additional administrative burden on the mining right holder in respect of the registration and administration of the trusts to be created and may also lead to additional costs. Who will be responsible for the administration of the Trusts (that is, the SPV or the mining right holder)?</p> <p>III. In AfriSam's view, the empowerment transaction should only be at Group level. In AfriSam's view, Ownership ought to be consolidated at Group level, as opposed to "per mining right". This will avoid the unbundling and the resultant different ownership structures.</p> <p>IV. AfriSam requires clarity on "consolidation." Does this mean the consolidation of all transactions at Group level?</p> <p>V. AfriSam requires clarity on the status of the Public Investment Corporation SOC Limited (representing the interest of the Government Employees Fund) as a major shareholder having regard to its status as a BEE Facilitator in terms of the B-BBEE Act.</p> <p>VI. BEE transactions are in our view rather complex (especially where third party financing is required) and finalising such transactions within 3 (three) years seems in our view not be practical.</p>	<p>I. The Department acknowledges the court case but the Minister is not precluded from exercising regulatory powers as conferred by the legislature. The BEE transactions should be structured in such a manner that exit and entry of BEE partners occurs simultaneously.</p> <p>II. The trusts will be created and registered by the Trustees of the respective empowered BEE partners. The concern regarding the costs and administrative burden will be carried by the trust.</p> <p>III. The concern is noted and the Department must formulate a position (Mr Mabuza).</p> <p>IV Yes.</p> <p>V The Dti to advise.</p> <p>VI the Department disagrees, the 3 years transitional period is sufficient.</p>
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		<p><b>VII.</b> On capital goods, the requirement for 30% reservation for SME's and a further 10% for ED is onerous on AfriSam, due to the type of capital goods purchased by AfriSam. Most are engineering equipment manufactured to specifications or imported.</p> <p><b>VIII.</b> On consumables, The requirement for 30% reservation for SME's and a further 10% for ED will be very onerous upon AfriSam.</p> <p><b>IX.</b> What form of local content verification would be acceptable and how is this proof to be submitted, and will a supplier's statement of SABS compliance of its products be adequate?</p> <p><b>X.</b> AfriSam does not support the Multinational supplier contribution of 1% turnover and instead propose 1% Net Profit after Tax (NPAT) as per the previous Charter.</p> <p><b>XI.</b> AfriSam will require clarity on the tracking Social development Trust Fund. That is, will the DMR track this requirement, or will the onus be on AfriSam to advise the DMR? AfriSam notes further that the Trust Fund has not been set up by the DMR to date. Further, if no trust fund is set up, can companies create a fund and utilise the money for SED?</p> <p><b>XII.</b> It would be preferable for DMR to develop guidelines on how the off-setting of 11% of the shares towards beneficiation will be calculated and measured. For example, will the DMR requirements/calculation for beneficiation be the same or different than the royalty tax calculation? It would also, in our view, be preferable for beneficiation to be calculated at a Group level (and not at the level of each mining right holder</p> <p><b>XIII.</b> On Employment Equity, in relation to AfriSam's current Board position, 50% are black people and 33% are black females. However, an increase of 25% in target does not, in AfriSam's view, seem realistic from an industry perspective, and it may be challenging for AfriSam to sustain this target percentage.</p>	<p><b>VII</b> The Department to consider introducing a provision for exemptions with the Ministers consent to import the requisite equipment.</p> <p><b>VIII</b> Refer to pint VII above.</p> <p><b>IX</b> The statement will not be sufficient, the Department requires a certificate of the extent of local content from the right holder as provided by the supplier.</p> <p><b>X</b> Treasury has advised that turnover is the suitable option.</p> <p><b>XI</b> The Department maintains the 1 % turn over and will develop the necessary tools (create the trust) to implement same.</p> <p><b>XII</b> Mr Menoe to advise.</p> <p><b>XIII</b> The said compliance levels are commendable, the increase of 25 percent can be progressively realised within the 3 years transitional period.</p>
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- XIV.** In relation to AfriSam's current Exco and SML position, 38% are black employees and 20% are black females. An increase of 50% in target does not, in AfriSam's view, seem realistic. In AfriSam's circumstances, the targets will be a challenge to meet, especially in this employment category due to low staff turn-over at both Exco and SML Levels. The slightest turnover of black employees in this level will have a huge negative impact (for example, YTD AfriSam has had a 3% turnover in black employees in the SML and this has resulted in a major drop with regards to representation). The targets are especially challenging due to the industry in which AfriSam operates being in decline (which makes it especially difficult to attract and retain black female employees). The inclusion of provincial EAP targets will be another challenge to AfriSam, as we operate in different provinces, and the use of national EAP targets may make it even more difficult for AfriSam to achieve these targets. In particular, attracting engineers to the industry in which AfriSam operates is challenging due to the competition for these scarce resources.
- XV.** In relation to AfriSam's current Middle Management position, 45% are black employees and 36% are black females. An increase of 88% in target does not, in AfriSam's view, seem realistic.
- XVI.** In relation to AfriSam's current Junior Management position, 58% are black employees and 16% are black females. A 120% increase in target, in AfriSam's view, does not seem realistic.
- XVII.** On Human Resources Development, the minimum target for Skills Development as contained in the revised BBBEE Codes is 6%. In our view, 6% therefore should be the target. In addition, the stated 5% in the Mining Charter, 2016 is in line with the previous Mining Charter targets. In AfriSam's view, alignment between the BBBEE Codes and the Mining Charter is important in order to ensure that companies can record their full investment into Skills Development. AfriSam is of the view that 5% of annual payroll on core and critical skills, bursaries and learnerships. AfriSam

**XIV** refer to point XIII above.

**XV** refer to point XIV above.

**XVI** refer to point XIV above.

**XVII** To confirm with Dti whether their 6% includes or excludes the mandatory 1% Skills levy. The concern about the 15% percent of the 5 percent is noted.

		<p>does not, however, support the 15% stipulated as it is an addition to the 1% skills levy that is already paid to the National Skills Fund. In effect, only 0.25% annual payroll will go towards up-skilling of employees.</p> <p><b>XVIII.</b> On Mine Community development, AfriSam will require clarity on whether this requirement is per mining operation. AfriSam is of the view that this requirement ought to be assessed on a corporate level and be allocated (perhaps based on revenue), to each mining operation.</p> <p><b>XIX.</b> On Housing and Living Conditions, the affordability aspect in relation to AfriSam subsidising its employees' purchase of houses is a concern. In addition, AfriSam is not in support of the suggestion in relation to guarantees.</p>	<p><b>XVIII</b> The suggestion is noted, the Department to formulate a position.</p> <p><b>XIX</b> The Department disagrees.</p>
<p><b>11. Association of Black Securities and Investment Professionals (ABSIP)</b></p>	<p>General, Ownership, Reporting</p>	<p>i. To place more emphasis on BBBEE (rather than BEE alone) we believe that additional incentives or credits should be given to broad based employee, broad based community schemes and the percentage of Black peoples' proportionate share held via retirement funds. Mining companies should be encouraged to look through retirement funds ultimate beneficiaries for BBBEE ownership. Black People and Black Women are slowly holding a greater proportion of retirement funds assets. This will in the longer term contribute to a significant reduction in the inequality gap in South Africa.</p> <p>ii. ESOP's and Community Trusts must be represented by fiercely independent fiduciaries that will look after the interests of a broad base Black People who are the intended beneficiaries.</p> <p>iii. The mining charter should also place explicit obligations on mining companies and its suppliers on reducing the amount of emolument attachment orders ("garnishee orders") of its employees and contract workers that may have been obtained by less than acceptable ethical practices.</p>	<p>i. The Department does not regard Black people's participation in the retirement funds as meaningful transformation within the Charter context.</p> <p>(ii) The Department agrees.</p> <p>(iii) The Department would support interventions by mining companies and their supplier to assist their debt trapped</p>

