



CHAMBER OF MINES  
of South Africa

OCTOBER 2017

# # MiningMatters

QUARTERLY UPDATE

A PUBLICATION PRODUCED BY THE CHAMBER OF MINES OF SOUTH AFRICA FOR MEMBERS

# #MiningMatters

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# FROM THE CEO



**Roger Baxter**  
CEO – Chamber of Mines of South Africa

*The battle to protect South Africa's mining industry and the national interest from succumbing to the 'state capture project' has been one of the main focus areas of the Chamber in the period under review.*

The Chamber not only supported the 'pledge to South Africa' made by Business Leadership South Africa, but has reiterated the call for the Judicial Commission of Enquiry into State Capture to be established by the Chief Justice as soon as possible. The country is crying out for ethical leadership and good governance. Given

the significant unanswered allegations of state capture and corruption against Minister Zwane, and given recent events regarding the unilateral release of RMC17, the ill-advised proposed s49 moratorium and the bad experience that the industry had on trying to resolve the ownership element, the Chamber has stated publicly that it has lost confidence in Mr Zwane to lead the Mines Ministry.

On the safety side, we were very saddened particularly by two accidents, the first at the Tau Lekoa mine and then at Kusasaletu, in each of which five people were killed. Our condolences go to all their family, friends and colleagues.

Soon after we issued the last newsletter, Minister Zwane responded to the industry's decision to apply for an interdict against his new Charter by stating on 14 July that he would suspend the implementation of the Charter and give himself more time to prepare his papers.

However, he was clearly unhappy at having to face the application, evidenced by how he issued a notice in the Government Gazette announcing five days later, on 19 July, his intention to place a moratorium on the granting of all new mining and prospecting rights or transfer of these rights. Again, the Chamber was forced to bring an interdict against this patently unlawful action. And, again, the Minister conceded by agreeing on 3 August not to implement the threatened moratorium.

Minister Zwane took further steps to avoid facing a court appearance on 13 September by extending his undertaking not to implement the new Charter pending an expedited hearing to review the content of the Charter before a full bench in the Pretoria High Court on 13 and 14 December.

So the Chamber and the industry await that hearing, which will be preceded by the long-awaited application for a declaratory order on the question of recognition of the continuing consequences of previous transactions, or the 'once empowered, always empowered' issue. This will be heard in the High Court on 9 and 10 November.

There was a great deal of publicity around the decision by Chamber office bearers and executives not to attend the dinner preceding the Joburg Indaba. Minister Zwane was invited as guest speaker at the pre-Indaba event. From our perspective, it was a carefully considered decision. We took the view that it would be extremely awkward to be present given the ongoing legal processes around the charter, and after my experience at the Down Under mining conference in Perth when I was forced to respond to patently inaccurate comments the minister made on the stage. We had no intention of creating publicity regarding our decision. We regret that the conference organiser chose to publicise our decision, which was conveyed to him purely as a matter of courtesy.

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The Chamber is working hard at seeking out sensible ways to further the transformation imperative. Internally, there are discussions about what a new charter should look like. And we are talking to other stakeholders too – unions, NGOs, leaders of the ANC. We know the work on a new Charter will need to take place. But we need engagements with leaders of integrity whose goals are intended to serve the national interest rather than a select few – the select few whose interests Minister Zwane was apparently appointed to serve.

It is not an overstatement to say that the future of South Africa's mining industry depends on the course these endeavours take over the coming months.

However, our other work must continue, and it does.

During August, the Chamber published the final report on illicit financial flows and transfer mispricing. Commissioned by us and produced by the independent consultancy Eunomix, the report demonstrates unambiguously that accusations of massive misinvoicing by South African mining companies, alleged most recently by UNCTAD, are totally unjustified. The report details the fundamental methodological errors their researchers committed.

Another very constructive initiative was the launch in September of the Mining for Schools programme, an online platform to provide



resources for teachers and learners to enhance learning about the South African mining industry. The first module of this website focuses on gold, as that is the current focus in the national school's curriculum. We were very gratified to hear that the Gauteng MEC for education has recommended to schools that they use the resource. You can read more about this on page 14.

