levels of dust and related health problems, air pollution, and a social and labour plan which gives no benefits to our community.

20.5. Our direct ascendants, comprising of 52 families, purchased the farm in 1910. Due to the discriminatory legislation of the time, they had to register the land under a trust regime.

21. The Second Applicant:

21.1. The Second Applicant is the Lesethleng community. It is composed of approximately 40 families, who together are the *de facto* owners of the Wilgespruit 2 JQ farm, also located in the Moses Kotane Municipality in the North West Province.

21.2. The Lesethleng community purchased Wilgespruit in 1918, and has used the property for farming and grazing for nearly a century.

21.3. In 2011, the Department of Mineral Resources granted a mining right covering the Wilgespruit farm. In 2015, Pilanesberg Platinum Mines ("PPM"), a subsidiary wholly-owned by privately-held resource company Sedibelo Platinum Mines Ltd, occupied this farm with the intention of beginning construction of a mine.

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21.4. The Lesethleng community was not consulted prior to this occupation and land rights litigation against PPM is currently underway. In the interim, the community members have received no direct benefit from the mining concern, have been prevented from exploiting the full potential of their land, and continue to struggle to meet basic needs. A majority of the community remains unemployed.

21.5. Instead of enjoying tenure upgrade of their land rights under the democratic Constitution, their land rights have finally been destroyed. The new mining charter needs to strengthen the surface rights of the hosting communities.

22. The Third Applicant:

22.1. The Third Applicant in this matter is the Babina Phuthi Ba Ga-Makola Community ("the Makola community"). This community is composed of 134 households, located in the Steelport Valley, in Limpopo Province. The Makola community claims the Boshkloof 331 KT, De Goedeverwachting 332 KT, and Mooimeisjesfontein 363 KT farms ("the farms"), but because these land rights were not recognised during apartheid, the community was pushed off of these properties in 1957. The Makola community has fought ever since to have its ownership recognized, to no avail.

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22.2. Today, the farms have been included in prospecting and mining rights awarded to various mining and exploration companies such as Eastern Platinum, Southern Sphere Mining and Development Company and SAMANCO FerroChrome. As such, the land may very well not be viable for restoration under the Restitution of Land Rights Act 22 of 1994. Members of this would-be mine hosting community instead live scattered about the area, largely in poverty. A large number of the community members, however, still live on the land.

22.3. Again, the rights of land claimants as prospective hosting communities must be recognised by the new Mining Charter. If the Minister has the opportunity to consider these interests, he may very well adapt the Charter accordingly.

23. The Fourth Applicant:

23.1. The Fourth Applicant is the Kgatlu community, composed of approximately 100 families, and located northwest of Polokwane in Limpopo Province. The Kgatlu community owns the Goedetrouw 366LR farm ("Goedetrouw farm"), which was included in a prospecting right granted in 2015 to a local subsidiary of Platinum Group Metals ("PTM"), a publicly traded company listed on the Toronto Stock Exchange.

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23.2. Most members of the Kgatlu community own homes on the property, and many use it for grazing and small-scale agriculture. The community understands on the basis of discussions with the company and its publicly-available documents through the Toronto Stock Exchange that PTM envisions that the Goedetrouw farm, together with two other surrounding farms, will in future host a major, fully-mechanized platinum operation, including a tailings dam, plant, and power sub-station.

23.3. The Kgatlu will depend on the future charter to obtain an ownership stake in the mine.

24. The Applicants were never consulted by the Minister, nor did his representatives consult us in the process of developing the 2017 Charter as such. The Applicants do not assert that the Minister must individually consult with each and every mining affected community. However, in adopting a Charter, the Minister is clearly implementing legislation, and his action therefore constitutes administrative action. As such, the provisions of sections 3 and 4 of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"), enjoins the Minister to follow a fair process and where the public at large is affected, he must follow notice and comment proceedings. He did not do so.

25. The Applicants submit that the Minister is enjoined to make specific provision in any process to engage with mine hosting communities. He may have some

discretion in what the details of the process entails, but he must give expression to the essence of the right to a fair procedure.

26. As a result of these procedural flaws, the 2017 Charter does not appropriately reflect our rights and interests and that is why we seek to be joined and become party to the main application. In addition to our procedural rights, our substantive rights to enjoy the benefits of a transformative charter is not fully incorporated in the 2017 Charter.

The Respondents

27. The First Respondent is the Chamber of Mines of South Africa (**"the Chamber"**). The Chamber is a voluntary association whose members comprise mining finance companies and operating mining companies. The Chamber's place of business is 5 Hollard Street, Johannesburg. Service of this application on the Chamber will be effected on Norton Rose Fulbright, appointed to represent the Chamber in the main application.

28. The Second Respondent is the Minister of Mineral Resources (**"the Minister"**). The Minister is cited in the main application in his official capacity as the Minister responsible for the administration of the Minerals and Petroleum Development Act 28 of 2002 (as amended) ("the MPRDA") and is responsible for development and implementing the Mining Charters as provided for in section 100 of the MPRDA. The Minister's office is situated at Trevenna Campus, 71 Meintjes Street, corner of Meintjes and Francis Bard Streets, Block

2B 2nd Floor, Sunnyside, Pretoria. Service of this application on the Minister will be effected on the State Attorney, Pretoria, and on his private attorneys, Goitseona Pilane Attorneys Inc., appointed to represent the Minister in the main application.

29. This Court has jurisdiction to hear this matter as the main application that we seek to join is currently pending before this Court.

BACKGROUND

30. The 2017 Charter is the third such document to be developed and published by the Minister over the previous 18 years. Below, I provide the document's legislative grounding in the MPRDA, as well as a brief overview of these historical versions of the Mining Charter. In each instance, I highlight the provisions contained in these Charters that contemplate the rights and interests of mining-affected communities in order to contextualise our case in relation to the broader dispute between the Applicant and Respondent in the main application.

31. If permitted to intervene in the main application, it will be the Applicants' respectful contention that these previous versions of the Charter have not fulfilled their purpose with respect to mining host communities like the Applicants. There certainly has not been compliance with section 2(i) of the

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MPRDA. Although we do not deal with the facts in detail in this application, I believe the following facts are true for most hosting communities:

31.1. Poverty levels have not improved as a result of the presence of mining. They have worsened in and around mining activities.

31.2. Mining companies have been allowed to renege on their Social and Labour Plans ("SLP") on a large scale. The Social and Labour Plan scheme set out in the MPRDA and MPRDA regulations has to date functioned as the primary method for attempting to facilitate mining-affected community development and transformation, and the 2017 Charter seeks to better align with that system. The Department of Mineral Resources historically has not properly enforced the SLP commitments by the mining companies.

31.3. Mining companies continue to externalise much of the costs of mining, such as pollution costs, related health costs, conditions created by migration caused by mining and the like.

31.4. Reporting requirements have not been enforced. In this way, hosting communities have little information to assess whether SLP commitments have been fulfilled or in many cases even what the content of these plans is.

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31.5. In this regard, I refer to two academic articles which I attach hereto as Annexures **FA 2.1** and **FA 2.2**.

32. We will further contend that the 2017 Charter – while more progressive in respect of its intentions to transform the industry – has simply not gone far enough in contemplating the rights and interests of hosting communities like the Applicants, likely due to the failure of the Minister to properly consult the very constituency that the 2017 Charter aims to benefit.

33. Important though, is the fact that the 2017 Charter does attempt to give at least 8% (eight) ownership of the mining companies to local communities in some circumstances. The Chamber makes strenuous objection to this. We obviously intend to argue that any review of the 2017 Charter cannot be based on the principle behind this provision. All that may be of concern, is the precise measures by which this change in ownership should be achieved.

34. I will conclude this section by recounting a brief history of the steps taken by the Applicants in respect of their intervention in the main application to date.

History of the Mining Charter

35. Section 100(2)(a) of the MPRDA provides that the Minister must publish a Mining Charter in order to "redress historical, social and economic inequalities as stated in the Constitution" and that such a Charter must set "the framework

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for targets and a timetable for effecting entry into and active participation of historically disadvantaged South Africans into the mining industry and to them to benefit from the exploitation of that industry". The 2017 Charter, for the first time, provides that mine affected communities have the right to part ownership of the mining companies holding the rights to mine on their properties, at least in the case of new rights holders.

36. Section 100(2)(b) of the MPRDA goes further, requiring that the Charter set out how the objects referred to in sections 2(c), (d), (e), (f), and (i) of the MPRDA can be achieved. These objects relevant to the rights and interests of mining-affected communities are *inter alia*:

36.1. promote equitable access to the nation's mineral and petroleum resources to all the people of South Africa;

36.2. substantially and meaningfully expand opportunities for historically disadvantaged persons, including women and **communities**, to enter into and **actively participate** in the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources;

36.3. promote employment and **advance the social and economic welfare** of all South Africans;

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36.4. ensure that holders of mining and production rights contribute towards the **socio-economic development** of the areas in which they are operating.

(own emphasis).

37. On this basis, the first Mining Charter was published in August 2004 as the Scorecard for the Broad Based Socio-Economic Empowerment Charter for the South African Mining Industry (including the Charter) (**"the Original Charter"**), attached here as Annexure **"FA 3"**.

38. The preamble to the Original Charter acknowledged the particular history of South Africa "which resulted in blacks, mining communities, and women being largely excluded from participating in the mainstream of the economy". It defined "Historically Disadvantaged South Africans" as any "person, 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". The Original Charter, however, contained only a single provision with respect to "Mine Community and Rural Development", essentially requiring that stakeholders co-operate in the formulation of an integrated development plan for communities where mining takes place. See Annexure **"FA 3"** at section 4.4. Certainly no mention was made of community economic participation or ownership in mining concerns on or near their properties.

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39. An Amendment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry was published six years later, in September 2010 (**"the 2010 Charter"**), attached here as Annexure "**FA 4**". According to the preamble of the 2010 Charter, the amendment was prompted by an assessment undertaken by the Department of Mineral Resources revealing "a number of shortcomings in the manner in which the mining industry has implemented the various elements of the Charter" including *inter alia* in respect of ownership and mine community development, reflecting a failure on the part of mining companies to fully "embrace the spirit of the Charter". At that stage, the inability of the Mining Charter to deal effectively with historical problems as required by the MPRDA was already common cause in the industry. The same situation continues to this day, hence the need for a new Mining Charter.

40. In the 2010 Charter version, "Community" was defined for the first time as "a coherent, social group of persons with interests of rights in a particular area of land which members have or exercise communally in terms of an agreement, custom, or law", while "Mine Community" was defined as "communities where mining takes place or labour sending areas".

41. The 2010 Charter reflected further changes across a number of categories, including an amplification of the provision with respect to Mine Community Development, that then required that companies make "a meaningful

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contribution towards community development" and provided that companies must "invest in ethnographic community consultative and collaborative processes" prior to developing mining projects.

42. In June 2017, the Minister published the 2017 Charter, the subject of the main application and attached here as Annexure "**FA 5**". The preamble of the 2017 Charter refers to additional assessments undertaken by the Department of Mineral Resources, which resulted in the conclusion that the industry was facing "increasing tensions with both workers and host communities" and purportedly identified that "a proliferation of communities living in abject poverty continues to be largely characteristic of the surroundings of mining operations". Certainly this describes my community of Sefikile, as well as the other Applicants to varying degrees.

43. Far from the single provision with respect to communities provided by the Original Charter and the 2010 Charter, the 2017 Charter consequently contains a host of mining community-centred items and obligations that mining rights holders are required to fulfil, including *inter alia*:

43.1. a new definition of "Mine Communities" as "communities where mining takes place, major Labour Sending Areas, as well as adjacent communities within a local municipality, metropolitan municipality, and/or district municipality";

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43.2. establishing community equity stakes of 8% by new rights holders;

43.3. creating a Mining Transformation and Development Agency as a vehicle for managing community trusts, answerable solely to the Minister;

43.4. aligning with and amplifying Social and Labour Plan requirements; and

43.5. important for communities, the 2017 Charter creates mechanisms for the effective enforcement of the targets and requirements of the Charter.

44. There can be no question that the 2017 Charter consequently directly impacts mining-affected communities, including host communities such as the Applicants in this matter. It is also clear from the founding papers of the Chamber in the main application, that it wants to cynically undo the most progressive aspects of the 2017 Charter.

45. Despite the potential to significantly affect the lives of communities like ours, however, none of the Applicants were consulted during the Minister's process of drafting and developing the 2017 Charter. This may be unsurprising – after all, we represent four of what must be numerous mine hosting communities across the country.