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		<p>iv. Every mining company must report its level of compliance with the Mining Charter annually, as provided for by Section 28(2) (c) of the MPRDA. However in addition to this requirement, this report must be made publically available on the company's website and easily available within six months of the relevant reporting period and verified by a Sanas approved verification agency. Reporting should disclose the detail progress on each element of the Mining Charter.</p>	<p>employees, however this cannot be prescribed in the Charter.</p> <p>(iv) The Department notes the suggested proposals.</p>
<p>12. Centre for Applied Legal Studies (CALS)</p> <p>MLK</p>	<p>General, Mine Community Development, Procurement, Employment Equity</p>	<p>I. Opportunities for public participation in the draft Reviewed Mining Charter appear to have been less than adequate. First, the Department of Mineral Resources (the DMR), when it published the draft Reviewed Mining Charter on Friday 15 April 2016 in the Government Gazette, did not upload the bill on the website. As a result the bill was inaccessible to much of the public who do not enjoy ready access to a government gazette. This is likely to disproportionately exclude mine-affected communities, workers as opposed to well-resourced groups and individuals. For many stakeholders, therefore, the month period cannot be regarded as commencing from 15 April. Further, given the significant barriers experienced by members of directly affected groups such as mine-affected communities in relation to resources, location and language, and the need for a charter to reflect their needs and priorities, it is vital that more extensive public participation be undertaken than a mere 1 month notice and comment period on a finished draft</p> <p>II. It is apparent from reading the obligations set out in the draft Reviewed Mining Charter that the interests of communities are still not accorded central priority. This is illustrated by the failure to include community development expenditure as one of the targets for which anything short of 100% compliance is non-compliance. The benefits conferred by the Charter are still not commensurate with the sacrifices they undergo in order for mining to occur. A far larger share than a portion of 5% (designated for communities and workers) should go to community development.</p>	<p>I. The Department submits that the 30 days period for public comments was sufficient and is open to further engagements on the draft Charter before it is gazetted for implementation.</p> <p>II. The communities are allocated stake in the ring fenced ownership element as part of the comprehensive benefits including the 1% community development requirement. The said percentages</p>