We hope that such constructive work will be able to be the industry's focus in 2018. We will keep you informed.

**“The Chamber is working hard at seeking out sensible ways to further the transformation imperative.”**

#### USEFUL LINKS

*Independent review of the UNCTAD report*

[www.miningforschools.co.za](http://www.miningforschools.co.za)

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# MINE HEALTH AND SAFETY COUNCIL CELEBRATES 20 YEARS



Mine Health and Safety Council

*The Mine Health and Safety Council (MHSC) is two decades old this year. The Council is currently planning celebrations to mark the occasion, with a Chamber representative on the task team working on the anniversary programme.*

#### USEFUL LINKS

*For more information on MHSC*

The MHSC is a national public entity (Schedule 3A) established in terms of the Mine Health and Safety Act, No 29 of 1996.

The Council was established to direct safety in the mining industry and to respond to industry safety challenges. The Council comprises a tripartite board represented by the state, employers and organised labour, under the chairmanship of the Chief Inspector of Mines. The MHSC is funded by public revenue and is accountable to Parliament.

The MHSC's mandate is to:

- advise the Minister of Mineral Resources on all occupational health and safety issues in the mining industry in the areas of legislation, research and the promotion of health and safety
- review and develop legislation (regulations) for recommendation to the Minister
- promote health and safety culture in the mining industry
- oversee research in relation to health and safety in the mining industry

Very appropriately in its 20th anniversary year, the Council is implementing a business plan for its centre of excellence, scheduled to open by the end of November. The idea behind the centre was first agreed in 2008 during the Tripartite Occupational Health and Safety Leadership Summit. The centre will seek to undertake research; build capacity; facilitate research outcomes for the mining sector in areas such as rock engineering, human factors and occupational health and hygiene; and provide health and safety-related training at all levels.

Says Dr Sizwe Phakathi, the Chamber's Head: Safety and Sustainable Development, "As a result of the downturn in the South African mining sector, mining companies can no longer afford to fund large, internal, research and development (R&D) programmes. And since the closure of the Chamber's Research Organisation in 1993, mining R&D has diminished in this country. The MHSC's centre of excellence will help fill that gap."





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**Mxolisi Mgojo**  
President of the Chamber of Mines

#### **MXOLISI MGOJO BACKS CONTINUED TRANSFORMATION**

*The Joburg Indaba took place on 4 and 5 October 2017. Speakers included the Minister of Mineral Resources, Mosebenzi Zwane; leader of the Democratic Alliance, Mmusi Maimane; and the President of the Chamber of Mines, Mxolisi Mgojo.*

This year the Indaba provided a useful platform for newly incumbent Chamber president Mxolisi Mgojo to remind the array of industry stakeholders of the mining sector's continued contributions to state coffers, to the economy at large, and how it serves South Africa's growing population.

#### **RECENT INDUSTRY CONTRIBUTIONS**

- R424 billion in mineral sales
- 25% of South Africa's exports are in primary minerals
- 40% of South Africa's exports including semi-beneficiated minerals
- Mining jobs represent 7.9% of private sector employment
- Employee earnings pegged at R120 billion
- R20 billion contribution to corporate taxes and royalties

"Simply stated," said Mxolisi,

**"Mining is the flywheel of the South African economy."**

When mining does well, it lifts many other sectors, those who supply inputs into the industry, and through the significant export revenue it brings back into the economy.

"The converse is also true – when mining struggles, most other economic sectors also feel the pain," he said.

Turning to the mining sector's role in South Africa's economy and history, Mxolisi alluded to some of the more shameful and distressing features of the sector, highlighting the notorious migrant labour system and its associated evils. He also pointed to the somewhat mediocre performance in terms of occupational safety and health, and the associated human cost extracted over the years.

"Even though much progress has been made, such as the 88% drop in fatal accidents since 1994, we remain too far from our goal of zero harm," he said.