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46. But I understand that the Minister in fact initiated no formal process to ensure that the views and experiences of mining-affected communities as a general matter and host communities in particular could be considered in the process of developing the 2017 Charter. I understand that instead, a draft version of the 2017 Charter was published in April 2016; none of the Applicants saw this draft, or even heard of it, as its existence was not publicized by the Department of Mineral Resources. I believe the Department then convened a single meeting in Pretoria sometime in 2016, to which certain members of civil society were invited to comment on the 2017 Charter. The Applicants knew nothing of this meeting, certainly were not invited, and in any event would have struggled to travel to Gauteng for such a meeting. As I stated above, this is in violation of the provisions of section 4 of PAJA.

47. Such an omission therefore gives rise to serious concerns about the procedural fairness of the Minister's decision-making process, given the fundamental impact of mining on such communities. I submit that at a minimum, such a document must reflect participation in its creation by those profoundly affected by it.

48. Our complaints go further than just the violation of the requirements of fair procedure. Communities have substantive rights to transformation and development as created by the MPRDA. At the very least, they can expect of mining companies to make good on their promises. The 2017 Charter needs to

go a lot further in the protection of hosting communities before there will be fulfilment of the requirements of the MPRDA.

Litigation History and Steps Taken

49. I am advised that once a party has shown standing and a substantial interest in a matter, a court does not have discretion to refuse intervention, other than in exceptional circumstances. The Chamber has attempted to make the point that the Applicants were late in coming to the proceedings. Nothing can be further from the truth.

50. Unfortunately, the Minister and the Chamber have indulged in much posturing and alarmism since June 2017. The result was that they, without consideration of the broader public interests, arranged a "semi-urgent" hearing for a matter where the urgency, if such does even exist, could have been managed far more sensibly. The Minister and the Chamber should respectfully have foreseen further interventions.

51. Our legal representatives, on the other hand, have been trying to approach the matter in a sensible manner and in a way that would optimise the use of judicial resources. The Chamber has simply been obstructive in not facilitating our joinder and participation.

52. Shortly after the 2017 Charter was published, we discussed with our legal representatives the potential impact of the 2017 Charter on the rights and interests of our communities. I was involved in these discussions in respect of my community. Like the other communities, we have been assisted over a number of years by our legal representatives to stop the degradation of our land rights and they have otherwise represented our interests in engagements with mining companies.

53. In the meantime, however, the First Respondent took near-immediate action to stop the 2017 Charter. On 26 June 2017, the Chamber launched an urgent application to interdict the Minister from implementing the 2017 Charter, pending the launch of a formal review application within 60 days of the disposal of its urgent application. The papers in the main application and the urgent application will be made available to the court should that be necessary.

54. I discussed the possibility of intervening in the main review application with our legal representatives –Lawyers for Human Rights (**"LHR"**). LHR then sought an initial opinion from counsel to begin to determine the contours of our possible intervention in the matter at that later stage. That was around mid-July 2017.

55. I am advised that our legal representatives and counsel believed that the main review application would be lodged within the 60-day period indicated in the notice of motion in that matter, and would follow the ordinary time periods

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provided for in the Uniform Rules of Practice. Indeed, they had no reason to think otherwise:

56. Our lawyers took note of the Chamber's 14 July 2017 press release announcing that the interim interdict hearing was likely to be set down for sometime in September and that the Chamber would lodge the main review application as soon as the judgment in the urgent interdict was handed down. A subsequent press release issued 18 August 2017 revealed that the urgent hearing was scheduled for 14 and 15 September 2017. See Annexures **"FA 6"** and **"FA 7"**, respectively.

57. On 14 September 2017, the Chamber instead announced that the parties had reached a settlement agreement with respect to the urgent application and revealed that the main review application would be heard within an expedited timeframe, with hearing of the matter set for 13 and 14 December 2017. This expedited timeframe came as a surprise. Also worrying, was the fact that the time frame made no provision for the possibility of other affected parties wanting to join.

58. The Applicants and our legal representatives scheduled meetings to discuss the matter and the way forward. I point out that the four Applicants are located some 150 to 350 kilometres from the Pretoria offices of LHR. Arranging these visits took special planning and specific resource allocation. Involving community meetings, they can only take place over the weekends.

59. Three weeks after we learned of the expedited timeframe within which the main application was to be heard and nine days before the main review application was launched, our legal representatives alerted the parties to the main application of our intention to intervene, which letter is attached hereto as Annexure "**FA 8**".

60. The Chamber immediately responded, stating that it would oppose the intervention of mine-affected communities such as ours, noting on one hand that our intervention was premature because it had not yet launched the foreshadowed review application, yet was somehow also unreasonably delayed. This letter is attached hereto as Annexure "**FA 9**".

61. The approach of the Chamber is fundamentally flawed and inconsistent with the Rules of court and the appropriate application of Rule 53. In this regard I wish to assert the following:

61.1. Rule 53(1) clearly states that the Notice of Motion must be "directed and delivered" to "all other affected parties". The word "directed" is not defined in the Rules. Moreover, the words must be adapted to accommodate modern realities in polycentric decision making processes.

61.2. In a case such as this, where the public at large is affected, and where there may have been a multitude of parties involved in the process

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leading up to the administrative action, a sensible, purposive and fair approach to the provisions of Rule 53(1) is obviously to give some public notice of the proceedings.

61.3. More importantly, those affected must then be given appropriate time and opportunity to join the court proceedings.

61.4. But our interests in the Mining Charter goes much further than just being affected by administrative action. As indicated above, our community and its members have direct and substantial interests in the subject matter of the litigation. We are, with respect, entitled as of right to join.

61.5. I also submit that it is appropriate for mining affected communities to be joined in proceedings dealing with the review of a decision that lies at the heart of the country's mining industry and how that industry must be transformed to the benefit of all.

62. The Minister, on the other hand, indicated his willingness to abide the Court's decision on our intervention, provided that our intervention would not delay the final resolution of the review application. That letter is attached hereto as Annexure **"FA 10"**. The Minister's approach was certainly more constructive.

63. Our legal representatives responded on our behalf, reiterating the need for the voices of hosting communities like ours to be included in the main proceedings reviewing the 2017 Charter. Further in that letter a pre-trial conference with the

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Deputy Judge President and the parties to the main application was requested. See Annexure "**FA 11**".

64. Our legal representatives had hoped that our entitlement to join would be recognised by the Chamber at that pre-trial meeting, and that the focus could then turn to facilitating our involvement within the time frame agreed to between the Minister and the Chamber. Unfortunately, that was not to be.

65. The pre-trial meeting with the Deputy Judge President was held on 20 October 2017, three days after the Chamber launched the main application and issued a Rule 16A notice requiring that amicus curiae expressions of interest be submitted by 13 November 2017.

66. Although the First Respondent continued to protest our possible intervention in the main application at the pre-trial conference, it was simply determined there that the Applicants should bring their intervention application as quickly as possible. Due to the stance of the Chamber, the matter could not be dealt with more constructively at that stage.

67. This application then follows from the discussions in that pre-trial meeting. I submit that this application was indeed brought as quickly as reasonably possible. I therefore respectfully request that the condonation as sought in the Notice of Motion be granted.

Summary of Submissions to be made in the Main Application

68. At the risk of repeating some of the contentions already stated above, the following are the main submissions which the Applicants seek to advance in the main application.

69. The 2017 Charter should be set aside for *inter alia* the following reasons:

69.1. The 2017 Charter (like the previous Charters) fails to fulfil the objects of the MPRDA and/or effectively redress the historical, social and economic inequality that plagues host communities and as reflected in our current circumstances. Past versions of the Mining Charter thus have failed in fulfilling their legislated purpose.

69.2. While the 2017 Charter contains desirable provisions in relation to communities affected by mining, the majority of those provisions are vague and unclear. It is therefore uncertain how those provisions will be given effect to.

69.3. Further, the majority of the provisions of the 2017 Charter insofar as they relate to benefitting mine-affected communities are also vague on how the mining companies will be measured.

69.4. The Applicants are concerned on how the funds that are meant to benefit them are going to be managed.

69.5. The Second Respondent and/or his representatives / agents did not at all *alternatively* properly consult mine-affected communities. The violation of procedural rights in this matter is clear.

69.6. However, the court must not find that the 2017 Charter is reviewable because it seeks to increase the shareholding of Black Persons. It must also not be found to be invalid because it seeks to create enforcement mechanisms. In this regard, we will oppose some of the grounds which the Chamber advances for the review of the 2017 Charter.

70. Any new Charter must reflect widespread consultation with mine-hosting communities like us. It must specifically contemplate the fulfilment of the relevant MPRDA objects as they pertain to such communities. The Applicants accordingly bring an important new dimension to bear on the question for consideration in the main application. This perspective will assist the Court in adjudicating the matter, and ensure that the relevant factual and legal context is fully ventilated.

INTERVENTION

Direct and Substantial Interest

71. As detailed above, there is no question that the Applicants in this matter have a direct and substantial interest in the adjudication of the main application. We, and other communities like ours, have substantive rights to transformation and development as created by the MPRDA. Had there been a formal process of participation, as there should have been, we would have participated in the same way as the Chamber would have.

72. Past versions of the Charters have not led to the effective fulfilment of these rights. Any new Charter must afford better protection to mining-affected communities in general and hosting communities in particular in order to give full effect to the objects of the MPRDA and to ensure the transformation of the mining industry in view of the historical, social and economic inequalities that have been its historical hallmark.

73. Considering the criteria for standing as developed under section 38 of the Constitution, and the range of fundamental rights affected by mining, it respectfully needs little argument to assert that the host communities have direct and substantial interests at stake in the main application.

Risk of Irreconcilable Orders

74. I am advised that attempting to intervene in the main application at this stage is to be preferred. This is because the jurisprudence on this point indicates that a third party preferably should be joined to the original proceedings rather than for them to approach the courts separately concerning the same subject-matter and potentially obtain an order irreconcilable with the order made in the other application – in this matter the main application.

75. In the present proceedings it is therefore desirable for this Court to hear the different arguments on the same subject matter between the same parties and make one ruling about the validity of the 2017 Charter.

76. Justice can only be served if all the affected parties are heard together. It would be extremely wasteful for the Minister to defend a multiplicity of proceedings.

Prejudice

77. From what has been set out above it is evident that the Applicants have a clear, direct and substantial interest in the outcome of the main application.

78. Should the Court dispose of the main application on the limited bases sought by the Chamber in that matter, our opportunity to ensure that the Minister initiate a new process of developing a revised Mining Charter in consultation with *inter*

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alia mine host communities will be foreclosed, and we may well have to continue to live under the current regime, from which we have obtained only hardship.

79. Alternatively, even if the Minister proceeds to initiate a new process of developing a Mining Charter in the absence of a court directive to do so, such a process may continue to exclude the input of mining-affected communities, as it has always done. Hearing all affected parties together, will avoid future uncertainty and possible further litigation.

80. The Respondents in this matter, on the other hand, would suffer no material prejudice by our joinder in the main application. Importantly, as traversed above, it is only the First Respondent that opposes our intervention in this matter. Yet we do not intend seeking relief against the Chamber of Mines. There can therefore be no prejudice to the First Respondent's case by allowing the voices of host communities to be heard in this matter, when we seek nothing from the First Respondent.

81. I do not dispute that our intervention in this matter may delay the hearing currently set for 13 and 14 December 2017, but submit that it need not delay it unreasonably. Should the Applicants be permitted to join in the main application, we commit to agreeing a schedule that seeks to accommodate the interests of all the parties.

82. I am advised that the Chamber and the Minister have alluded to the adverse impact that uncertainty related to the fate of the 2017 Charter has had on market conditions and investment sentiment with respect to the mining industry. While I do not dispute that the publication of the 2017 Charter on 15 June 2017 may have had a markedly negative impact on mining shares for a short period, analysis of the country's key mining and minerals stock exchange indices reveals a sharp rebound in performance in the months subsequent to the 2017 Charter's release. See Annexures "**FA 12**". The negative impact was therefore nothing more than speculative market transactions, or irrational panic.

83. A hearing within the first term of 2018 will not prejudice any of the parties, and will allow for a less rushed approach to the matter. In any event, a hearing on 13 December 2017 is still possible, but not ideal.

URGENCY

84. As has been detailed above, the First and Second Respondent determined in September 2017 – apparently without consideration of the rights of other affected parties to intervene in this case – that the main application would be heard on 13 and 14 December 2017. In the pre-trial conference called by the Deputy Judge President between the parties to the main application and potential interveners in the main application, the Deputy Judge President directed that these third parties should launch intervention applications as a matter of urgency.