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<p>MK</p>		<p>III. There are community calls for effective and independent grievance mechanisms for rights violations and failure to meet social obligations by mining companies and an independent capacity development fund to assist communities in accessing the economic planning, ecological and legal (etc) knowledge enabling communities to make informed decisions and participate in decision-making on an equal footing with companies.</p> <p>IV. The draft Reviewed Mining Charter, under the <i>'mine community development'</i> section provides that mining companies contribute 'a minimum of 1% of their annual turnover to towards local community development and labour sending areas. Reading the draft Charter does not yield certainty as to whether this 1% is to constitute SLP expenditure or is required over and above SLP expenditure. If the former interpretation is correct, the use of actual (as opposed to projected) turnover is problematic as lower than projected turnover could result in SLP expenditure being revised downwards.</p> <p>V. There is no reference at all to SLPs in the draft reviewed mining charter. We therefore call for the clarification, in legislation and policy, of the respective roles of the Charter and SLP systems and for their alignment.</p> <p>VI. In CALS' preliminary research on the implementation of the SLP system, a persistent theme echoed across a variety of role players in community organisations, local government and in the mining sector is of a lack of effective communication and co-ordination. The draft Reviewed Mining Charter does not indicate the mechanisms for co-ordination or provide guidance on how this should be achieved. In this regard, the development of a new Charter represents a missed opportunity.</p> <p>VII. The Charter does not recognise the need to compensate for environmental losses as a result of mining. The lack of attention to environmental justice is also reinforced by the removal of sustainable development from the objectives of the Charter.</p>	<p>are just minimums and a mining operation is not precluded from going beyond the stated minimum percentages.</p> <p>III. Communities are welcome to approach the Department for assistance with the challenges regarding mining operations.</p> <p>IV. The Department will consider reconciling the Charter and SLP to remove any ambiguities. The 1% is intended to create certainty and the Department supports actual expenditure.</p> <p>V. The Department will consider reconciling the Charter and SLP to remove any ambiguities.</p> <p>VI. Refer to point V above.</p> <p>VII Compensation is regulated in terms of section 54 of the MPRDA read with NEMA and MHSA. The Department will consider</p>
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<p><b>VIII.</b> We welcome what appears to be a new requirement that the procurement targets for capital goods and consumables must be manufactured in South Africa. This is critical as if the ultimately goes offshore to purchase goods, for example from developed countries, the desired impact of stimulating domestic industrial development and job creation is largely negated. However, the effect of this is blunted by the ambiguity of the wording used which, in both cases of capital goods and consumables refers to 'a minimum of...of locally manufactured consumables from BEE compliant manufacturing companies,' If read literally, this would mean, rather than requiring a specific percentage of goods that are both procured from BEE compliant companies and are locally manufactured, that instead only those goods that are manufactured locally need to be from BEE compliant companies. To achieve what seems to be the purpose of the provision, this ambiguity should be removed</p> <p><b>IX.</b> There should be a requirement that companies, where possible, procure a proportion of goods and services from local BEE compliant companies based within the area surrounding the mine or the municipality and for companies to report on this.</p> <p><b>X.</b> Our concerns regarding the Social Development Trust Fund (SDTF) are that provisions do not indicate how spending will be directed to communities. Furthermore communities are excluded from list of stakeholders who must be trustees. We suggest that multinationals should be required to contribute to the SLPs of the mines they supply, 'through a transparent, ring-fenced allocation of funds.'</p> <p><b>XI.</b> It is important that the charter regulates the composition of the board of trustees for the community trusts. However, by only requiring traditional leadership to serve as community representatives on the board, the effect is to entrench the power of traditional leaders and undermine the self-determination of members of traditional communities. There is a pattern of community members alleging that traditional authorities are usurping the community share for their own benefit. It is</p>	<p>reinstating the sustainable development element.</p> <p><b>Viii.</b> The concern is noted, the Department will reconsider the wording used.</p> <p><b>IX</b> The Department disagrees.</p> <p><b>X</b> The Department will consider broadening the scope of representation in the Trusts to include communities. Management of trust moneys will be governed by the trust instrument.</p> <p><b>XI</b> Refer to point X above.</p>
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<p style="text-align: center;">MK</p>		<p>therefore critical that democratically elected community organisations should also be accorded a right to be represented on the board. It is critical that communities are able to choose their representatives.</p> <p><b>XII.</b> The draft Reviewed Mining Charter represents an improvement in that there are gender specific targets (for black women) representation at various levels of the company. It is not clear whether the targets refer to the percentages of the share of the positions to be held by black people or a percentage of all positions. If the former is the case, these targets are very low. For example, the draft Reviewed Mining Charter provides for a minimum of 50% Black executive directors, '25% of which must be black female.' The literal meaning of this would be that 25% of 50% of executive directors are to be black women, i.e. 12.5%. This would be a very low target. The other interpretation would be 25% of directors would be black women.</p> <p><b>XIII.</b> The Amended Charter still fails to respond to the manner in which the externalised costs of mining fall predominantly on women. These costs include the loss of economic autonomy, where many women in rural areas lose access to arable land. Where agriculture is replaced by mining, relatively few women, in practice, are employed on the new mines with the result that the economic marginalisation of women is exacerbated.</p> <p><b>XIV.</b> Further the Charter does not address barriers to the advancement of women in the workplace. It does not provide for measures to address harassment and gender-based violence on mines. It does not set a deadline for all mines to have equipment for women, separate bathrooms and sanitation needs for women. It does not require a timeframe for on-site childcare facilities for parents working on the mine.</p>	<p><b>XII</b> The submission is noted, the Department will rework the wording and percentages used.</p> <p><b>XIII.</b> The MPRDA provides for compensation in terms of section 54.</p> <p><b>XIV</b> This is addressed in the Mine Health and Safety Act, 1996.</p>
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<p>13. GOLD ONE GROUP LIMITED</p> <p>MK</p>	<p>General</p>	<p>The Draft Mining Charter 2016:-</p> <ol style="list-style-type: none"> <li>I. is a nullity in law,</li> <li>II. Retrospective in its application, therefore a violation of the rule of law and the principle of legality, thus violating section of the Constitution.</li> <li>III. An arbitrary deprivation of property, thus violating section 25(1) of the Constitution.</li> <li>IV. Prescriptive regulatory instruments unjustifiably interfering with commercial agreements.</li> <li>V. Impacts negatively on foreign direct investments thereby negating some of the objects of the MPRDA.</li> </ol>	<ol style="list-style-type: none"> <li>(i) The Department does not agree, the Charter derives from section 100(2) of the MPRDA and gives effect to its objects in section 1 and the requirements of section 23.</li> <li>(ii) The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. The Charter derives from section 100 and cannot be said to be ultra vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act.</li> <li>(iii) See point ii above.</li> <li>(iv) See point ii above.</li> <li>(v) See point ii above.</li> </ol>
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<p>14. South Africa China Economy and Trade Association (SACETA).</p> <p><i>MK</i></p>	<p>General, Transitional period, Procurement, Ownership,</p>	<ol style="list-style-type: none"> <li>I. The Charter gives the Minister broad a discretion to amend it as and when the need arises, it would be preferable if the requirements of the charter were to be incorporated in the principal Act and thus only amendable through the normal legislative process.</li> <li>II. The three year transitional period is inadequate.</li> <li>III. We are happy to comply with the procurement provisions provided that there are sufficient local companies to procure from, in the absence of such companies we recommend that exemption be granted to companies to source good offshore.</li> <li>IV. Instead of the requirement of 1% on Multinational Companies we suggest that mining companies be offered tax incentives to procure locally.</li> <li>V. The 1% levy on turnover is unaffordable in the current investment climate.</li> <li>VI. The charter must impose an obligation on BEE entities to only exit empowerment transactions by selling to other BEE entities.</li> <li>VII. The requirement of an empowerment transaction per mining right is impractical, in that a company with 10 mining rights would have to enter into 10 empowerment transactions.</li> <li>VIII. It gives rise to difficulties to force BEE parties (communities, workers and entrepreneurs) into one SPV.</li> <li>IX. The Draft Charter is retrospective and thus unconstitutional for violating the rule of law.</li> </ol>	<ol style="list-style-type: none"> <li>I. The Department does not agree, the Charter derives from section 100(2) of the MPRDA and gives effect to its objects in section 1 and the requirements of section 23. The Department will consider prescribing the review timelines to create regulatory certainty.</li> <li>II. The Department disagrees, the 3year period is sufficient to allow for progressive/cumulative transition into the new dispensation.</li> <li>III. The Department will consider providing room for exemptions with prior written consent of the Minister.</li> <li>IV. The determination of tax incentives is competency of National Treasury. The Department will keep the 1% from Multinationals and create the</li> </ol>
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<p>MMK</p>			<p>requisite mechanisms for implementation.</p> <p>V. The Department notes the submission. Clause 2.9 of the Charter addresses this challenge.</p> <p>VI. The Department notes the submission and will address it in the review exercise.</p> <p>VII. The Department notes the submission and will address it in the review proposals.</p> <p>VIII. See note VII above.</p> <p>IX. The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. The Charter derives from section 100 and cannot be said to be ultra</p>
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			vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act.
<p>15. Institute of Race Relations (IRR)</p> <p>MR</p>	<p>General, Ownership, Procurement, Employment Equity, Human Resource Development, Mine Community Development, Housing and Living Standards, Scorecard</p>	<p>I. The use of the concept "Black People" also contrary to Section 9 of the Bill of Rights, which bars any form of racial discrimination by either the state or private persons.</p> <p>II. When BEE investors 'exit' an ownership deal, a mining company must do whatever additional deals might be needed to keep BEE ownership at 26% overall (and at 5% for each of the three categories of BEE beneficiaries identified in the draft charter). These obligations will require mining companies to keep diverting scarce capital into ever more ownership deals, which in turn will inhibit the sustainability and development of many mines.</p> <p>III. Requirements to set up and establish trusts for employee and community stakes in particular ways will add to compliance costs, both direct and indirect. Having to establish an SPV for each BEE transaction will also be complex and costly, and will have major tax implications which seem not to have been considered. Already, the financing of a BEE deal costs some 30% of the total amount, and the additional complexity required under the draft charter is likely to add significantly to these costs.</p> <p>IV. Particularly damaging is the demand that all mining rights holders should re-do all the BEE ownership deals they have already concluded so as to bring them into line with the new requirements. Retrospective rule-making of this kind is contrary to the rule of law. Yet the Constitution stresses the 'supremacy' of the rule of law and makes it clear that it cannot simply be ignored.</p>	<p>I. Section 9 (2) allows for positive discrimination meant to redress the past imbalanced. The objects of the Charter are to give effect to this provisions.</p> <p>II. The Department disagrees, the intention is for mining companies to have 26% BEE transaction in place for the life of the mine. If a BEE partner exists it must be replaced with another BEE partner or if it sells it must sell to another BEE partner or to the Empowering Company.</p> <p>III. The Department will reconsider the proposed SPV model taking into account alternative models. Trusts will also be reconsidered in</p>