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## “Chamber leaders are working hard at developing ideas for a new charter”

### THE FIRST MINING CHARTER

Mxolisi stressed the Chamber’s support of the transference of mineral rights ownership to the custodianship of the state. He admitted that the aims of the first mining charter were not yet all in the bag, and that evidence of legacy issues remain in many mining towns and in the composition of workforces.

### MINING CHARTER SUCCESSES

- The last piece of job reservation law to go was that applicable to the acquisition of blasting certificates (until the late 1980s, skilled jobs were denied to black miners)
- Profound employment equity changes
- Significant transformation in procurement from local black-owned companies
- Virtually every hostel dweller now has private accommodation, compared with 18 people sharing a room not so long ago
- With real transformation over the years and the emergence of black-owned mining companies, in excess of R200 billion in value has been transferred

### “TRANSFORMATION IS A PROCESS AND NOT AN EVENT. AND, WE HAVE MUCH MORE WORK TO DO.”

Mxolisi emphasised that the industry’s transformation journey must continue, based on realistic targets and a properly negotiated outcome – the sector needs to be competitive to attract investment and grow. Simply stated, transformation, competitiveness and growth are mutually reinforcing concepts that have to work in tandem. The development of a globally-competitive mining industry has been elusive: it is difficult to transform without competitiveness and growth and similarly it is difficult to be competitive and grow without transformation.

Chamber leaders are working hard at developing ideas for a new charter. This is not being done in isolation – but rather with many stakeholders being consulted. We know that real consultation, engagements and partnerships are the key to a sensible transformation journey and outcomes, Mxolisi said.

### LEGACY ISSUES

Mxolisi pointed to a number of unresolved legacy issues including unclaimed retirement fund payments, the scourge of occupational lung disease over a number of years, environmental liability matters and health and safety.

The Chamber’s response has included:

- establishing an office to service retirement funding inquiries by former mineworkers. This office works with the funds, the Financial Services Board and others in order to resolve these issues
- working with gold companies in the Occupational Lung Disease Working Group to help the new commissioner fix the Occupational Diseases in Mines and Works Act compensation fund, and towards a settlement of silicosis claims
- dealing with dust, water, rehabilitation and other environmental issues
- an intensive focus on improving safety and health both through the Chamber safety structures and within the Mine Health and Safety Council too

### UNLEASHING SOUTH AFRICA’S ECONOMIC AND TRANSFORMATIONAL POTENTIAL

Mxolisi spoke of the commodity leadership forums established only a year ago which have spawned essential collaboration on key issues such as innovation, employment relations and market development. Road maps are being developed for the industry as a whole, and for each sector, at least until 2050.



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## “We will continue to call for ethical leadership and good governance in government”

Flowing from the Mining Phakisa, a mining innovation precinct was established in Richmond, Johannesburg at the old Chamber of Mines Research Organisation site. Some 50 full-time occupants work on improving the industry’s safety performance, efficiencies and useability, Mxolisi elaborated.

An allocation of R150 million from national government has been supplemented by a commitment from a number of mining CEOs to allocate a further R30 million towards such innovation initiatives.

#### **SUPPORTING THE COUNTRY’S DEVELOPMENTAL AGENDA**

Mxolisi reiterated Neal Froneman’s call a year ago for private sector-led growth in a free market economy in order for our country to meet its development goals. He also referred to the African Mining Vision, which calls for Africa to use its vast mineral resources as a catalyst for development, so that it can play a transformative role.



He added, “We will hold government to account and, in parallel, ensure that our own performance on governance is beyond reproach. We will hold our own members to account through our Chamber membership compact, and ensure our own house is in order. At the same time, we will continue to call for ethical leadership and good governance in government, SOEs and in particular in the DMR. We will engage key stakeholders on this journey and, where necessary, turn to the courts to ensure outcomes that are in the national interest.

“As the leadership of the Chamber we have drawn a firm line in the sand regarding our opposition to unethical leadership, bad governance and state capture. And we are doing what is necessary to ensure better outcomes for our sector and our country.”