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85. On this basis, I am advised that this application should be enrolled on the urgent roll. This reflects the need to confirm the final suite of parties to the main application in view of the hearing currently scheduled for 13 and 14 December, particularly given that provision will need to be made to accommodate additional argument should the Applicants be successful in this application.

86. I submit therefore that this urgency is not self-created. I respectfully request that this application be urgently enrolled in terms of the Notice of Motion.

87. Although a court deciding on intervention in terms of Rule 12, usually also deals with matters ancillary thereto, the main application in this matter is being dealt with subject to directives of the Deputy Judge President. It is respectfully appropriate that he deal with further details of exchanges if intervention is granted.

88. It is respectfully fair that costs of this application be either costs in the cause, or be reserved for adjudication in the main proceedings. However, any opposition to this application will be unreasonable, and in such event, we shall ask for costs against any party that may oppose this application.

WHEREFORE I request this Court to grant the order as prayed for in the Notice of Motion.

DEPONENT

THUS DONE AND SIGNED BEFORE ME AT PRETORIA THIS 26th DAY OF OCTOBER 2017, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS DECLARATION AND CONSIDERS IT BINDING ON HIS CONSCIENCE, THE REGULATIONS CONTAINED IN GOVERNMENT NOTICE NUMBER R1258 OF 21 JULY 1972, AS AMENDED, AND GOVERNMENT NOTICE NO R1648 OF 19 AUGUST 1977, AS AMENDED, HAVING BEEN COMPLIED WITH.

COMMISSIONER OF OATHS

FULL NAMES:

POSITION:

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AREA:

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COMMUNITY RESOLUTION

We the undersigned, by signing our name on this document confirm the mandate of Lawyers for Human Rights to intervene in the application by the Chamber of Mines of South Africa to set aside the "Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry, 2016 i.e. the Reviewed Mining Charter, 2017 (published in Government Notice 581, Government Gazette No. 40923 dated 15 June 2017). We further confirm the mandate of Lawyers for Human Rights to take any other steps necessary to protect and enforce our rights and interests.

We, the undersigned, SES'FIKILE COMMUNITY do hereby nominate OBAKENG KEROMENG and/or ______________________ to depose on our behalf any documents required in our matter.

Signed on this ______ day of ________________ 2017.

NO:	NAME & SURNAME	ID NUMBER
01	Seati C Ntshabele	7607245610081
02	HOSEA NTSHABELE	5105075637084
03	Aaron Manyako	4710085540086
04	Mmatsheko Moilwe	670325 0885 087
05	LETSWAMOISE PAUL MOGOBJE	6511256038084

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ID NUMBER

06	Michael Keromeng	5310~~12~~5186088
07	Deborah Huma	—
08	Jacob Manyaka	4501085487083
09	T.O. KEROMENG	8011060521084
10	keoagile kekobile	7507134707089
11.	Agnes Motlhatlhedi	7009140864 087
12.	Mmatsatsi Makgale	~~0783045~~
13	Naome Tau	7102080700088
14	Magdeline Tau	7211116531084
15	HOSEA NTSHABELE	5105075637084 ~~510756~~
16	John Mataboge	5304065950082
17.	PANE NTSHABELE	4310235494084
18	Johanna Mokowe	5404040886086
20	Keromeng O. Jomo	7605155701 088
21	Keromeng Jane	4504240505088
22.	Moilwe Lerato	9208070715081
23.	Moilwe Salome	5202220848 086
24	Mekeni Themba	7912105471089
25	Shadibo Keromeng	5205020992087
26	Ivin Mathaba	4602256187085
27.	Maria Bangalisa	4001250408 089
28	Matiila Rebecca	4505040540 084
29	Matiila G. S.	8406281340084

CK MTC

No	Name & Surname	ID number
11	Mmanky Keromeng	5809270213084
12.	Sinah Keromeng	6003060991088
13	Keromeng kHumo	9207040495089
14	Lucas p kgotlhang	5808036790089 ~~58 03 67 79~~
15	Melida kgothang	5807140978 084
16	NoNoza Dube	8308060526083
17.	Tshdofelo Metsileng	7805120705088
18	Kelang Moilwe	7903275440087
19	Percy Tisane	9503075663082
20	Salamina Mabula	810306 0938085
21	Porbia Dube	8905231155088
22	Thabo Masisi	5604015938081
23	Esther Masisi	6805070969080
24	SopHy KgoTLHAnG	6403051078087
25.	Elvis kgotlhang	9301205704086
26	kgotlhang Masego	9907220580080 ~~0608921 6654~~
27	Mogobye Julia	490213 0278 081
28.	Mathibi SHano	4703290127088
29	Morubi Virginia	8306070478089
30	Shimane Maage	[illegible]
31	Georgina Thabane	[illegible]
32	Amogelang Moeketsi	9211235578108 9
33	Tobogo Moeketsi	571014 0160 08 5

No	Name & Surname	ID number
34	Boitumelo Moeketsi	8705215632080
38	M.J. Moeketsi	8008260603084
86	L.D. Keromeng	6808145848081
37	TP Mogobya	6306065895085
38	Sello Mogorbye	5203235657082
39	Esther Manyako	5811251062084
40	Samuel Mthembu	8411125742081
41.	Florah Kolwane	0715612735
42	Molebatsi Zelda	072 337 0989
43	Sewle Gommy	083 7184849
44	Lucas Kgotlhang	0799419640
45	Mersileng Monabo	078 2058 785
46.	Modise Molwe	083 899 5549
47	Mmathudugo Magawo	0651947814
48	Surprise Magawo	0732026624
49,	Mmamitse Phejo	0787643108
50.	Mapula Kolwane	0715612735
51.	Daisy Molebatsi	071 954 4598
52	Sille Babalwa	0717065742
53	Tshiamo Keromeng	0785596033
54.	Patrick Sewle	0734225970
55	Tshepang Keromeng	0832166667
56	Lerato Kgopisi	8505101577088

Cf

MNL

No	Name & Surname	ID number
30	Maggy Masinge	–
31	Mogaswa Sylvia	–
32	Flora Mogaswa	–
33	Kgomotso Mogaswa	–
34	Hellen Mogaswa	–
35	Julia Mogaswa	–
36	Madibela Jan	640101 8612 089
37	Samuel Kotsedi	5801015210 087
38	Joseph Tymane	–
39	Mathaba Jonas	–
40	Mathaba Alfred	
41	T.P Mathaba	8905296203087
42	Bheki Mathaba.	–
43	Goodwin Kamanga	5601035197086
44	Mangope Jeanette	8906100884086
45	Mangope Gladys	
46	Mangole Jeffry	
47	Mangole Dinah	
48	Hellen Maimane	
49	Happy Lebome	
50	Sithole Portia	
51	Mangope Tebogo	
52.	Mangope Mologeleng	

Ck

MC

	Name & Surname	ID. NO.
	Bangaiisa Esther	8808060608088
	Tebogo kopedi	8610261155087
	karabo kopedi	
	Bangaiisa Bonny	
	Moiiwe Ditsoto	
	Masinge Suniiver	
	Diale Kgomotso	
	Metsileng Jacob	
	Mangope Tebogo	
	~~Te~~ Tshegofatso Bangaiisa	
	Bangaiisa Tshepila	7008060970080
	kopedi Sizwe	8412165782086
	koopedi Lucy	
	Madibela Sophy	
	Michael Moilwe	7307255757081
	Monse Malme	
	Elizabeth Moilwe	4105050452086
	Nana Kgetse	441113 0102 085
	Moilwa Moeketsi	7008045939085
	Keromeng Benhethi	5811270987089
	Keromeng Keagiso	8907165650084
	Molefe Ladyfaire	9109080797084
	Molefe Whitney	9409160970087

CK

MFL

No	Name & Surname	ID number
	Mmapula Motaung	7306161313 089
	J.K. Metsileng	6503045993083
	L.Moagre	5808080244081
	Mmatsheko Moilwe	6703250885 087
	Rose Shibane	600517080 0083
	Anah Metsileng	70041709 40089
	Sam Metsileng	67091357 80088
	R.M. Metsileng	6405126145 080
	R. Metsileng	6209025062085
	S. Metsileng	6004090915089
	C.H. Metsileng	7305051597082
	Moilwe Oupheme[illegible]	910708 5621 088
	April Lisame	890628 5820 08 0
	Eugene Botshoko Moilwe	901227 5843 080
	Moilwe Botshelo	970625 5547 088
	Matgale Leorapetse	8901250916088
	Mary Rathebe	7806300576082
	Johannes Mogomotsi Kofen	8412165782086
	Bangalisa Esther	8808060608088
	Tebogo Kopeoli	8610261155087
	Peter Sibanda	7203275780081
	Alfred Molefe	6805056937085

OL

MMC

Name & Surname	ID NO Contact	Signature
Mmapula Motaung	7306161313089	M.Motaung
Mmathapelo Makhubela	9509091171083	M Makhubela.
Mathathedi	9007315589085	[illegible]
MOILWE, MOEAME, ISAAC	4801205722082	MoiLWE
Manyako Jane	6807121048088.	[illegible]
MAREA Mohageng	7508070507087	M-Mohageng
Manyako Matseka	9703301063087	M.J. Manyako.
DAVID MANYAKO	7203046278084	David
KEAMOGETSWE METSILENG	9301155519088	[illegible]
Thapelo Sikoane	9908305525086	[illegible]
NUNU CHILEMO	7701175935085	N.Mdena
Emmy Maropeng	6212080933083	E.Maropeng

Ck MVC

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LAWYERS FOR
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Kutlwanong Democracy Centre 357
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Web www.lhr.o

COMMUNITY RESOLUTION

We the undersigned, by signing our name on this document confirm the mandate of Lawyers for Human Rights to intervene in the application by the Chamber of Mines of South Africa to set aside the "Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry, 2016 i.e. the Reviewed Mining Charter, 2017 (published in Government Notice 581, Government Gazette No. 40923 dated 15 June 2017). We further confirm the mandate of Lawyers for Human Rights to take any other steps necessary to protect and enforce our rights and interests.

We, the undersigned, LESETHLENG VILLAGE COMMUNITY do hereby nominate LAWYERS FOR HUMAN RIGHTS and/or DONNY MATSHEGO to depose on our behalf any documents required in our matter.

Signed on this 02 day of SEPTEMBER 2017.

NO:	NAME & SURNAME	ID NUMBER
1.	MPULE DAVID PHETO	6106085911088
2.	Mogale Pilane	4904035130088
3	RAMONO PILANG LINCHWE	5206066879908
4)	KOBEDI PILANE	5812195772085
5	Makope Kotsedi	4706050683083

CK

MC

6	RANKWANE PHETO	6408110 6001088
7	Thabo Diphako	7308215595083
8	Bogatsu PHETO	7809045509087
9	[illegible]	4[illegible]
10	REALINAH KOTSEDI	6906201167089
11	MANTIA S. MOLEFE	4240711 5794082
12	Senoelo Doris	5911050867082
13	TLHOBOGANG MALESA	7405105897080
14	MOLEFE MASALLA	7708030583083
15	BOITUMELO NTLANE	7404280829083
16	mokei M moanakweng	
17	Kgaoeng Phethana	
18.	Dikeledi Moeafe.	
19.	BARATI LYDIA MATLOU	8101036608087
20	mmaletobi Teke	0714351929
21	Tshepang Maselwane	6511020919080
22	Gertrude Pilane	
23	Segakweng ~~Segoto~~ Rasepae	6203070975085
24	PERCY PILANE	7810085046080
25	LERATO MAGAE	
26	Mmammu Tinasi	560919 0946 080
27	Mesele Melody	4706260638083
28	Sarah Moekane	7211210787087

CL

MK

29.	Virginia Basigame Phalane	7909300798084
30	MALEFE POANE	5306135[illegible]
31	Matshegwe SD	5106285657086
32	TUMISI MODIBEDI	
33	Shymane Mapusha	6208085103086
34	TEBOGO BALATSENG	7510145632080
35	Jacob SEGALE	4701017383083
36	Motswasele Senoelo	5302015835080
37	Lesley Ramakobya	8210296000083
38	Mmamoshibid Neoome Motshego	3506070278083
39	Thotho Letheo	
40	SONNYBOY M. PILANE	5705295420086
41	Kgotso Ramakobya	6207076240089
42	TUMELO JUSTICE PELOTAKGOSI	5604085854085
43	Bachiphile Madisa	5506251013083
44	DANIEL PHETO	6804085993086
45.	TEBOGO PHETO	7409270857085
46	MABITLENG PHETO	6511265751081
47	PETER LEGWALE	
48	Naomi Seporapelo Mangale	5009220691089
49	Maputi Gladys Madiao	4507310431088
50	Balesinye Paulus Maputle	4001016666087
51	Sekati Maria Teke	3804180377089