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<p>MMK</p>		<p>V. Many of the draft charter's provisions in this sphere are also vague and difficult to interpret. This further contradicts the rule of law, which requires that laws and regulations be certain and precise. What does the draft charter mean, for instance, when it says that mining rights holders must 'consolidate the empowerment transactions' (see Clause 2.1(i))? And what does it mean when it states that 'the mining rights holder must...review its empowerment credentials', in the final paragraph of Clause 2.1? The wording of the draft charter provides no clear answer.</p> <p>VI. On procurement, the increase from 40% to 60% for capital goods is a major shift, which may not be realistic and could add significantly to input costs, as many local manufacturers are less competitive than global ones. The expectation that 30% of this 60% should come from small businesses is particularly unreasonable.</p> <p>VII. The DMR should be wary of imposing additional financial burdens on multinational companies with a wide range of faster-growing countries in which to operate. The international trade law implications of the provision imposing a 1% levy on turnover of multinational companies generated from South African mining companies are significant and seem to have been overlooked.</p> <p>VIII. The targets on the Employment Equity element, like the Employment Equity Act of 1998 (the EE Act) on which they are based, assume that, because black South Africans make up 77% of the economically active population (EAP), they should make up 77% of executive, senior, and middle managers too. But the EAP includes all those between the ages of 15 and 64 who either work or wish to be employed. Given the youthfulness of the black population – more than half of black people are under the age of 25 – the EAP includes many black teenagers who have never obtained a matric or worked at any job at all.</p>	<p>line with the trust Report commissioned by the Dti.</p> <p>IV. The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect.</p> <p>V. The current wording of the Charter will be refined to provide clarity.</p> <p>VI. The Department will maintain the current percentages/targets. Consideration will be given to provide for exemptions with Ministerial consent in respect of Capital goods imports. The Charter also provides for supplier</p>
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<p>MK</p>		<p>By contrast, executive, senior, and middle managers must have appropriate experience and skills. In 2015, only 40% of blacks fell within the 35-64 age cohort that might be considered eligible for such management posts. In addition, though degrees or diplomas are often necessary or advisable for such jobs, only 5% of the black population then held any kind of tertiary qualification. This means that the pool of black people from which such managers can realistically be drawn is far smaller than the draft charter assumes.</p> <p>IX. On Core and Critical Skills, the draft charter adds that mining rights holders 'must ensure that a minimum of 40% black people are represented in the mining company's core and critical skills by diversifying their existing pools. To this end, it says, the rights holder must 'identify and fast track their existing pools', while 'the abovementioned fast tracking of pools must be a proportional representation of the workforce'. These requirements, particularly the last one, are so badly phrased as to be virtually unintelligible.</p> <p>X. On Human resource development, the draft charter requires the mining industry to 'invest 5% of annual payroll' in essential skills development activities, 'such as artisanal, bursaries, literacy and numeracy' (sic). It indicates that this allocation must be 'reflective of the proportional representation' (sic). Again, this provision is poorly drafted and difficult to understand. Mining companies should have the choice of spending the full amount of the levy on in-house training, or support for academic institutions, both of which are likely to be more effective in meeting their training needs.</p> <p>XI. The target of 1% on turnover for mine community development should be based on net profit after tax, rather than on annual turnover.</p>	<p>development by the mining right holder.</p> <p>VII. The Department disagrees the 1% requirement from Multinational suppliers to be retained and implementation tools provided.</p> <p>VIII. The Department of Labour to assist with verification of the figures.</p> <p>IX. The wording of the Draft Charter will be refined to provide clarity.</p> <p>X The Department disagrees the requirements of tis element are clear and will be maintained.</p> <p>XI Treasury has advised that turnover is the appropriate text to use in this instance.</p>
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<p>MK</p>		<p><b>XII.</b> The draft charter fails to recognise the difficulties that mining companies may have, in practice, in helping to provide employee housing where the necessary land or infrastructure has not been made available by municipalities or other organs of state.</p> <p><b>XIII.</b> It is unreasonable to expect companies to maintain 100% compliance with costly housing and skills development obligations during periods of limited or no profitability.</p> <p><b>XIV.</b> Given the magnitude of the increases in many of the targets, a three-year transitional period is far too short.</p> <p><b>XV.</b> The scorecard provided in the draft charter is also intrinsically vague. Though each target is supposedly now to be weighted, and each mining right holder will earn a score between 0 and 100, the scorecard does not set out the points attainable on each element. Thus, though it identifies 26% as the 'minimum target for HDSA (sic) ownership', it does not say how many points mining companies will score for meeting this target. Likewise, it sets out the targets for procurement on capital goods, consumables and services, but it does not say how many points will be available for full (or partial?) compliance with this element. This makes it impossible to determine how points will be allocated, which in turn makes it impossible for scores to be computed.</p>	<p><b>XII</b> The Department supports integrated development (co-operation with local government and municipalities) and its doors remain open at all times to address challenges experienced by mining operations in delivering on their transformation commitments.</p> <p><b>XIII</b> Clause 2.9 states that the Department shall monitor and evaluate implementation of the Charter taking into account the impact of material constraints which may result in not achieving the targets.</p> <p><b>XIV</b> The Department disagrees the proposed 3 years transitional period is sufficient for progressive realisation of the charter targets.</p> <p><b>XV</b> The Draft scorecard will be revised to address the identified loopholes. (Mr Menoe to assist).</p>
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<p><b>16. Thabacheu Mining</b></p>	<p>General, Ownership, Employment Equity, Beneficiation, Human Resource Development, Mine Community Development, Housing and Living Conditions.</p>	<ol style="list-style-type: none"> <li>I. Companies which have sold shares to BEE partners, mostly at a discount, which have been traded afterwards cannot be held non-compliant if they do not sell further shares to other BEE partners.</li> <li>II. It seems that the charter does not cater for small mining operations.</li> <li>III. Some small scale mining operations have no workers but rather contractors.</li> <li>IV. The elements should be linked to the company owning the mining rights/s rather than linking them to an operation.</li> <li>V. The revised employment equity targets will be difficult to meet as the skills pool is limited.</li> <li>VI. Unions should not necessarily represent workers in the SPV, as there could be better qualified workers to undertake this task.</li> <li>VII. The methodology of the offsets of beneficiation are not clear.</li> <li>VIII. The requirement of an empowerment transaction per mining right is burdensome. In our company there are 4 mining rights, therefore we must set up 8 trusts (4 for the workers and another 4 for the community), did the Minister check that the CIPC can handle the administration.</li> <li>IX. The rules on procurement are complicated, cumbersome and impractical. It is impossible to keep track of where what was purchased, it places a huge administrative burden on companies.</li> <li>X. SABS is not geared to certify local content.</li> </ol>	<ol style="list-style-type: none"> <li>I. The Department notes the submission and will consider it in the review process.</li> <li>ii. The Charter does not have a differentiated approach to operations by virtue of their size. It applies to all mining right holders without exception.</li> <li>iii. The Charter does not apply to small scale miners (Holders of mining permits in terms of section 27 of the MPRDA). Section 1 of the MPRDA defines employee to include contractors. Section 101 of the Act obliges the right holder to be responsible for contractors.</li> <li>iv. The Department disagrees, a decision to be made on whether the Charter must apply at right level or at company/holding level.</li> <li>v. The Department of labour to advise.</li> </ol>
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- XI. If mineral sampling are to be done by South African companies the ministerial approval process must be simplified.
- XII. The requirement of 50% black representation at board level is unacceptable.
- XIII. The demographics of where the mine is situated must be used.
- XIV. The 5% on turnover to be used for human resources development is simply unaffordable.
- XV. The 1% on turnover for community development is also unaffordable and a duplication since the community will have shares in the operation.
- XVI. The prescriptions on housing and living conditions are vague and unclear.
- XVII. The three year transitional period is too short.
- XVIII. The concept of ring fenced elements is disturbing since 100% compliance at all times is impossible.