#### USEFUL LINKS

*The full text of Mxolisi’s address can be found here*

# BEATING THE MINING DRUM ABROAD

ROGER BAXTER POINTS THE WAY FORWARD  
FOR A SUCCESSFUL SECTOR

#MiningMatters

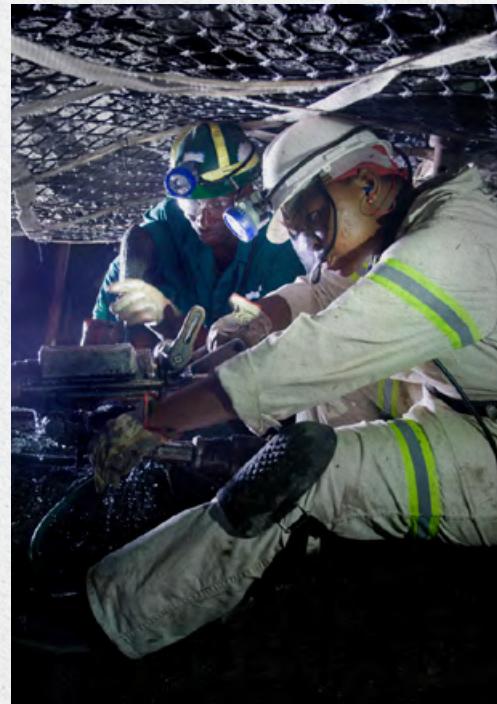
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*The Africa Down Under conference took place from 6 to 8 September 2017 in Perth, Western Australia. Now in its 15th year, the conference was created to raise awareness of Australia's interests in African mining and energy. The Chamber's CEO, Roger Baxter, gave a presentation on the last day of the conference.*

South African mining executives who travel abroad to shore up investment in their country's capital intensive mining industry, frequently talk of the hurdles raised by large global institutions who control the purse strings.

This should not be a surprise to any South Africans, given the recent, seemingly sinister developments in the legislative regime, and the accompanying arrogance of the bureaucrats and others in authority. International investors look, in the first instance, for bang for their buck, then for a user-friendly permitting process, in a benign legislative framework which provides both incentive for investment and long-term security of tenure.

Roger acknowledged these difficulties and the associated mood about foreign investment in South African mining. Speaking at the Down Under Conference in early September, Roger made the very important point that there are solutions to 'restoring the dream' of a prosperous, growing, and transformed mining sector. "We still have a chance to restore this sector so that it can contribute materially to meeting the goals of South Africa's National Development Plan," he said.

# BEATING THE MINING DRUM ABROAD CONTINUED

ROGER BAXTER POINTS THE WAY FORWARD  
FOR A SUCCESSFUL SECTOR

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#### HOW CAN WE HOPE TO RECOVER?

Roger spoke of the three critical areas to be recognised if we are serious about repositioning this sector and transforming it into an important economic engine in South Africa:

Firstly we need to acknowledge the high risk of the business, with long lead times from exploration through to mine development, and ultimately closure.

Secondly, we must recognise that this is an extraordinarily capital intensive sector; that cannot pass on cost increases to the final consumer.

Thirdly, mining activities are geographically determined, and require access to cost-competitive and efficient infrastructure.

However, Roger reminded his audience that the South African mining industry remains a resilient one and that it has previously faced crises which demanded enormous fortitude, creativity and imagination to overcome, and pointed to five key areas which needed to be addressed in order to re-establish a successful and investment-friendly mining sector:

- Ethical leadership, good governance and a stakeholder leadership partnership to drive a proper growth and transformation strategy for the country
- A regulatory and legislative environment that is stable, predictable and competitive
- A stable and constructive labour relations environment and better social licence to operate

- Access to available, efficient and cost-effective infrastructure
- Solutions to improve productivity (next generation mining) and reduce cost pressures

Roger added that encouraging investment in mining required policies which recognise the characteristics of mining and help reduce the risks of investment in long-term projects, concluding that the Chamber remains committed to finding workable solutions in the national interest.