CL MM

52	Molebatsi Moses Khudunge	5204225768087
53	Modise Andrew Madimakwe	3205265780085
54	AFRICA SEGALO TLHASI	5303285658087
55	Palai Joseph Ramakopa	4711205584086
56	Mmurubeng Emily Rasepae	5601060341088
57	Mmaletobi Ellen Teke	4605270561089
58	Lobelo Elias Matshego	3311235165089
59	Shimane Hosea Matshego	4807255636080
60	Motlapele A.T. Matshego	4506250244086
61	Kgomotso Jacobeth Makgena	6205010997087
62	Motshabi Peggy Mashao	6506210918082
63	Mmapula Dorah Molefe	5902021429081
64	Motsei Margaret Moarakwe	4812170534089
65	Jacobeth Mashao	6012040989088
66	Mpho Johannes Rampete	6102055944084
67	Serufe Christina Mashao	5312070833086
68	Dikeledi Caroline Molefe	4107020331087
69	Ditshabe Abram Senwelo	4404195507082
70	Tselane Onicca Senwelo	5901090879085
71	Tshwenyana Maleoye	4606105540082
72	Monica Maleoye	5606161066088
73	Emily Nkileng Modise	5406250920083
74	Joyce Mokone	5404290816080

Ck

MM

75	Tholögelo Tom Molefe	3502015193081
76	Elphoru Naomi Ragopane	4403120576089
77	Mmaletoi Miriam Ragopane	4210160476082
78	Rammopsa Caiphas Khuduge	4201075699082
79	Jerry Ramagogodi	8407155419084
80	Mojaki Esther Khuduge	4803060744086
81	Setwe M. Pilane	6105085898089
82	Mothonyana Francinah Pilane	5809281208081
83	Mosikong Helena Molefe	6011070883088
84	Lesego Johanna Molefe	3604010289086
85	Rampotshe Isaac Pakai	4808095259083
86	Motsei Jane Moerane	4209160514082
87	Kaekoa Motshegwe	5402250809087
88	Mokomi Naome Rasepae	5310040833087
89	Mogotsi Levy Rasepae	6509235332081
90	Dikeledi M. Khuduge	4507130498082
91	Tihalefang D.J. Teke	6205140964080
92	Maditlabo M. Maphuphu	4707160647083
93	Kgomotso Mirriam Mere	6605130490089
94	Rammone H. Molefe	5707225867089
95	Shadi R. Ramakobye	5204260806081
96	Motshabi Johanna Molefe	4508140268085
97	Dikeledi Anna Pilane	4501170270089

CK MMC

98	Frans Ramoipone Molemane	5503095688089
99.	Sepotoko Moerane	6206285998081
100	Patricia Kgomotso Tete	6504290704084
101	Mathhotsane Betty Motshane	7710040842087
102	Gadifele Annah Nkome	6109210105089
103	Lena Saramo Kwele	3101180177084
104	Mmalesope Rebecca Kotsedi	4406160589084
105	Lerato Lea Magae	6306231044087
106	Thoto Elizabeth Letheo	4607250561089
107	Nkosi Justice Ledwaba	5509305753084
108	Banki Josephine Pheto	6410080923084
109	Lesego Kgafela Pheto	4705055804082
110	Rorisang Gloria Grace Rammutla	8202270385 085
111	Mogomotsi James Diphoko	6801106372084
112.	Mphoi Jacob Molefe	5018225687086
113	Galeyo Samuel Moeng	6511275762086
114	Lesego Moses Moanakweng	5310106380080
115	Iavy Moanakweng	6803201098085
116	Johannes Sedumedi Pilane	5706075998085
117	Nthabiseng Thasi	8411270312086
118	Tshomankane Jacob Molefe	5504015304088
119	Levy Mopyane Molefe	4901025789087
120	Nkgaleng Rebecca Thasi	6904180713080

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MMC

121	Modise Stephen Ditsele	5709125295080
122	Maniki Marlas Diphoko	5812085965088
123	Tshose Daniel Rasepae	5602075463081
124	Sitse Tlhasi	4809215648080
125	Samuel K. Malebye	5101015436083
126	Gertrude Pilane	6009130936086
127	Priscilla Lerato Senoelo	6707190656086
128	Tsholofelo M. Mashao	8012290930087
129	Kobedi David Senoelo	5501145790087
130	Mmamonkatse Evelyn Malebye	4308210407089
131	Tumisi Modibedi	5580758814084
132	Keitumetse Phenny Rasepae	5401200914088
133.	Matsie Florina Pilane	6608160871087
134	Mojaki Esther Khudugi	4803060744086
135	Motlatsi Lydia Pheto	5605060953081
136	Moropeng Moroke	6208035962086
137	Dikope Miga Matshego	4910145701088
138	Tshwenyana Malebye	4606105540082
139.	Monicca Malebye	5606161066088
140	Mathana Stephen Selemela	5705275894086
141	Molefe Lovy Pilane	5501145785087
142	Sello Joseph Modimoeng	6809185941083
143	Molefe Diane Molefe	6110035864082

Ol MRL

144. David Segalo Piphoko 3602135219087
145. Mojatshwaang Letsebe Amoo 4406065925088
146. Lawrence Lesego Tlhasi 6309106084089
147. Mmoni Uzabeth Molefe 4804120753083
148 Lekgotla Shadrack Motlhabi 5603235962087
149. Modise Nketso 5612080495085
150. Setshaba Good Moloi 4804125604083
151 Matsetse Ismail Ntuane 6411365806088
152 Tonko Solomon Pheto 5812285869080
153. Elia Pheko Rasepae 5610195709085
154. Mmaphefo Emmy Rasepae 6110070709085
155 Sefore Ernest Mokwate 6009205260081
156 Nkgedi Phillip Molefe 4408125836087
157. Modisaotsile Modimoeng 5977
158 Immanuel Thabang Letsholo 8703175666087
159 Ramaditse Simon Molefe 6709175761089

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Kutlwanong Democracy Centre 357
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MAKOLA COMMUNITY RESOLUTION

We the undersigned, by signing our name on this document confirm the mandate of Lawyers for Human Rights to intervene on our behalf in the application brought by the Chamber of Mines to review the Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry, 2016 (Reviewed Mining Charter, 2017) published in Government Notice 581, Government Gazette No. 40923 dated 15 June 2017.

We, the undersigned, MAKOLA COMMUNITY do hereby nominate KGAUME FREDDY MAKOLA and/or MISHACK MAKOLA as our community representative(s) to sign any documents required in our matter on our behalf.

Signed on this 24th day of SEPTEMBER 2017.

NO:	NAME & SURNAME	ID NUMBER
01	PHURUTSI TIMOTHY SHEMA	6003135765085
02	SEHOLELA JOHANNES MAKOLA	6410095440082
03	MFANA ELIAS MAKOLA	6703115387089
04	ANDRIES KABANE MAKOLA	6609125773087
05	MATHIBELE SIMON MAKOLA	5710265812080

CC MTC

06	ELMOH MAKOLA	5702075672 082
07	JOHANNES MAKOLA	4308235322081
08	MOSES KGETSI TSHEHLA	4706255265 082
09	LLAKA TITUS MAKOLA	711010 5495 089
10	APRIL SERUTLA MAKOLA	470506 5492 084
11	TIMOTHY MAKOLA	
12	JOEL MAKOLA	5505155746087
13	Stephen, M, Makola	450414 5487 085
14.	MAKHURUMETJE ELIAS MAKOLA	591019 5163 08 6
15.	MASHITISHI JIM THOKWANE	2911305117083
16.	RAMASHEGO MAKOLA	5307110653080
17.	JOHANNES MAKOLA	6702115513082
18.	SEPHULI MAKOLA	5207100326087
19.	MALEKE MAKOLA	6106030655087
20.	UTLA MAKUTULLA JOHN	2602175129 0810
21.	MAKOLA SERUANE	4208265556089
22.	MAKOLA TICHERE	4401095215089
23.	MAKOLA DAVID	6012205434086
24.	MOGOGORWANE MAKOLA	3050550320083
25.	COLLINS PHURUTSI	6511205560089
26.	DAPHNEY MAKOLA	6806060821083
27.	MAKOLA MOLATO WILLIAM	4202155390089
28.	MANKGE SEDEKE MARIA	4106030197080

29.	MANKGE MAVIS	7401011654087
30.	MANKGE THABO	8201065955086
31.	MANKGE MABUIMO	7002235490082
32.	MANKGE ELVIS	9311205775085
33.	MOKOBANE TSHADIBE	3607080278080
34.	MAKOLA KWITSIKWITSI JAN	2611015136080
35.	MAKOLA PATRICK	5708055461084
36.	LEKALA FLORAH	7112120928086
37.	MAKOLA ROSINAH	6703210441087
38.	MOSOTHO ANNAH	5904070698087
39.	MAKOLA WILLIAM	7212095274084
40.	THEBETHE SAMSON MAKOLA	6605025482084
41	CATRINA SISHANE MAKOLA	6112300545081
42.	MADALA SAMUEL MAKOLA	6801155897086
43.	FRANK MABULE MAKOLA	6410103559086
44.	MAKWELA NAPOGADI NELLY	5712020838087
45.	MOKUBANE KOLWANE LUCAS	4804165625089
46.	MOKWADI SEISHANE JENETTE	5402080518080
47.	MOKWANI TEDI JIANTJI	5307195259085
48.	MOKWADI CHARLIE	6109175246084
49.	PHETLA MADIPHALE JOHANNA	6503170287087
50.	MAKOLA PHUBUTSI TITIOS	5107145271084
51.	MAKOLA NAMODI FLORAH	6207100366082

52.	MOLAKA ELIZABETH KGOEDI	5312150238081
53.	THOBEJANE MAMOHLABE HELEN	4903200365089
54.	THOKWANE MPOTANE	3910116008087
55.	MAKOLA MATUKU CHRISTINAH	5903100919083
56.	MAKOLA PHISHANE SAMUEL	7002025782086
57.	MAKOLA PHOLOSHI JOSEPH	7302026861081
58.	MAKOLA ~~MEAR KURANE~~ MBALANE PHILLIP	4309095353083
59.	MAKOLA KUBANE JOSEPH	7905026136088
60.	MAKOLA MASHEGWANE WILLIAM	7003225342085
61.	MOLATUDI MAGABATHO CYLIA	7305020963084
62.	MAKOLA THEBETHE SAMUEL	7505025524084
63.	MAKOLA MAGABATHO PATRICK	7106066068089
64.	PHETLA MATHULE ANNA	6109130437083
65.	SALATHAA PHETLA	6209305300080
66.	MAKOLA NKGEBU GLORIA	7406050872086
67.	MOKOBANE MAMORAKE MIRRIAM	4001060159088
68.	MAKOLA MATSHABENG GLADYS	4308310148088
69.	THOKWANE MILDRED LEBOGANG	8507260839085
70.	MAKOLA MABUENYANE MOSES	7005285397081
71.	MAKOLA MOKADI SABINA	6904040753086
72.	MAKOLA RENEILWE	7404251048085
73.	MAKOLA MOTSATSI LUCAS	9209256486083
74.	MAKOLA MOKGAMPANE JOSEPH	7809045629083

CE MMC

75.	MAKOLA BABANG RICHARD	4703055531086
76.	MOHWELEDI ANNAH MANKGE	4903130673081
77.	MANTSOAKO PETRUS MANKGE	5503265651081
78.	NTLOBENG REBECA MANKGE	5601050845080
79.	PHISHANE SAMUEL MAKOLA	7409185765087
80.	DAKENG JANE MACHIKA	6911201128081
81.	KGAUME PIET MAKOLA	7109095702082
82.	GLADYS PHELELO NTSOANE	7707071064086
83.	MPHORENG BETTY MAKOLA	8011250175089
84.	MAKOLA MAMPEDI DEBORAH	3310110248085
85.	ELSIE LLAKA MAKOFANE	6005100640088
86.	SEPHULE TSHESANE	3101011109270 88
87.	DIKETANE SELINAH TSHESANE	5904260600086
88.	SALOME IDA MABUTLA	6108180630084
89.	MAKABATENG JOHANNES TSHESANE	6711235249089
90.	MABUSHI JOYCE MAKOLA	7003090431088
91.	THABANG TSHESANE	7801195373088
92.	SEPEKE MOBOTA	5003130802084
93.	BRENDA MOBOTA	9003160935081
94.	MISHACK MOBOTA	8709095945083
95.	MOBOTA BEN	7706106301083
96.	MOBOTA DINAH	8306050721086
97.	MASHIANOKE IDAH	8202040969085