- vi. Union representation is a more structured and formal forum for worker representation.
- vii. Mr Menoe to advise.
- viii. The Department disagrees, a decision to be made on whether the Charter must apply at right level or at company/holding level.
- IX The Department notes the submission and will take it into account in the review process.
- X The Department disagrees.
- XI The Ministerial approval is not required for mineral sampling locally.
- XII The Department disagrees.
- XIII The Charter makes provision for Employment Active Population (EAP) and not demographics.
- XIV The Department notes the submission. This is not a new target.
- XV 1 % represents the Companies social license to operate and should be delinked from the ownership element.

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			<p><b>XVI</b> The Department notes the submission and will revise the Housing and living Standards to ensure that there is alignment.</p> <p><b>XVII</b> the Department disagrees.</p> <p><b>XVIII</b> The Department disagrees.</p>
<p><b>17. Serudumo Sa Rona Community Based Organization (CBO)</b></p>	<p>General,</p>	<p><b>I.</b> Serodumo acting on behalf of its members wishes to exercise the right to equally voice the concerns on the draft reviewed Mining Charter. However, given the time period allocated for making submissions, it is not practical for the CBO to adequately brief its members residing in the far flung rural areas and engage meaningfully on these important issues.</p> <p><b>II.</b> We plead for a sixty (60) days extension for the "meaningful participation" to indeed take place within our communities and constituency.</p>	<p>The Charter was gazetted for a 30 days period as defined in the MPRDA to solicit public comments on same. The Department is open to further meaningful and progressive proposals on the draft Charter.</p>
<p><b>18. Zurel Bros SA</b></p> <p><i>MMK</i></p>	<p>Procurement, beneficiation</p>	<p><b>I.</b> The mining Charter provides for a mechanism for companies to offset up to 11 percentage of the 26% of the ownership reserved for black people. how this 11% can be calculated, what amount of procurement or HR development is needed?</p> <p><b>II.</b> Why does mineral beneficiation fall under the mining charter in the first place? I know the mining charter is mentioned in the Diamond Amendment Act No 29 of 2005 and the regulations, as well as the Precious Metals Act of 2005 and its regulations, but surely that is a mistake? In section 6 of the precious metals act, it even goes as far as giving the SADPMR authority to consider the application for a licence or permit if the mining charter is not met.</p>	<p><b>I.</b> The 11% offset for beneficiation relates exclusively to the ownership element and does not apply to procurement and HRD.</p> <p><b>II.</b> Mr Menoe to advise.</p>

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<p>MR</p>		<p>III. The mining charter is clearly for mines and mining, all the wording ("Mining rights holders") is set around these core operations, however mineral beneficiation is roped into it. We trying to understand why this is, is it maybe because we are working with minerals that are mined? But with that reasoning, the metal industry, motor cars etc should also fall under the mining charter as the metal used to make cars and engines come from mining, also the building industry should fall under the mining charter as the bricks and cement are a result of mining.</p> <p>IV. In our opinion, the diamond and jewellery industry should not be part of the mining charter, sure transformation must be a factor, but why can't the SADPMR not rather request a BBBEE score as a minimum requirement, example level 4 or 5 compliant? With the BBBEE score card, there is room to score points on different categories to assist the companies that score low on other categories? Also, when we are dealing with other companies and government departments, they request anyway our BBBEE certificate and don't recognise the mining charter score card. Just the other day the DTI requested our BBBEE certificate and we told them that we fall under the mining charter and we have a mining charter scorecard, they didn't accept it, we had to swear an affidavit of our BBBEE status.</p> <p>V. The mining charter talks to mining community development, housing and living conditions and it even gives mines points for beneficiating their products locally, how can this be for us (diamond and jewellery shops and factories)? Furthermore our concern is that)? It's clearly meant for mines only as how do we get those points on the scorecard, we can't beneficiate our product, it has already been beneficiated from a mine in South Africa? Most diamond and jewellery factories and shops are small businesses, but their turnover exceed the R3.8M as its costly to buy the raw product, and once sold</p>	<p>III The Charter does not apply to beneficiators but to mines who chose to beneficiate. The Department to further consult with the SADPMR regarding PART B of the draft Charter.</p> <p>IV The Department to further consult with the SADPMR regarding PART B of the draft Charter.</p> <p>V The Department to further consult with the SADPMR regarding PART B of the draft Charter.</p>
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		<p>the profit margins are low but they all add up when it comes to turnover, for example my turnover can be R4M but only approximately 20% of that was actual profit.</p> <p>VI. Our concern is that the SADPMR will enforce as the DMR requires as they are an agency of the DMR. Diamond and jewellery companies must apply and renew diamond licences and jewellery permits with the SADPMR and that is where the mining charter requirements are being checked for compliance, if we not compliant, no licence or permit and hence no more business. This is very important to our existence, the industry has already shrunk to record lows because of the availability of economically viable rough diamonds to purchase and cut in South Africa. The remaining companies really cannot survive another blow.</p>	<p>VI The Department to further consult with the SADPMR regarding PART B of the draft Charter.</p>
<p>19. SAMBCO</p>	<p>Ownership</p>	<p>I. According to the Definition of the BBBEE Act's first two Objectives:</p> <ul style="list-style-type: none"> <li>➤ The number of Historical disadvantaged people must be increased in Management, Ownership, Control of Enterprises or Co-Operatives and Productive assets.</li> <li>➤ B. Facilitating Ownerships and Management of enterprises and Productive Assets by Communities, Workers, Co-Operatives and other collective enterprises.</li> </ul> <p>At SAMBCO we believe that the Two Primary objectives of the BBBEE Act can be easily achieved in the Mining Charter through Mining and Beneficiation Co-Operatives. Co-Operatives have proven to be inclusive in Nature and can benefit a larger portion of the Nation/population taking into account the poorest of the poor.</p> <p>At SAMBCO we believe that "Meaningful Economic Participation" can only be achieved through BEE Transactions with Co-Operatives in the form of Community Co-Operative, ESOP's Co-Operatives and Workers Co-Operative, such Co-Operatives will be able to divers into Services Co-Operatives, Consumables Co-Operatives and Capital Goods Co-Operatives, Housing Co-Operatives and Health Co-Operatives.</p>	<p>I. The Department will consider alternative models to give effect to broad based and meaningful transformation of the mining industry.</p>