#### USEFUL LINKS

*Roger's full presentation can be found here*

*The Chamber's media release about Roger's presentation can be found here*

# THE REVIEWED MINING CHARTER (RMC)

AN UPDATE

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## BACKGROUND AND CURRENT STATUS

*On 13 September 2017, agreement was reached between legal representatives of the Chamber of Mines and Mineral Resources Minister Mosebenzi Zwane to suspend the Chamber's application for an urgent interdict against the implementation of the RMC and for a charter review process.*



The Chamber had originally lodged its application on 26 June 2017, with a hearing scheduled for 18 July. However, the Minister, through his legal representatives, requested additional time to prepare his affidavit. He undertook in writing that neither he nor the DMR would implement or apply the provisions of the RMC until the court had handed down its judgment in respect of the urgent interdict application.

The 14 and 15 September 2017 were then set as the dates for the hearing on the Chamber's application. Three days prior to the scheduled 14 September hearing, the Minister's legal representative approached the Chamber's legal team, again asking for a postponement of the hearing. On this occasion, the reason given

was that the Minister wanted the matter to be heard by a full bench of the Pretoria High Court. The Minister offered to give a written undertaking that he would not implement the RMC until judgment had been handed down in the review application.

The Chamber was not pleased that the application would again not be heard, but legal advice was that the written undertaking would have the same effect as an interdict, as the RMC would not be implemented until the court had handed down judgment in the Chamber's application for the Minister's RMC to be reviewed.

The Chamber's legal representative demanded, additionally, that the Minister should also state

that, whenever he refers in public to the RMC, he will also say that he has given a written undertaking not to implement the RMC until judgement has been handed down in the review application. This arose due to comments by the Minister at an Australian mining conference where he suggested that the RMC was already in effect. If the Minister does not adhere to his written undertaking, the Chamber will be able to bring an urgent interdict application along the lines of the intended interdict application.

On 19 September 2017, the Minister filed the Record (the documents/evidence which the Minister used/took into consideration when he drafted the RMC).

# THE REVIEWED MINING CHARTER (RMC) CONTINUED

## AN UPDATE

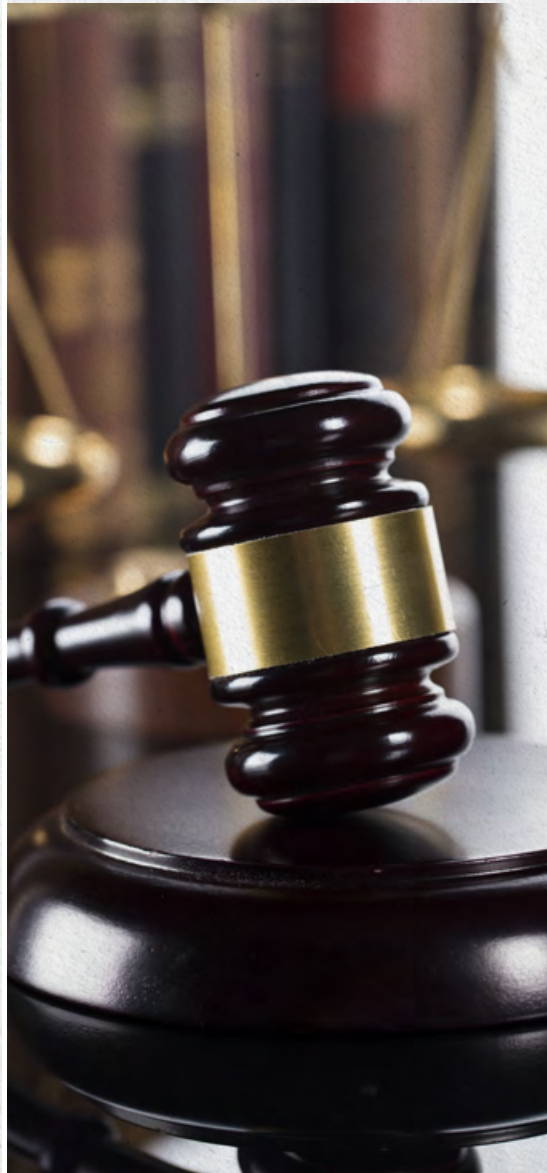
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#### The timetable