CK

MMC

98.	MALIOPE THAPEDI	7410110125086
99.	LLAKA BOY TSHEHLA	2108035127082
100.	NAMUDI MAKOLA	4707040581080
101.	FRANK MOBETSELE	6903145646088
102.	ESTHER MOBETSELE	7905030963089
103.	SAMUEL MOBETSELE	8407025931089

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SPECIAL POWER OF ATTORNEY

1. I, JOSEPH MANAMELA, hereby appoint Lawyers for Human Rights, Johannesburg Law Clinic, as my legal representative.

2. I hereby confirm that there are no other attorneys on record for this matter.

3. My legal representative shall have powers and authority to act on my behalf and that of the community of Kgatlu on the terms outlined herein. The Kgatlu community is composed of the landowners and occupiers of the Goedetrouw Farm 366LR. This power and authority shall authorise my legal representative to apply for intervention and joinder of the application to interdict the publication of the "Reviewed Broad-Based Black Empowerment Charter for the South African Mining and Minerals Industry, 2016, published in Government Notice 581, Government Gazette No.40923 dated 15 June 2017 and perform any action incidental to the application including, but not limited to, authorisation to:

   3.1 Prepare, sign, serve and file documents with parties, their agents and any other party, in the matter currently before Gauteng Division, Pretoria between The Chamber of Mines of South Africa/ Minister of Mineral Resources under Case no: 43621/17 and any other court matter which many arise in the course of this application and/ in relation to the same issues and/ or any other policy deliberations regarding regulation of the mining industry, offering an opportunity to advocate for the same and related interests of the community.

   3.2 Request and obtain information or documents from the Government, its departments and agents, Chamber of Mines, agents and members, PGM (Pty) Ltd, the subsidiary or agency, or any party, possessing information or document which maybe required for the application and any matter connected thereto.

   3.3 Instruct counsel and commission any other person, whose services are reasonably required to advance the interests of the community in the matter and/ any other matter incidental to it.

   3.4 Initiate, join, participate and/or engage in legal advocacy, collaborations, and lobbying, public communication and make formal submissions for the purpose of advancing the interests of the community in relation to the charter and any other deliberations related to the policy-making and regulation of the mining industry.

4. This Power of Attorney shall be construed as a Special Power of Attorney restricting or limiting the powers granted to the mandate specified herein.

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5. My legal representative shall not be liable for any loss that results from a judgment error that was made in good faith. However, my legal representative shall be liable for wilful misconduct or the failure to act in good faith while acting under the authority of this Power of Attorney.

6. I have been informed of the cost implications of bringing an application in any court. I am aware that Lawyers for Human Rights will not ask me for any fees for legal services rendered by them in accordance with Rule 115A.3 of the Rules of the Law Society of the Northern Provinces. I am also aware, however, that should any application brought on my behalf be unsuccessful and a court orders a cost order against me, I will be responsible for the payment of such a cost order. I am also aware that if a cost order is granted in my favour, Lawyers for Human Rights, Johannesburg Law Clinic will take cession of the cost order and collect any costs awarded in the matter in its own name and account in accordance with Rule 115.3.2 of the Rules of the Law Society of the Northern Provinces.

7. I hereby undertake to contact Lawyers for Human Rights on a regular basis and keep my contact information, including address and telephone number, up to date with Lawyers for Human Rights. I understand that if I do not contact Lawyers for Human Rights within a reasonable period and give regular instructions, my file may be closed and no further action will be taken on it. I also understand that my file may be destroyed after five (5) years of closure in accordance with the Rules of the Law Society of the Northern Provinces.

8. This Power of Attorney shall become effective immediately. I confirm that I have the mental capacity and have been duly authorised by the Kgatlu community to sign this power of attorney. This power of attorney shall not be affected by any subsequent lack of mental competence or disability, except as may be provided otherwise by an applicable statute.

9. This Power of Attorney may be revoked by me or duly authorised representative of the Kgatlu community at any time by providing written notice to my Agent.

Signed at BRAAMFONTEIN on 13 OCTOBER ~~2016~~ 2017

CLIENT:

Name: JOSEPH MANAMELA

Signature: [signature]

WITNESS:

Name: KGABO MANAMELA

Signature: [signature]

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BADUDI BA KGATLU: KOPANO KA DI 16 OCTOBER 2017

1 LAKA CHOENE ONISMUS ID 5202095428089
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Original article

Mining and 'community' struggles on the platinum belt: A case of Sefikile village in the North West Province, South Africa

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ABSTRACT

The rapid expansion of platinum mining into rural communal land in the former 'homeland' areas of South Africa has caused intensive intra-community struggles. To date, however, there has been limited empirical focus on the character of these struggles at the village level. In this article, I attempt to narrow this gap by drawing on a detailed ethnographic case study of Sefikile village in the Bakgatla-ba-Kgafela traditional authority area, North West Province. The analysis illustrates how the post-apartheid mineral policy's reform has failed to grasp the complex character of rural communities found on lands where platinum mining has expanded. The findings drawn from Sefikile – a village that hosts one of the oldest platinum mines in South Africa – reveal intense struggles over land, mining revenues and public services. Such struggles are fought mainly through distinct group identities as social markers to exclusive group rights. The current mineral policy is incapable of adequately addressing the escalating disputes and marginalisation at the village level.

1. Introduction

In post-apartheid South Africa, communal land which falls under the former 'homeland'[1] areas has increasingly become a focal point of mineral development strategy. This emanates from the country's geological advantage: specifically, the existence of the Bushveld Complex, an enormous multi-layered, ore-bearing, underground rock formation. It spreads over more than 65,000 km^2, spanning two of the country's most rural provinces—North West and Limpopo. Here, it is widely believed that "[t]here are enough [platinum] deposits in the Bushveld Complex ... to supply world demands for many decades or even a century" (Cawthorn, 2010, p. 205).

With over 80% of the world's known PGM reserves, South Africa's Bushveld Complex has contributed significantly to the massive platinum boom over the past two decades, and has overtaken gold as the major player in the country's mining sector.[2] South Africa's platinum mining industry has recently drawn the world's attention for being a hot spot for wage-related strikes. At the apex was the Marikana Massacre in August 2012: members of the South African Police Service opened fire on striking mine workers at the Lonmin Mine, North West Province, a massacre which left 44 people dead and many others injured (Chinguno, 2013). The growing concern is that the platinum mining industry in post-apartheid South Africa is characterised by fragmented and precarious work (Chinguno, 2013, p. 33). As such, like gold mining, it relies on a massive African migrant labour force, low wages, and poor working and living conditions to bolster its profits (Mnwana and Capps, 2015).

In South Africa, gold has fuelled the development of large urban industrial centres. But the increased attention paid to platinum post-apartheid has shifted the geographical focus to rural areas. The vast area spanned by the platinum-rich Bushveld Complex, often called 'the platinum belt', is overlaid by rural communal lands, which fall under the political jurisdiction of traditional – 'tribal' – authorities (Claassens, 2014). The densely populated, poverty-stricken communal areas have become a new focus for the rapid expansion of the platinum mining industry, particularly in the North West and Limpopo provinces, over the past two decades. Like all former 'homeland' areas in South Africa, these rural communities bear the legacy of apartheid, having fallen under the 'independent homelands' of Bophuthatswana and Lebowa, respectively. These labour-sending areas are characterised by, among other things, extreme poverty, massive unemployment, poor

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[1] The ten ethnically-defined semi-autonomous African 'states' that were created during apartheid for Africans/Blacks in South Africa in order to exclude them economically, socially and politically.

[2] The key investors in platinum group metals (PGMs) are Anglo American Platinum (Amplats), Impala Platinum, and Lonmin.

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education standards, and a shortage of basic services (Mnwana and Capps, 2015).

The geographical shift coincides with post-apartheid legislation attempts to redefine residents in these communal areas as 'traditional communities' under chiefs. Several pieces of legislation that significantly enhance the powers of traditional leaders (chiefs) have emerged over the past decade. These include the Traditional Leadership and Governance Framework Act of 2003 (Act 41 of 2003, or the TLGFA), the Communal Land Rights Act of 2004 (Act 11 of 2004) and the Traditional Courts Bill (B15—2008). Studies show that these laws and bills on traditional leadership tend to impose colonial ethnic identities on rural residents by establishing the current traditional authorities in exactly the same boundaries as the apartheid 'tribal' ('bantu') authorities (Claassens, 2014; Claassens and Matlala, 2014). These laws are criticised for fortifying the powers of local chiefs and tribal councils over communal property, particularly land and mining revenues, and making downward accountability impossible to realise (Claassens and Matlala, 2014; Claassens, 2014; Mnwana, 2014b). Chiefs have become the mediators of mineral-led development and mining deals. Local conflict has intensified over the past few years in communal areas on the platinum belt (Mnwana, 2012). Some scholars observe that the escalating conflict epitomises a resurgence of ethnic identities in post-apartheid South Africa (Manson, 2013).

In this article, I contribute to key arguments that deal with the issue of platinum mining, particularly its benefits for local rural communities. I argue that the expansion of platinum mining into rural communal land in the former 'homeland' areas of South Africa generates intense intra-community struggles over mining, land and revenues. There is still limited empirical focus on the actual character of these struggles at the village level. In this article, I attempt to narrow this gap. I draw on a detailed ethnographic case study of Sefikile village in the Bakgatla-ba-Kgafela traditional authority area, North West Province, to illustrate how the post-apartheid government's mineral policy reform has failed to cater to the complex character of rural communities on whose land platinum mining expands. This, in turn, has fuelled inter-group disputes at the village level. The empirical findings drawn from Sefikile, a village that hosts one of the oldest platinum mines in South Africa, reveal intense struggles over land, mining revenues and public services. Such struggles are fought mainly through distinct group identities as social markers of exclusive group rights.

The article is structured as follows. After unpacking the argument presented in this introduction further, I review particular debates on mining and community relationships. Next I summarise the research methods adopted, and then report findings from the work undertaken in Sefikile village. The last two sections of the paper present some analytical discussion and a conclusion in which I argue, mainly, that the state's attempt to include 'traditional communities' in South Africa's post-apartheid mining industry has failed to grasp the complex group identities at the village level, therefore fuelling tension.

2. Mining and local communities: key concepts and arguments

Local communities who host large-scale mines tend to suffer adverse social and environmental impacts. Moreover, these settlements typically derive few benefits from the mineral wealth generated in their immediate environment (Mate, 2002; Cronjé and Chenga, 2009). One of the widely-reported challenges which renders large-scale mineral extraction intolerable to local communities is dislocation. Such a problem is well articulated by Hilson and Yakovleva (2007), who assert that mass extraction of minerals is responsible for local conflict and innumerable social problems, none more significant than community dislocation. Moreover, the rapid mineral policy reform that has taken place in numerous developing countries, which has helped to attract significant investment, has largely excluded the interests of local communities. The tendency of the state to focus merely on promoting large-scale mining activities and neglecting the welfare of local communities in the area where these activities creates tension between management and local residents (Hilson and Yakovleva, 2007, p. 99). Banks (2005) examines at length these dynamics, drawing heavily on the effects of large-scale mining in Melanesia, contending that local community members who are also landowners complain that mining in their area brought about tremendous fear due to the rapid influx of migrants, referred to by the locals as people we do not know. For Banks(2005, p. 189), mining-induced migrant influx not only leads to extensive breakdown of social cohesion but can also deteriorate traditional forms of government.

In natural resource-rich sub-Saharan Africa, studies have shown that the absence of direct community control remains a major driver of communal resistance and socio-political conflict (Ikelegbe 2005; Obi, 2008; De Koning, 2008). Other reasons include: (1) environmental degradation (Lockie et al., 2009, p. 330); (2) poor communication between mine management and surrounding communities (Hilson, 2002, p. 65); (3) a lack of compensation for operating mining activities on indigenous lands (Clark and Clark, 1999, p. 193; Warden-Fernandez, 2001, p. 16; Crawley and Sinclair, 2003, p. 364); (4) mining companies that fail to secure social licences (Holden 2005:432); and (5) forced relocations of indigenous communities from their ancestral lands to make way for new activities (Clark and Clark, 1999, p. 193). Despite companies' championing Corporate Social Responsibility (CSR), corporate citizenship (CC), corporate social investment (CSI) and sustainable development, the situation remains tense. This impasse has earned the extractive industries a bad reputation and significantly diminished local communities' trust of mining companies (Harvey, 2013).