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	<p>According to the Mining Charter's first two Objectives:</p> <ul style="list-style-type: none"><li>➤ Promote equitable access to the Nation's Minerals resources to all the people of South Africa.</li><li>➤ Substantially and meaningfully expand opportunities for black people to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources.</li></ul> <p>At SAMBCO we have seen Mining Co-Operatives benefiting their communities in BRICS member countries like Brazil, China and India. Black people opportunities are more increased in the form of Co-Operatives through Tax Incentive, Grants and Soft Loans. SAMBCO is also partnered to a number of International and Local Educators in Mining and Beneficiation, to insure on the success of our Co-Operatives</p> <p>At SAMBCO we see ourselves as partners in the BBBEE Act as the poorest of the poor and the BBBEE Act recognizes Co-Operatives as an alternative for the poorest of the poor.</p> <p>II. We Request the Mining Charter to give a minimum of 10% ownership per Mining Right unto Co-Operatives to enable the growth of Co-Operatives or Artisanal Small-Scale Miners and a Minimum of 26% were there is no BEE partner or the Miner is struggling to find suitable BEE partners.</p> <p>III. It is requested the DMR to empower Co-Operatives with the 6 152 Abandoned Mines, We also request that the mining Dumps be given to Co-Operatives, The dumps are terrorizing communities with illegal miners or Zama-Zamas and Co-Operatives in the form of Communities, un-employed women and youths will eradicate the Zama-Zamas from the face of our economic landscape.</p>	<p>II. Refer to point I above.</p> <p>III. The suggestion is noted.</p>
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20. SADC YOUTH IN MINING	Definitions	<p>I. <b>“Broad-Based Black Economic Empowerment”</b>, we submit that sub section (b) should also specifically include the youth.</p> <p>II. <b>“Meaningful economic participation”</b>, we submit that BEE transactions shall only be acceptable and compliant if concluded with clearly identifiable partners in the form of BEE entrepreneurs, youth, workers and communities.</p> <p>III. <b>“Ministerial Skills Development Trust Fund”</b>, we submit that the Ministerial Skills Development Trust Fund shall dedicate a minimum of 40% of its expenditure to skills development for youth beneficiaries.</p> <p>IV. <b>“Social Development Trust”</b>, we submit that the Social Development Trust shall dedicate a minimum of 40% of its expenditure to enterprise and supplier development for youth beneficiaries.</p> <p>V. <b>“Youth”</b>, for the purposes of the Mining Charter shall mean South Africans between the ages of 22 and 35 years and whose racial composition shall reflect the national racial demographics of South Africa.</p>	<p>(i) The submission is noted.</p> <p>(ii) The submission is noted.</p> <p>(iii) The submission is noted.</p> <p>IV The submission is noted.</p> <p>V The age of majority is legislated. (18 to 35).</p>
	Objectives	I. We submit that there should be an additional objectives of the charter as follows: (f) Facilitate mainstream participation of the youth in the mining industry to achieve sustainable development, seamless succession and value creation throughout the entire spectrum of the mining industry.	The submission is noted.
	Ownership	We submit that the 26% BEE ownership stake will only be acceptable and compliant if a minimum of 5% thereof is owned by a youth. Where a BEE partner or partners exit or BEE contract has lapsed, the BEE shares may only be acquired by another qualifying BEE partner to avoid non-compliance with the 26% BEE ownership target, 5% of which shall be held by youth.	The submission is noted.
	Procurement	We submit that:	The submission is noted.

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	Beneficiation	Beneficiation should be used to create additional opportunities for the youth in downstream linkages. the department of mineral resources should adopt a policy that progressive increases local beneficiation of south african mined commodities.	The submission is noted.
	Employment equity	<p>We submit that:</p> <ul style="list-style-type: none"> <li>➤ <b>Executive Management (Board):</b> A minimum of 5% must be youth.</li> <li>➤ <b>Senior Management (EXCO):</b> A minimum of 5% must be youth.</li> <li>➤ <b>Middle Management level:</b> A minimum of 10% must be youth.</li> <li>➤ <b>Junior Management level:</b> A minimum of 20% must be youth.</li> <li>➤ <b>Core and Critical Skills:</b> Mining right holders must ensure that a minimum of 10% youth is represented in the mining company's core and critical skills by diversifying their existing pools.</li> </ul>	The submission is noted.
	Human Resources Development	We submit that 40% of all Human Resources Development target expenditure shall be dedicated to youth beneficiaries.	The submission is noted.



21. PETA Attorneys	Definitions	The term BEE Transactions should be defined.	Noted, the Department will consider defining the concept.
	Ownership	We suggest that a paragraph (h) should be added, which will include the definitions differentiating between BBBEE transactions versus an empowerment transaction.	Noted, the Department will consider defining the concepts.
	Procurement	It is suggested that the percentage which should be given to small business development, should be given to majority black owned/HDSA enterprises as opposed to merely BEE complaint.	Noted, the Department will consider the suggested proposal.
22. Mamokgethi Molopyane and Gargi Mishra Creative Voodoo Consulting & Mining Innovation	Part B: Reporting (Monitoring and Compliance)	It is our view that the MPRDA be amended to ensure that non-compliance with the provisions of both the Charter and the Act is severely penalized. Mining companies need to file compliance report annually.	This is already provided for in the MPRDA and the Charter. The MPRDA Bill which is currently before parliament proposes increased penalties linked to a percentage of annual turnover of a mining operation.
23. SEESA	Scope of Application	There is no scope of application provided to indicate which entities will be subject to this sector code. It is suggested that the Mining Sector Code should be applicable to the bigger mining companies and not your small sand washers who also have a mining license. These types of businesses will also not be able to comply with this sector code seeing as they do not have the infrastructure to sustain this scorecard and its requirements.	The Charter does not have a differentiated approach to operations by virtue of their size. It applies to all mining right holders without exception.
	General comment/suggestion	It will also be more effective if the Mining Sector fall under the DTI for verification purposes. Then accredited B-BBEE certificates can be issued under SANAS or IRBA. This will ensure that all Mining Sector Codes that are issued is done so by an accredited verification agency. This will give the B-BBEE certificate also more weight as being verified by an accredited B-BBEE verification agency. Therefore the fact that the Mining Sector is not	The suggestion is noted however the Regulator is responsible for monitoring compliance and evaluation.