Date (2017)	Action
<b>17 October</b>	Chamber will bring its application for a review of the RMC
<b>10 November</b>	Minister and the NUM* will serve their respective answering affidavits
<b>22 November</b>	Chamber will serve its replying affidavit
<b>30 November or 1 December</b>	Chamber will serve its Heads of Argument
<b>5 December</b>	Minister and the NUM will serve their respective Heads of Argument
<b>13 and 14 December</b>	Review is set down for hearing

*Notes: The Chamber's application for a declaratory order regarding the 'once empowered always empowered' principle has been re-enrolled for hearing on 9 and 10 November 2017 by the Deputy Judge President of the High Court at the request of the Chamber.*

*\* The NUM asked to be admitted as a friend of the court or amicus curiae. The union argued that the Minister was entitled to implement the RMC, but that he was not permitted to change the definition of a historically disadvantaged South African. We surmise that the NUM is conscious of suggestions that the new definitions would empower individuals who were foreign citizens pre-1994.*

## BEYOND THE DECEMBER HEARING

It is difficult to predict the course of events during and after the December hearing, even if it is assumed that the Court finds constitutional and/or other legal flaws in the content of the RMC, and/or finds it in breach of the Promotion of Administrative Justice Act.

It does not appear feasible that the Court would itself redraft the RMC or draft a new Charter. It may be more likely that it would send the Minister back to the drawing board, or send him back to redraft the RMC in consultation with stakeholders.

Future developments regarding the RMC could also depend on developments in the political arena which are also impossible to predict.

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*The Chamber of Mines hosted the launch of the Urban Agriculture Initiative on 11 October 2017. The initiative aims to create an urban agricultural ecosystem by repurposing disused rooftops and making use of hydroponics and aquaponics to produce agricultural produce for Johannesburg's inner city communities.*

The initiative was established by the Johannesburg Inner City Partnership, in which the Chamber is a key stakeholder. The Chamber participated in and funded a pilot project to assess the feasibility of growing herbs and vegetables on the rooftops of inner city buildings including the Chamber itself. The first crop was planted on the rooftop of the Chamber building for the benefit of an agripreneur. Should the pilot project be successful, it will be rolled out to other sites resulting in sustainable employment for other agripreneurs. A successful basil crop has already been harvested and sold.

Johannesburg is one of many cities in the world turning to inner city farming with the objective of addressing high unemployment and food insecurity, while regenerating neighbourhoods.

#### HYDROPONICS AND AQUAPONICS – THE ADVANTAGES

- crops are grown in special water solutions without the need for soil or large open spaces
- only a very small area is required to produce a sustainable crop
- significantly reduces water consumption given that 95% of the water used is circulated and therefore reused
- production can be increased by extending the gardens upward
- soil erosion and pest control issues are completely eliminated
- hydroponic plants mature much faster than crops in other mediums, resulting in a faster turnaround



**The Chamber hopes the project will extend beyond rooftops to sidewalks and even to other under-utilised spaces for the benefit of the people of Johannesburg's inner city and beyond.**

*A healthy basil crop growing on the rooftop of the Chamber of Mines building*



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# MINING MODERNISATION

## LATEST DEVELOPMENTS AT THE MINING PRECINCT

*In 2016, the old Chamber of Mines Research Organisation campus in Richmond was redesignated as a mining innovation precinct, with the aim of transforming the South African mining industry into a safer, more productive one, with better skilled and better paid employees.*

The public-private partnership driving the collaborative approach to modernisation of the mining industry continues to gain momentum at its physical address, the Mining Precinct@ Carlow Road in Richmond, Johannesburg.

Major impetus has been given to the initiative recently with confirmation first of government funding of R150 million over the next three years, and then of industry funding of R30 million in 2018.