Although South Africa's mining companies, particularly those in the platinum industry, have reportedly demonstrated some commitment towards their CSR obligations, it has not been genuine towards the social well-being of the communities on whose land they operate. As such, the character of CSR, explains Hamann (2004, p. 288), traditionally manifested itself as philanthropic initiatives premised on competitive efforts at gaining improved image and reputation. Moreover, continues Hamann (2004, p. 288):

> Not only did this manifestation of CSR prevent a sincere, proactive engagement with the underlying causes of social problems in the area but the competitive element also helped to obstruct the establishment of improved collaboration between local actors.

Fig (2005, p. 601) also observes that the business community in South Africa generally prefers the concepts of CC and CSI rather than CSR. Though also important, CC and CSI pose a challenge of power imbalance and superficial policy implementation, since, as Fig (2005, p. 601) also asserts, they ask no questions about legacy, memory, history, justice, or moral and ethical responsibilities of the business. In fact, this very weakness in CSI and CC could be quite detrimental to indigenous communities who live close to the operations of the mining industry.

It is behind the backdrop of this impasse that the post-apartheid state in South Africa has introduced drastic minerals policy reforms. Such reforms not only did away with mineral rights as a form of private property, but introduced a range of measures through which rural communities can participate in the mining industry. Mnwana (2014a) argues that these 'new' policy measures have led to a significant control of mineral

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wealth by a few traditional communities in South Africa. However, community control of mining revenues through local chiefs exposes local communities to serious paradoxes, including conflict and inequality, especially when exposed to the challenge of distributing mineral resource wealth (Mnwana, 2014a, p. 840).

3. 'Traditional communities' and South Africa's platinum industry

The inclusion of rural communities in South Africa's platinum mining industry must be seen in the light of the post-apartheid state's redress mission. The ANC Government has, in an attempt to redress past injustices, introduced some radical legislative and measures in the mining sector. The key issues the state sought to address were the historical racial exclusion of Africans from mine-ownership structures, and the relationships between the mining companies and local communities. The key piece of legislation in this regard is the Minerals and Petroleum Resources Development Act of 2002 (Act 28 of 2002, or the MPRDA) and its accompanying regulations. This legislation also drives the inclusion of traditional communities in South Africa's platinum industry. Through this legislation, the state has promoted a range of measures, including black economic empowerment (BEE) mine-community partnerships, continued royalty payments, and social labour plans as requirements for mining companies. Communities which previously received royalty payments for mineral rights on their land have been encouraged by the state to convert their royalties into equity shares. Several communities on the platinum belt have converted their royalty payments into equity stakes and also entered into other complex deals with mining companies who operate on their land. Local chiefs, as assumed custodians of communal resources, have become mediators of mineral-led development and mining deals (Mnwana, 2014b).

The administration of community (mining) royalties remains a contentious issue in the North West Province. During apartheid community royalties were kept under custodianship of the Bophuthatswana President, Mr Lucas Mangope, as a trustee. These royalties, amounting to hundreds of millions of rand, were kept in the so-called 'D-accounts' (development accounts)[3] administered by the President's office through a complex system of financial controls. The communities on whose behalf these accounts were held made formal requests through their tribal councils to the offices of local magistrates whenever they wanted to utilise money in these accounts. When the 'homelands' were dismantled in 1994 more than 800 D-accounts were transferred to the office of the Premier of the North West Province. Since 1994 these accounts, worth more than R500 million, have never been audited and millions have gone missing (City Press, 2012). Some communities have levelled serious allegations of corruption and mismanagement against the former premier and senior officials in the North West Government (City Press, 2012). These allegations are still under investigation.

An element which complicates the mining-related conflict on the platinum belt is the ambivalence in the definition of 'community' in the mining legislation. The original version of the MPRDA (2002) defines the community as a coherent, social group of persons with interest of rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law.[4] Through this definition the act grants communities a range of measures including a referent right to prospect and mine minerals on the land they occupy[5] and continuation of royalties.[6] This definition has changed twice since then. The MPRDA amendment of 2008 provides that a 'community' means a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law.[7] The second amendment of MPRDA in 2014, which President Jacob Zuma refused to endorse and returned to Parliament, defines a community as a coherent, social group of persons within a district municipality as defined in the Local Government: Municipal Structures Act 1998 (Act No. 117 of 1998), with interests or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law[8]. As we shall see later, village level struggles demonstrate that none of these definitions captures the complex character of communities occupying the mineral rich land on the platinum belt.

In the North West Province alone, several indigenous communities have entered into complex arrangements with mining companies—including royalty conversions and BEE partnerships. These 'traditional communities' include: the Bafokeng, Bakgatla-ba-Kgafela, Bapo-ba-Mogale and Bakubung-ba-Ratheo. These deals have encountered numerous controversies and contention among the 'tribal' elite and vicious opposition from ordinary village residents. Such paradoxes primarily emanate mainly from the highlighted pieces of legislation that empower chiefs' control over communal property (Mnwana, 2014b). Moreover, in defence of their rights to land and mineral wealth, rural residents on the platinum belt continue to refute the state's imposition of amorphous colonially derived 'tribal' identities upon them (Claassens, 2014). For mining companies, these controversies render the task of identifying the legitimate 'community' and authentic representative extremely challenging. It is behind the backdrop of this challenge that the ANC government has passed laws (like the TLGFA and MPRDA) that secure the position of chiefs and 'legitimise' their assumed role as custodians of communal property. This strategy, although vigorously opposed at grassroots, seems to work well for mining capital. Companies do not have to engage directly with thousands of rural residents before turning communal grazing and ploughing fields into massive open pits and multiple shafts: they just obtain the approval of the chief and the tribal council. As illustrated later with the case of Sefikile, claims by state officials, chiefs and mine officials that proper procedures were followed and community members were properly consulted and gave consent to the development of a mine have been fiercely refuted by ordinary villagers. Usually, villagers claimed to know very little or nothing about the complex mining deals or the social and economic impact of mining. This is why village level struggles over mining connect to contestation over land (Mnwana and Capps, 2015, p. 43).

[3] These accounts were established through the Bophuthatswana Traditional Authorities Act (Act No. 23 of 1978) (s11).

[4] See MPRDA Sec. 1. This definition also connects to the definition of 'historically disadvantaged persons', defined as: (a) any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution took effect; (b) any association, a majority of whose members are persons contemplated in paragraph (a); (c) any juristic person other than an association, in which persons contemplated in paragraph (a) own and control a majority of the issued capital or members' interest and are able to control a majority of the members' votes (Ibid.).

[5] See MPRDA Sec. 104 (1–4).

[6] The Act allows communities who were receiving royalties immediately before this Act took effect to continue receiving such royalties. (MPRDA Sec. 11.(1).

[7] The Mineral and Petroleum Resources Development Amendment Act (Act No. 49 of 2008) Sec. 1(c).

[8] The Mineral and Petroleum Resources Development Amendment Bill [B 15B–2013], Sec 1(d).

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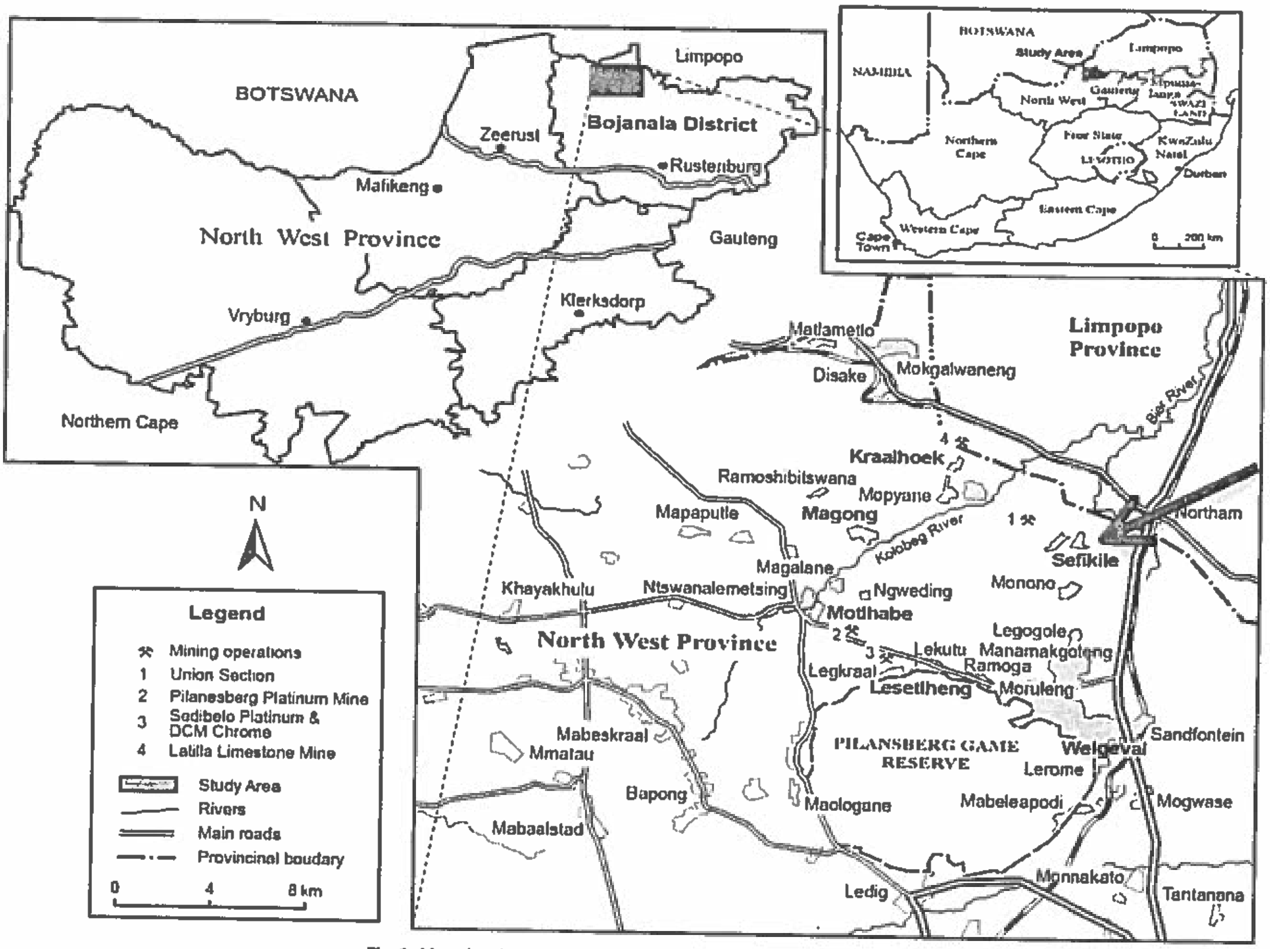

Fig. 1. Map showing Sefikile village in the Bakgatla-ba-Kgafela area.
Source: Mining and Rural Transformation in Southern Africa (MARTISA), Society Work and Development Institute (SWOP), University of the Witwatersrand.

Land struggles are much deeper and cannot be covered within the scope of this article (see Mnwana and Capps, 2015). What is crucial to highlight, however, is that current struggles connect to the distinctive history of early land purchases by African groups in the colonial Transvaal. Although the colonial state under Afrikaners formerly prohibited Africans from purchasing land, African individuals and groups entered the colonial land markets through the help of European – white – intermediaries, usually missionaries who resided among them. Later, when African groups could officially purchase land in in the colonial Transvaal[9], such purchases – farms – could only be registered under the name of a 'recognised' chief. A state official, usually the Minister of Native Affairs, kept the title deed to such a property 'in trust' for the chief and his tribe. This led to the dominant assumption that this land was bought through the aegis of the tribe. Despite the two major racially oppressive 'Native Land Acts'[10] that prohibited formal land transitions between Africans and Europeans, the practice of African group-land buying continued until the second half of the 20th century. The farms that were purchased and registered in this process were later included within the juridical boundaries of the apartheid state's infamous 'Bantu Authorities' in the 1950s, and officially regarded as tribal properties kept under the trusteeship of the state (Mnwana and Capps, 2015). There is growing literature which details the history of private group land acquisitions in the colonial Transvaal.[11] The work of Capps (2010) is seminal in demonstrating that, contrary to the standard and accepted view, these purchases were made on a tribal basis. African land purchases were, quite often, conducted on a private basis by distinct syndicates who were then compelled by racially oppressive colonial policies to register their purchases not in their names, but under a 'recognised' chief and kept 'in trust' by a state official. As we shall see later, the grammar of land contestation in Sefikile village connects strongly to this historical trajectory.