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	part of DTI and that there is no accredited B-BBEE verification agencies to issue certificates creates a big problem for entities who fall under this sector code.	
Ownership Scorecard	It is suggested that the trust as part of Ownership structure must comply with the requirements as set out in the Codes of Good Practice. To ensure that the trust is managed correctly and to ensure that the trust is not circumventing any of the requirements of the B-BBEE Act.	All the trust proposals will be revisited in line with the detailed Trust Report commissioned by the Dti.
Procurement, Supplier and Enterprise Development	There is no mention of Empowering Supplier status in this scorecard. If a B-BBEE certificate is issued in terms of the Mining sector the entity will not be able to use this certificate in the sense that their clients will not be able to use it for procurement purposes. The first problem is that this is not an accredited B-BBEE certificate and secondly the Mining Entity will not be measured as an empowering supplier.	The Department interacts with mining operations not suppliers. Suppliers account to Dti. Further consultation with Dti will be done to clarify this matter.
Employment Equity	Clarification needs to be provided whether the EAP targets are going to be applicable to this element and also the calculation method needs to be provided.	The Department of labour to assist.
Housing and Living Conditions	It is suggested that there should be an alternative scorecard for Mining Entities who does not have any accommodation for workers. Like for instance in smaller mining entities whose employers have their own living arrangements and accommodation and who lives in town?	This element is a priority element and operations must endeavour to comply with all its requirements including provision of subsidies, guarantees etc.
Part B – Application of the mining charter	It is suggested that the brackets for determining whether an entity is an EME or a QSE must be amended to be in-line with the Codes of Good Practice. Below is the list of how the codes of good practice measures its entities : <ul style="list-style-type: none"> <li>➤ EME – Turnover below R10 million;</li> <li>➤ QSE – Turnover between R10 – R50 million;</li> <li>➤ Large – Turnover more than R50 million;</li> </ul>	The Department to further consult with the SADPMR.

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	Reporting (monitoring and compliance)	Clear indication should be provided as to what's the consequences if an entity does not comply with the scorecard or in the alternative not reach the set targets.	Provisions of sections 93, 47, 98 and 99 of the MPRDA will be invoked.
	Applicability of targets	Ownership, Housing and living conditions and human resources development elements are classified as ring fenced which require 100% compliance at the time.  Therefore it is suggested that there should be a provision which enable mining entities to obtain pro-rata points on these elements.	The Department disagrees with the suggestion.
MK	24. IVANPLATS The Timing of the Reviewed Mining Charter	Since the global mining industry is currently experiencing a particularly difficult time, with low commodity prices exacerbated by a global recession, an extreme shortage of capital for mining, especially for green fields mining projects, growing political uncertainty and increased production costs. We believe that potential providers of capital to the South African mining industry will be focused on the practical costs of implementing the Reviewed Mining Charter, and thus, we would suggest that the Regulator consult with the industry as to the cost of each proposed change so as to better appreciate the balance between a particular change's costs and benefits. We submit that such an approach is consistent with the Reviewed Mining Charter's goal of "sustainable transformation and growth of the mining industry". Furthermore we would wish the Minister to discuss the cost of doing business in South Africa, in the mining industry in particular, how this compares to the cost of mining in other jurisdictions and the expectations of investors, so that the Reviewed Mining Charter can incorporate those initiatives that will best incentivise new investment in the South African mining industry.	The Department has done a cost benefit analysis (SEIAS) with the support of DPME.
	The Mining Charter in relation to the B-BBEE Act and Codes	We note that the Reviewed Mining Charter explicitly deviates from the B-BBEE Act and the Codes in a number of important respects, such as the setting of employment equity targets which far exceed the targets set by the Codes, and the explicit rejection in the Reviewed Mining Charter of the so-called "once empowered, always empowered" principle, whereas the Codes allow measured entities to retain ownership credits for	Alignment process relates mostly to use of terms and concepts, the Department is allowed to deviate and set its own targets with the approval from the Minister Dtl.

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	shares sold or lost by black shareholders under normal circumstances. If the Reviewed Mining Charter could be aligned with the Codes, it would be a vast improvement on the current draft.	
Procurement	<p>The Platreef Mine which Ivanplats is constructing near Mokopane, in Limpopo Province, is not a typical, South African underground mine. The planned mechanised underground mining method necessitates the use of hi-tech equipment operated by highly skilled employees. In this context, the requirements in relation to procurement of capital goods, under section 2.2 of the Reviewed Mining Charter, will be extremely difficult to meet. A significant portion of capital goods to be procured by Ivanplats will be hi-tech, underground mining vehicles and machinery for primary development. There is no South African manufacturer of such vehicles and machinery; in fact, Ivanplats would have to import nearly all of the relevant equipment from countries such as Sweden or Australia, which are the leading countries for producing such equipment. By this Ivanplats find itself in the position that it is extremely difficult, if not impossible, for it to comply with the abovementioned provisions, simply because its ore body is different and the local, South African market is not set up to cater for highly mechanised underground mining. Furthermore, the Reviewed Mining Charter cannot be reconciled with the supply of such expensive equipment by a "small enterprise", as defined.</p> <p>Another problematic provision is the requirement that mining right holders must utilise South African based facilities for the analysis of 100% of each company's mineral samples across the value chain. In our experience, there are not enough South African-based facilities available to do this, which has resulted in unacceptable delays in decision-making and reporting.</p>	The Charter provides for Ministerial Consent for exemption on a case by case basis. The Department will consider introducing an option for exemption in relation to Capital goods.
Employment Equity	The new proposed targets in respect of employment equity, especially in relation to the proportion of black employees to be employed in junior- and middle management positions, are extremely high and will be difficult to comply with during the proposed transitional period of three years. It is suggested that either the	The Department disagrees, the proposed 3 years transitional period is sufficient in respect of both EE targets and targets for women.

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		<p>targets be changed, or the transitional period be extended until the education system is capable of catching up and fulfilling the demand.</p> <p>The target percentages of women to be employed in mining companies. Whereas the Charter previously required 10% women in mining (including in core critical mining activities), the philosophy now appears to be that black women should roughly comprise half of the total black staff complement at all levels. In our experience, there simply are not enough black female candidates to fill positions, and the shortage is more acute in respect of core critical mining. This aspect should be considered and negotiated with the industry and labour. We would suggest that the employment equity targets postulated in the Reviewed Mining Charter cannot be met within a three year transitional period and are not aligned with those of the B-BBEE Act, the Codes, and/or the National Development Plan, 2030. While it is a laudable goal that employment should broadly reflect the demographics of the country, this should, to some extent, be allowed to happen over time, and not be forced upon an industry regardless of the cost of such compliance, otherwise the net result may be fewer jobs for all in the South African mining industry.</p>	
MK	Ministerial consent provisions	<p>In a number of instances, the draft Reviewed Mining Charter contains provisions which require ministerial consent or ministerial determinations for certain actions. These include:</p> <ul style="list-style-type: none"> <li>➤ ministerial consent for consolidation of empowerment transactions (clause 2.1(i));</li> <li>➤ ministerial consent for conducting sample analyses using foreign-based facilities (clause 2.2 point (c) under the heading "Services");</li> <li>➤ Possible ministerial exemption from the requirement to invest 15% of the 5% payroll levy in the Ministerial Skills Development Fund "...in the event of having partnered and supported State owned entity (e.g. Mintek) in respect of research and development".</li> </ul>	The Department will consider development of a consent guideline to outline the process, timeframe and requirements for Ministerial consent.