This leverages and augments the estimated R500 million invested by mining companies in their own initiatives and further investment by mining equipment manufacturers in individual product development.

The collaborative research programme has six workstreams, each under expert leadership. Workstreams cover both current operations and elements further along the strategic journey to modernise the industry by 2030.

The current mining programme focuses on the first stage in the strategic journey – how best to get more from current mining infrastructure and methods – and seeks to build on the strength of South African mining equipment manufacturers’ capabilities and offerings, as well as the collective knowledge and ingenuity of our mining people.

The other five workstreams are:

- Mechanisation using drill and blast
- Non-explosive rock breaking
- Real-time information management systems
- Advanced orebody knowledge
- Successful application of technology MAP

An example of one equipment manufacturer that has developed equipment that could improve drilling activities is CMTI: a

remotely-operated drilling or rock-breaker machine that is being tested at Sibanye-Stillwater’s Burnstone gold mine in north eastern Gauteng. The Precinct’s Technology Assessment and Readiness (TARA) database has been established to assist mines in identifying technologies such as CMTI’s, and in monitoring and evaluating their performances.

Progress is being made in a Chamber-backed initiative to gather expert opinion on what trends could and should influence and inform the collaborative modernisation strategy until 2030. A much broader stakeholder involvement process is also being developed to better understand what factors are shaping the South African innovation ecosystem in which modernisation is taking place currently and are likely to shape the ecosystem in which it will take place in the future.