The case village of Sefikile, in the Bakgatla-ba-Kgafela traditional authority area of North West Province, is relevant to

[9] As stipulated by the clauses from the Pretoria (1881) and the London Conventions (1884).

[10] The Natives Land Act of 1913 and the Native Trust and Land Act of 1936.

[11] For further readings on land history in the Bakgatla area see also: Morton F. (1998) Cattleholders, evangelists, and socioeconomic transformation among the baKgatla of Rustenburg District, 1863–1898. South African Historical Journal 38(1): 79–98; Mbenga B.K. (1996) The Bakgatla-Baga-Kgafela in the Pilanesberg district of the western Transvaal from 1899 to 1931. Unpublished PhD thesis, University of South Africa, Pretoria.

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evaluate the consequences of the post-apartheid policy changes and how they influence ordinary residents over property rights and mining benefits.

4. Methods

This work is part of ongoing research which focuses on the making and unmaking of rural social orders as platinum mining capital expands into South Africa's former 'homeland' areas. A research team comprising myself and two research assistants conducted detailed local-level fieldwork in the Bakgatla area. We collected ethnographic data between July and November 2013. We also made several follow-up visits during 2014. Our methods included in-depth interviews, observations and analysis of documents. For this article I draw on selected in-depth interviews and unstructured observations conducted at Sefikile village in the Bakgatla area. We conducted key-informant and group interviews with more than 50 respondents in this village about the social impact of the adjacent mining activities. Participants were purposively selected from a range of village activists, youth, mine workers, municipal officials and knowledgeable village elders. During the different stages of data collection we also participated in a range of activities, including *makgotla* (village meetings), youth gatherings, court disputes, and state-instituted commission hearings on Bakgatla chieftainship disputes. Three features made the village of Sefikile an appropriate case study to explore the social impact of mining and the manner in which the post-apartheid minerals policy reforms have affected poor rural communities on the ground (Mnwana and Capps, 2015). They are as follows:

1 This village hosts one of the oldest and largest mining operations of Anglo American Platinum (Amplats) in South Africa. The operations have altered the physical landscape and taken most of what used to be the villagers' agricultural and pastoral land.
2 Over the past few years, there has been heightened resistance against the mine and the Bakgatla chieftaincy.
3 There have been on-going group disputes over mineral-rich land. The Bakgatla Chief has entered into numerous complex mining contracts and deals with the mining companies operating on this land.

5. 'Community' struggles: the village of Sefikile

Sefikile is one of 32 villages that make up the Bakgatla Bakgatla-ba-Kgafela traditional authority area. This predominantly Setswana-speaking community is led by a traditional council under *Kgosi* (chief) Nyalala Pilane. It is one of the largest communal areas in North West Province, spreading over a vast area containing more than 40 farms, about 60 km north of the town of Rustenburg (Mnwana and Capps, 2015). According to local government demarcations, the Bakgatla area falls under the Moses Kotane Local Municipality (MKLM). It is one of the prominent platinum-rich tribal authority areas in South Africa (see Fig. 1).

The village of Sefikile is adjacent to Anglo American Platinum's (Amplats) Union Mine, which is the oldest mining operation in the Bakgatla area. Sefikile is located on the south-western portion of the farm Spitzkop 298 (410 JQ), roughly 20 km north-east of the Pilanesberg mountain range. Sefikile was historically constituted by a multi-ethnic mixture of African families, including fugitives, former labour tenants from white-owned farms, and other landless Africans displaced by various forms of injustice during the colonial and apartheid eras. An elder explained:

> We are Basotho from Basutoland – Lesotho. Others are from Lebowa, others are the Matebele from Kwazulu Natal, and others came from various places. We all met at Sefikile and constituted Sefikile as a village. (Interview: Sefikile, 08.11.2013)

The village presents an unsettling scene of raggedly dotted small homesteads with generally poorly-built iron shacks and mud structures. Of course, if one takes a walk through the narrow paths inside the village it is possible to spot a few homesteads with well-built houses. Homesteads are clustered around a small rocky mountain also called Sefikile. Tradition has it that during the Difaqane Wars in the 1830s, when Mzilikazi and his raiding Zulu warriors arrived next to this mountain, they declared, 'Sifikile!'—'We have arrived!'/'We are here!' Thus, the place was thereafter named Sefikile. It is said that when the Boers chased Mzilikazi northwards in the late 1830s he left some of his captives at Sefikile (Interview: Sefikile, 28.07.2013).

Sefikile is a conspicuous image of a neglected mine-hosting village. There are massive informal settlements on the north-western and south-western margins. Migrant miners who work for the Union Mine reside in these informal settlements. The village is extremely overcrowded. One small primary school and one secondary school cater for the education needs of scores of children from the village and the surrounding informal settlements. When we conducted this study, the two schools were about the only visible public service facilities in Sefikile. If it had been completed, the abandoned, half-built structure of a village clinic would have been another public service facility.

To enter Sefikile with a vehicle we had to navigate the harsh rocky path which hardly matched any possible description of a road. Ironically, along this path stood Amplats's billboard which claimed that this was an 'internal road' and the Union Mine was maintaining it. This billboard is, in my opinion, an epitome of a mining company's desperate window-dressing. Such a character epitomises the marginalisation of the residents of this village, both by the mine (Amplats) and by the tribal authority.

6. The Union Mine and royalty-to-equity conversion

In 1947 Union Mine commenced operation on the farm Swartklip 405KQ located less than 4 km away from Sefikile (RPM, 1957). When it began in the late 1940s this mine was called the Union Platinum Mining Company. It made history by becoming the second major platinum operation to be established in South Africa. In 1949 it became part of the Rustenburg Platinum Mines (RPM). The latter was administered under Rustenburg Platinum Holdings (RPH), a subsidiary of Johannesburg Consolidated Investment Co., Ltd. (JCI). After this incorporation Union Mine became known as the Union Section of RPM. In the early 1970s the operations of this mine entered the farm Spitskop 298 (410KQ) on which Sefikile is located. When JCI was unbundled in 1995 RPM, together with other platinum asserts, fell under the ownership and administration of Amplats (RPM, 1957:4; Bruce, 1996, p. 4). Today, Union Mine's massive operations straddle two farms: Spitskop 298 (410KQ) and Swartklip (405KQ).

A significant portion of the community-owned farm Spitskop is now a mine-lease area enclosed for Union Mine's operations. Although mining operations entered Spitskop the 1970s, local farmers argued that they started losing grazing and ploughing fields in the late 1940s when the mine started. According to village elders, residents were never consulted before Union Mine began its activities. The mine signed an agreement with the chief and occupied the land accordingly. As a result, villagers nicknamed the mine *Sinkgalaleng!* – Don't undermine us! This is how an elder narrated his early encounter with Union Mine:

> I can remember clearly when they began mining in this village. I was about ten years old. On one side of this farm we were

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ploughing. On the other side we grazed cattle. There were families that had cattle posts on the part of the farm that is now occupied by the mine. They were removed by force from that area. There was no compensation from the mine. (Interview: Sefikile, 28.07.2013)

Sefikile's residents have had sporadic episodes of uprisings against the mine, but these were never particularly significant. Things took a different turn in the late 1990s when a group of village youth activists took up the struggle against the tribal authority and Union Mine. The youth were concerned that, ever since mining began in Sefikile, residents had never benefited. These young militants were concerned about getting jobs in the mine and public infrastructure in their village. The mine responded by funding two projects: the renovations at Sefikile Primary School, and a short tarred road that runs along the western side of the village. Resistance subsided for a while (Mnwana and Capps, 2015).

In 2006 the tensions fermented again when the people of Sefikile became aware that Amplats had been paying royalties for its operations in their village since the early 1980s. The tribal administration office had been receiving these payments. Towards the end of 2006 rumours circulated that *Kgosi* Nyalala was about to enter into another transaction with Amplats. He was in the process of converting the mining royalties at Union Mine into an equity stake. This deal granted 15% ownership to the Bakgatla 'tribal' authority[12] on behalf of the entire community of 32 villages. Amplats, through its subsidiary RPM, controls the remaining 85% (Anglo American Platinum 2006).

To secure this deal, the *Kgosi* Pilane and his traditional council took a loan of R420 million[13] from Rand Merchant Bank. This loan complemented a royalty conversion. The actual amount of these royalty payments were never revealed to ordinary community members. This is how the community relinquished their entitlement to the royalty payments over portion 2 of Spitskop 410 JQ[14], in favour of dividends from the 15% equity stake (Anglo American Platinum 2006). According to Amplats this transaction was endorsed by the members of the community at a *Kgotha-Kgothe* (or general meeting) of the Bakgatla ['tribe'] on 25 November 2006 (Anglo American Platinum 2006). However, most of our respondents knew very little about the details of this transaction including the actual figures agreed upon during the signing. As one elder of Sefikile explained:

> This mine has been operating here for more than 50 years to the disadvantage of the people of Sefikile. We have refused on many occasions that the chief should give away this land to the mine because it is our grazing land. But he insisted. The white people told him that there was a lot of money there [where the mine is operating]. We do not know how much money the chief has made. (Interview: Sefikile, 08.11.2013)

7. Resistance

When this transaction was finalised and announced in the media in December 2006, tensions between the chief and the people intensified. What began as a youth-led uprising has become a broader village opposition against the equity stake transaction. Most residents, young and old, joined in. Residents blockaded the road between the village and the mine and demanded an urgent reversal of this transaction. It was during the peak of this conflict that some of the elders told the young protesters about the land purchase history. They learnt that Spitskop was not supposed to be tribal land, and that it was bought privately through the contributions of a distinct syndicate between 1910 and 1912. From that moment on, the village struggle shifted significantly, and the contestation over the farm Spitskop became central in the struggle against the *Kgosi* Nyalala and the mine (Mnwana and Capps, 2015).

At the peak of this struggle was a court battle which raged for almost two years, between 2010 and 2011. On 14 June 2010, a group of villagers, constituted as the Bakgatla- ba-Sefikile Traditional Community Association (BBSTCA), filed a court application with the North Gauteng High Court to challenge tribal ownership of the farm. The BBSTCA represented the descendants of the 52 families who contributed towards the purchase of the farm, between 1910 and 1912.This group sought a court order to compel the Minister of Rural Development and Land Affairs to transfer the ownership to the names of the original buying families. This application sought to effectively remove *Kgosi* Nyalala's custodianship over this property and its mining revenues.

North Gauteng High Court, probably because of lack of jurisdiction ... over this matter[15], transferred the application to the North West High Court on 31 January 2011. Judge Leeuw handed down judgement on the case on 1 December 2011. She relied strongly on the perceived 'customary' custodianship of chiefs over communal land. She made reference to the Constitution and post-apartheid legislation pieces that empowers chiefs to act as trustees over communal land. Citing Sec. 211(3) of the Constitution, she argued:

> In this matter I am enjoined by the Constitution to recognise that land that is held by the *kgosi* or traditional leader on behalf of a tribal community should be dealt with in terms of legislations that have been enacted for the purpose of regulating amongst others, the ownership thereof as well as the role and powers of the traditional leaders.[16]

The judge dismissed the application of the BBSTCA with costs. Thus, the rigid conception of custom which evolved with the colonial state (empowering chiefs to be trustees of communal property) prevailed. The BBSTCA, apparently facing financial challenges, has been unable to challenge the judgement. Such an outcome confirms Mnwana's (2014b:21[17]) argument that the interpretation of customary law by the courts, especially the North West High Court not only leaves the chief's unaccountability unchecked but also endorses the punishment of village activists who challenge the chief to account. Hence it remains extremely difficult for ordinary rural residents to challenge the chief to account for vast mineral revenues that he controls on behalf of their communities.

8. '*Thula Mtswana!*': ethnic tensions

The impact of the mining operations is more visible in Sefikile than in any other village in the Bakgatla area. The loss of pastoral and agricultural land is among the most glaring consequences.

[12] The 15% equity stake is held through a Bakgatla – community – owned trading company called Lexshell 36 (Pty) Ltd., the latter is directly owned and managed Lexshell 703 (Pty) Ltd. (also a Bakgatla company).

[13] This debt is serviced through the dividends that accumulate to the Lexshell 36 (Pty) Ltd. Company.