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	<p>We respectfully submit that ministerial consent and determination provisions should be deleted altogether, or at least, should be amended to set out clearly the parameters for those decisions, so that everyone is clear about the rules.</p>	
<p>Specific comments on provisions</p>	<p><b>Definition of "effective ownership":</b></p> <ul style="list-style-type: none"> <li>➤ We believe that the term "meaningful participation" in the definition is vague, in that there is no objective measure for what "meaningful" participation entails. This should be clarified in order to remove vagueness and uncertainty, and to provide an objective measure for determining whether there is effective ownership. This may be achieved by linking this definition to the definition of "meaningful economic participation". Which we discuss below.</li> </ul> <p><b>Definition of "meaningful economic participation":</b> in using the words "...includes, inter alia, the following key attributes...", this definition leaves open room for introducing additional "attributes" of what meaningful economic participation entails. These additional attributes should be specifically listed and included in the definition, or the term "meaningful economic participation" should be limited to the attributes already mentioned in the definition. We are of the view that a failure to do so leads to unacceptable uncertainty about the "compliance" of empowerment transactions, and/or gives the Regulator an unacceptable level of discretion in adjudicating these transactions. This increases the scope for arbitrary decision-making and reduces transparency and investor confidence.</p> <p><b>Definition of "Ministerial Skills Development Trust Fund" read with clause 2.5:</b></p> <ul style="list-style-type: none"> <li>➤ We do not support the establishment of such a fund. Mining companies already contribute to the relevant sector education and training authorities ("SETAs"). Many SETAs are currently unable to spend their budgets and end up returning large sums of money to the national treasury. Government</li> </ul>	<p>The Department will reconsider the definition of meaningful participation by removing the word "include" and prescribing the relevant BEE partners alternatively delete the definition and prescribe the BEE partners in the substantive provisions of the Charter.</p> <p>The Department disagrees with the submission.</p>

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<p>MR</p>		<p>should look at increasing the effectiveness of the SETAs instead of imposing what is essentially a new "tax" on mining companies. Moreover, the Reviewed Mining Charter is not clear about the nature and structure of the trust, how the trustees will be elected and/or appointed, how the beneficiaries will be selected, and the manner in which the trustees are to exercise their fiduciary duties. In its current form, this provision is too vague to be enforceable and there is a risk that dishonest trustees may abuse the funds in the trust.</p> <p><b>Definition of "Social Development Trust" read with clause 2.2:</b></p> <ul style="list-style-type: none"> <li>➤ To the extent that this fund has not yet been established, we do not support its establishment, for substantially the same reasons as set out in relation to the "Ministerial Skills Development Trust Fund".</li> </ul> <p><b>Empowerment Trusts (clause 2.1(d)):</b></p> <ul style="list-style-type: none"> <li>➤ It is unclear what is meant by the requirement that these trusts must "report" to the South African Revenue Services and the Department of Mineral Resources. What level of detail and/or content would this reporting entail?</li> </ul> <p><b>The effect of traditional authority representation as referred to in clause 2.1(e):</b></p> <ul style="list-style-type: none"> <li>➤ The requirement for traditional authority representation on a community trust has the potential to be highly problematic in certain situations. Over the years, the mining industry has noticed that the involvement of traditional leadership in empowerment transactions can lead to a proliferation of internal political strife within communities. We submit that traditional representation should not be</li> </ul>	<p>The Department disagrees with the submission.</p> <p>The Department will reconsider proposals on trusts in line with the Trust Report commissioned by the Dti.</p> <p>These differences will be provided for in the MOI's which includes dispute resolution mechanisms.</p>
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a strict requirement for effective and substantial ownership change – instead, mining companies should be allowed the latitude to reach agreement with communities on terms that are acceptable to both the mining company and to the majority of members of that community.

**The meaning of the term “enterprise development” (clause 2.2):**

- The term “enterprise development” is used a few times in this clause, and it apparently has a very specific meaning, which differs from “small business development”. We respectfully submit that the Reviewed Mining Charter will benefit from a clear definition for this term.

**Verification of local content for capital and consumer goods (clause 2.2):**

- The draft Reviewed Mining Charter stipulates that “Mining right holders shall before submitting the annual mining charter report to the Department verify local content for capital and consumer goods as provided for above with the South African Bureau of Standards (SABS).” This provision seems highly impractical and/or speculative, at least for the foreseeable future, as we are not aware of any process for verifying local content of goods with the SABS.

**Multinational supplier contributions to Social Development Trust Fund (clause 2.2):**

- This provision appears rather odd, in that it places an obligation on suppliers to the mining industry, as opposed to mining companies themselves. To the extent that mining companies themselves might be expected to “enforce” compliance with this provision, it places an unfair obligation on mining companies, who are not in control of such multinational companies’ expenditure. Moreover, the provision in its current form is vague: it is not clear which entities would qualify as “multinational

The Department will reconsider the use of this term and definition thereof.

The Department to consult with SABS/Dti on this submission.

The Department will consider defining Multinationals, the Department interfaces with right holders and they have a duty to account for their suppliers.

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		<p>suppliers", what the level of supply should be before this provision becomes applicable, and how exactly the "1% of annual turnover" would be calculated.</p> <p><b>Beneficiation:</b></p> <ul style="list-style-type: none"> <li>➤ There should be clear provisions stipulating how beneficiation credits can be achieved and how many credits will be awarded for varying levels of beneficiation.</li> </ul> <p><b>Non-Compliance (Clause 2.12):</b></p> <ul style="list-style-type: none"> <li>➤ From a legal perspective, the Reviewed Mining Charter is not legally enforceable in the same way as legislation, and hence non-compliance does not automatically equate to contravention of the MPRDA. This provision should be deleted and compliance with the provisions of the MPRDA should be measured against the provisions of the MPRDA itself.</li> </ul> <p><b>Review of the Charter (Clause 2.13):</b></p> <ul style="list-style-type: none"> <li>➤ The Minister is not empowered by the MPRDA to review the Mining Charter. Furthermore, any review should be based on concurrence by all relevant stakeholders.</li> </ul>	<p>Mr Menoe to advise.</p> <p>The Charter derives from section 100 and cannot be said to be ultra vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act.</p> <p>Refer to the reply above.</p>
<p>25. Empowerdex (Pty) Ltd.</p>	<p>overarching provisions that have not been addressed in this Charter:</p>	<p>i. The clarification notice 408 of 2015 (gazette 38766) issued by the Ministry of Trade and Industry on 6th May 2015 which detailed specific procedures to develop and gazette transformation charters. In this regard, it is a requirement for the relevant industry body and its Line Ministry (the DMR in this instance) to apply to the Dti in writing for such charter, in addition to that, they must provide evidence of compliance with S12 iv of the B-BBEE Act. The Constitution and MPRDA alone do not satisfactorily address the objectives set forth in</p>	

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