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# MINING FOR SCHOOLS

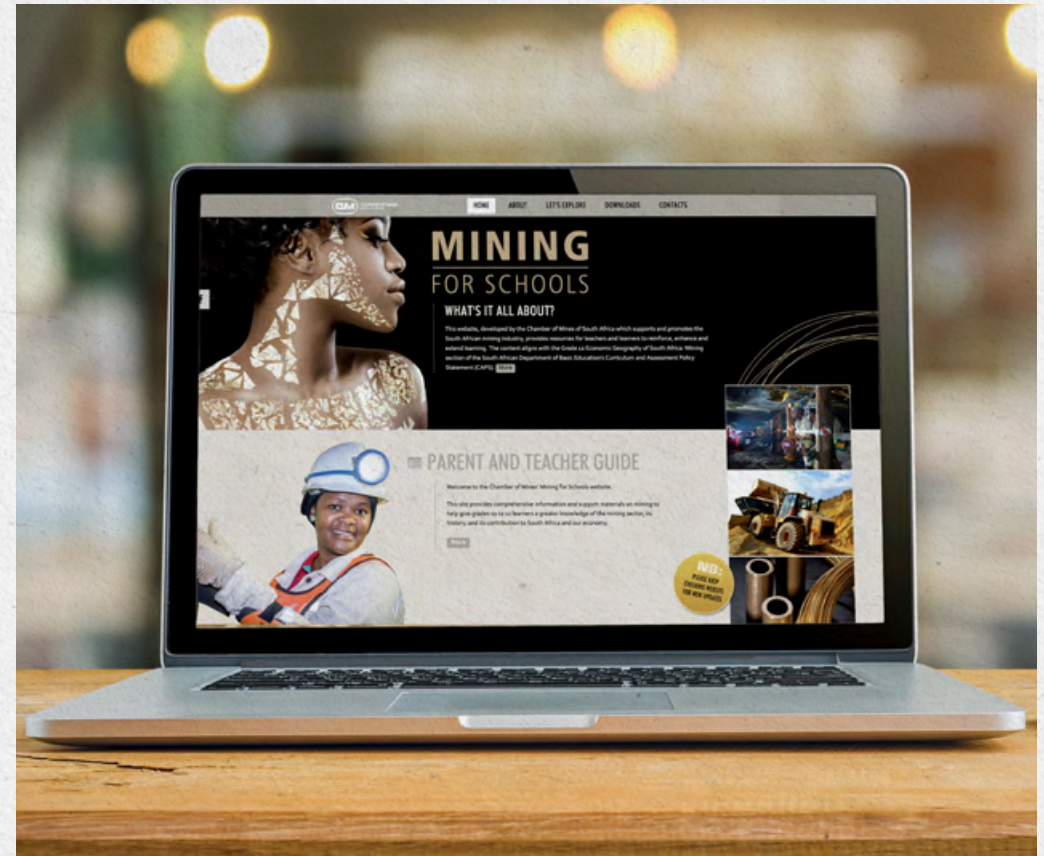
A JOURNEY THROUGH SOUTH AFRICA'S MINING INDUSTRY

*On 6 September 2017, the Chamber of Mines launched its Mining for Schools initiative, an online platform providing resources for teachers and learners on the South African mining industry.*

The website aims to provide visitors to the site with interesting and useful information about South Africa's mining sector - past, present and future - and its contribution to the country and its economy. Resources include videos, presentations and posters.

The content aligns with the Grade 12 Economic Geography of South Africa: Mining section of the South African Department of Basic Education's Curriculum and Assessment Policy Statement (CAPS). The information is designed to supplement prescribed learning material and set text books and is intended for learners in grades 10 to 12. The material will be particularly useful for those studying economic geography and related subjects.

Visitors to the site will learn about the abundance of metals and minerals to be found in South Africa, and which have accounted for a significant proportion of world production and reserves over many decades.



The first module focuses on gold, which ties in with the national schools' curriculum for 2017. The next module will cover diamonds, to link with the schools' 2018 focus topic. Future modules will focus on coal, platinum, base metals and aggregates.

### USEFUL LINKS

*The website may be accessed at [www.miningforschools.co.za](http://www.miningforschools.co.za)*

# ADDITIONAL INFORMATION – LATEST MEDIA RELEASES

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*To find out more about the Chamber's recent activities, take a look at the media releases listed below:*

**5 October 2017:**  
*What does the mining industry contribute to the South African economy?*

**4 October 2017:**  
*Chamber's non-attendance at Joburg Indaba dinner*

**27 September 2017:**  
*Chamber of Mines supports Cosatu's stand against state capture and corruption*

**14 September 2017:**  
*Minister's undertaking to suspend implementation of Reviewed Mining Charter noted in court*

**13 September 2017:**  
*Chamber of Mines agrees to Minister's written undertaking*

**8 September 2017:**  
*Chamber and its members have lost confidence in the Minister of Mineral Resources and in his leadership of the DMR*

**6 September 2017:**  
*Chamber of Mines launches Mining for Schools initiative*

**29 August 2017:**  
*Harmony Kusasaletu mine: Chamber of Mines extends sympathies and thanks*

**22 August 2017:**  
*Independent review of the UNCTAD report (final)*

**22 August 2017:**  
*Chamber of Mines releases final independent report on trade misinvoicing*

**18 August 2017:**  
*Chamber serves replying affidavit*

**10 August 2017:**  
*Mining production falters in May on uncertain commodity prices*

**8 August 2017**  
*Chamber of Mines notes DMR statement*

**4 August 2017:**  
*Parties' formal agreement on moratorium made an order of court*

**3 August 2017:**  
*Chamber of Mines responds to DMR implementation of moratorium on the processing of applications submitted after 19 July 2017*

**31 July 2017:**  
*Chamber of Mines shares concerns related to job losses in the mining sector*

**25 July 2017:**  
*Seismic event at Tau Lekoa*

**25 July 2017:**  
*Chamber lodges interdict to prevent Minister Zwane from implementing 'unlawful' notice*

**20 July 2017:**  
*Minister's actions unlawful, says Chamber*

**14 July 2017:**  
*Minister suspends implementation of Reviewed Charter pending judgment*

**13 July 2017:**  
*Chamber of Mines responds to Treasury's Inclusive Growth Action Plan*

**4 July 2017:**  
*Chamber attendance at ANC policy conference*

**29 June 2017:**  
*Chamber of Mines fuel cell registering for carbon credits*