[14] The Bakgatla tribal authority has been receiving royalties for mineral rights (under the old order) on this farm since 1982.

[15] Bakgatla BaSefikile Community Development Association and Others v Bakgatla-ba-Kgafela Tribal Authority and Others (320/11) [2011] (1 December 2011), para 2.

[16] Bakgatla BaSefikile Community Development Association and Others v Bakgatla-ba-Kgafela Tribal Authority and Others (320/11) [2011] (1 December 2011), para 42.

[17] Mnwana (2014b) basis his argument on a detailed examination of a number of court judgements including the case between the residents of Motlhabe village and Kgosi Pilane (Pilane and Another v Pilane and Another (CCT 46/12, February2013) which is similar in many ways to the BBSTCA case.

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Even more land has been lost as a result of the mushrooming informal settlements all around the village. The informal settlements provide home to thousands of migrant mine workers and job seekers mainly from the Eastern Cape, Mozambique, Lesotho and other labour sending areas.

It is important to note that Union Mine operates using vertical and decline shafts. Deep-level mining, however, requires a much larger underground workforce which is largely recruited as migrant labour. After 1994, when the mines started to pay living out allowances, migrant workers moved out of mine hostels into informal settlements on surrounding land. This process led local village resistance to customary authority to take an ethnic form. It was 'foreigners' who were perceived to be taking over agricultural land with the chief's approval, as well as the mine directly.

Migrant miners forced their way onto Sefikile's communal land and built informal settlements in the early 2000s. The largest informal settlement, Khwecheza, straddles the land between Union Mine and the original village of Sefikile. Residents of Sefikile generally refer to Khwecheza residents as 'foreigners'. This is how an elder from Sefikile narrated his experience:

> Foreigners are mainly the Xhosas from the Eastern Cape. I was here when they started to occupy our ploughing fields by force. It all happened just under my nose. The chief did nothing to stop it. (Interview: Sefikile, 14.08.2013)

Ostensibly, the notion of 'foreigners' originated in the 1980s during the reign of former Bophuthatswana leader President Lucas Mangope. It is said that Mangope used to deal harshly with non-Tswana migrant miners, referring to them as 'foreigners'. Miners frequently went to Sefikile for beer drinking and women. Some residents narrate nostalgically how Mangope's Bophuthatswana police chased and arrested non-Tswana miners found wandering in the village. The arrested miners were at risk of losing their jobs and of being deported back to their 'homelands'.

Mine workers are of course no longer confined to overcrowded single-sex hostels in the post-apartheid era. Workers receive an incentive called a 'living-out allowance' if they opt to live outside the mine premises. The majority of workers at Union Mine have left the hostels, and most reside at Khwecheza while others rent backyard shacks in and around Sefikile. Amplats does not seem committed to providing alternative accommodation for its workers who have left the hostels because they want to stay with their families. Khwecheza has become an enormous shack-built informal settlement nicknamed by its inhabitants 'Thula Mtswana' (isiXhosa for 'Shut up Tswana'). This nickname epitomises the tensions between the ethnic Tswana village residents and Xhosa migrant miners.

When this study was conducted, there were no services at Khwecheza, apart from a few communal taps and pit latrines in every small yard. There were no roads, electricity, health care centres or even a school. Khwecheza remains an uncomfortable scene of poorly- built, overcrowded shacks. Swarms of little children ran around the narrow paths where droves of men drifted slowly to and from the Union Mine.

The fading edges of what used to be ploughing plots were the only sign that there was once productive agricultural land in the area occupied by this informal settlement. One Saturday afternoon we visited Khwecheza together with four residents from Sefikile. They were eager to show us where they used to plough. As we drove through this massive informal settlement, we saw a small herd of goats nibbling on the remaining patches of what used to be dense shrubs behind the shacks. An elderly woman who was part of the group that accompanied us complained:

> Every time I see these goats I feel like crying. I used to own more than 40 goats. These people [the residents of Khwecheza] stole them all. Now they are farming goats. These are the goats they stole from us! (Informal conversation: Sefikile, 20. 07. 2013)

9. The 'informal' land market

Informal sales of land by some members of prominent families have also triggered tensions in Sefikile. This practice began in the late 1990s. Two male residents of Sefikile sold portions of their ploughing fields as residential plots to unmarried women and migrant workers—groups that were denied access to customary land rights. Recently, unmarried Tswana women have been increasingly gaining access to land rights just like men. This shift can be attributed to the recognition of women's customary rights to property promoted by the South African Constitution and international law. But except in very rare cases, customary law generally excludes non-Tswana migrants from owning residential plots in the Bakgatla area. Customary land rights are acquired through ethnic (Tswana) group membership. The individual 'land-sellers' spotted this as an opportunity. Since migrant mine workers – 'foreigners' – cannot gain access to land through the tribal authority they became a new target market. They acquired land much faster than the single women did. This has led to the rapid development of an additional informal settlement on the south-western periphery of Sefikile, not far from Union Mine, called Machela Pata ('across the road'). The land sellers are usually males from prominent families in the village.

Mine workers who buy residential plots usually build rows of shacks and rent them out to other migrant miners. Machela Pata has become the section of Sefikile with the most single-roomed shacks. Most of the new shack owners in this section are isiXhosa speakers from the Eastern Cape. A middle-aged Xhosa woman from Cala in the Eastern Cape explained how she and her husband, a mineworker, purchased a plot of land at Machela Pata in 2009 from a local Tswana man for R3000 (Interview: Sefikile, 04.10.2013). Renting out shacks seems to be the most lucrative business at Machela Pata. Between eight and 20 shacks can be found on one plot. Without any form of public infrastructure and services – and with seething ethnic tensions – after Khwecheza, Machela Pata is the most overcrowded section of Sefikile.

The question of public services was central in the tensions among residents at Machela Pata. Tensions were exposed by the dominant ethnic discourse which distinguished the 'locals' from the 'outsiders'. Since migrants did not have stand numbers, it is difficult to access services from the Moses Kotane Local Municipality. Migrants cannot access services from the Bakgtla-ba-Kgafela Tribal Authority because they are not members of the tribe. One resident from Machela Pata, a Setswana-speaking woman, complained about the local municipal councillor's intention to connect tap water and electricity to plots occupied by 'foreigners'. According to her, by doing so, the councillor was inciting war between Xhosas and Tswanas (Informal conversation: Sefikile, 10.08.2013). In March 2014 the Moses Kotane Municipality initiated a process of constructing a community recreation centre in Khwecheza. This was stopped by Sefikile 'locals' who accused the local councillor of neglecting them and prioritising the needs of the 'foreigners' (Interview: Sefikile, 05.12.2014).

Notwithstanding the tensions, the business of renting out shacks to mine workers at Machela Pata seemed to continue unimpeded. The adverse state of most of the shacks, and the virtual absence of public services such as water and electricity did not deter potential tenants. Tenants paid between R150 and R250 a month for shacks that did not have water or electricity connections. For shacks that had an electricity connection and a water tap in the same yard tenants paid between R350 and R600 per month (Informal conversation: Sefikile, 10.08.2013). The

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demand for rental shacks seemed high. More and more land continues to disappear under long rows of corrugated iron shacks.

10. Discussion

Evidently, mining has intensified village struggles, especially at Sefikile, which hosts the oldest mine in the Bakgatla area. For all the years the Union Mine has operated next to this village it has made an infinitesimal contribution towards the social and economic well-being of villagers from whose land it extracts platinum. This empirical material shows that what the state promotes as 'community inclusion' in the mining industry can reproduce and exacerbate marginalisation, poverty and conflict at village level. To explain this finding I proffer two main arguments.

First, the legislative framework in South Africa is ineffective in dealing with deepening village level poverty and marginalisation because its current definition of 'community', which is *de facto* interpreted as 'tribal/traditional community', fails to capture the complex character of residents who co-exist with major mining operations on the platinum belt. Resistance to the exclusion by the mine and to chiefly control of revenues culminates in group claims over land and mining revenues. Property disputes also become a struggle over group identity. Competing interests and heightened village tensions in the Bakgatla area point towards one phenomenon which remains silent in academic scholarship: that groups and social units continue to define and redefine themselves in terms of existing and historical relations to private property. As this study has shown, smaller 'corporate communities'[18] continue to emerge within the larger tribal political community. Social units are defined and redefined in terms of existing and historical relations to property as much as they are also defined by political affiliation. As such, struggles are fought through competing group identities and boundaries that function as social markers of property rights. The question 'who benefits?' remains fruitless until the competing groups in the manifold struggles that pervade new rural frontiers of platinum mining in South Africa are better understood. These struggles have to be seen beyond the simplistic perceptions of homogeneous 'tribes' and 'traditional communities' who share common interests.

Furthermore, the *de facto* interpretation of 'communities' as 'tribes' entrenches and elevates ethnic identities, thus it leaves the non-Tswana migrant miners – the 'foreigners'– with very limited grounds to claim any rights to property and mining benefits. Evolving identities revolve around group claims to exclusive control over mining revenues and other benefits. In Sefikile, the ethnic character of tensions is more conspicuous than in the other villages in the Bakgatla area. The tensions are not only entrenched in the struggle for mining benefits but also in the constant imposition of the 'foreigner' identity to those regarded as outsiders. This is an example of a phenomenon described by Peters (2004, p. 302) as [imposing] metaphors of difference. Citing the case of north-western Zimbabwe, Peters observes that [F] amilies denied legitimate status as members of the landholding community are called 'squatters' by those claiming original settlement Peters (2004, p. 302). Understanding the migrants' agency in Sefikile in acquiring land rights 'illegally' helps us appreciate their determination to resist their marginalisation and prejudice against them. As platinum mining expands, evolving and new forms of tensions and group identities demonstrate broadening lines of community fracture at village level.

The second argument highlights the vulnerability of customary land rights, particularly in the contexts of rapid economic shifts at village level. Evidently, the entry and expansion of the Union Mine into the land used by villagers for ploughing and grazing was fairly easy because the chiefs have historically been – and still are – assumed to be the custodians of customary land rights. As such, the reported unaccountability and lack of transparency by the current chief about mining deals he enters into with Amplats on village land occupied by the Union Mine is rooted on the precariousness of customary land rights. There is silence in the current mining legislation about protecting the customary land use rights of villagers when extractive industries enter communal land. Now that Amplats is planning to sell the Union Mine (Seccombe, 2014) it is unlikely that this global leading platinum producer will take steps towards ensuring the social well-being of the village residents. Moreover, there is very little hope that the Sefikile residents will ever receive any compensation for the loss of productive farming land.

The informal sale of residential plots at Khwecheza also epitomised the vulnerability of customary rights. The fundamental weakness in the customary system of land rights lies in the tendency to aggravate the marginalisation of the rural poor, especially when there is rapid immigration into communal land and increases in landed property values. For instance, Woodhouse (2003, p. 1718)Woodhouse (2003, p. 1718) argues that customary land tenure does not act as an inalienable safety net for the poor. The author goes on to explain that wherever land values rise it is possible to identify processes of commodification and individualization of access to land – 'enclosure' – which reduce access to land for the poor.

The escalation of land sales at Sefikile fits the definition of 'enclosure' stated above. The vulnerability of customary rights over land and natural resources seems more visible in the context of mining, and the struggles in Sefikile epitomise this weakness. The forceful entry of migrant miners into communal land opened an opportunity for commodification of land previously controlled through customary tenure, but only the members of prominent families who held – through inheritance – customary ploughing rights to land close to the Union Mine could sell this land. Women are still excluded from this form of accumulation since historically it was only men who inherited land, especially ploughing fields in the Bakgatla area. This informal land market enhanced marginalisation, not only of women, but also of the youth and village residents who had no ploughing fields in the much desired part of village—the land adjacent to Union Mine.

11. Conclusion

Although there is notable growth of scholarly literature on mining impact on communities in Africa and beyond, there is limited empirical focus on the micro-level social dynamics that arise when mining expands into rural communal land. This article attempts to take a step towards bridging this gap. I have demonstrated through the case of the village of Sefikile that platinum mining expansion into communal land in South Africa has resulted in few benefits for rural communities. Hosting the Union Mine, the oldest and largest mining operation in the Bakgatla area, this village is characterised by complex struggles and tensions that render the benefits of mining marginal. I argue that such struggles epitomise the failure of the post-apartheid mineral policy reforms to protect communal land rights and to ensure tangible benefits for rural communities on the platinum belt.

The current policy regulating mining in South Africa takes no cognisance of the distinctive land histories that now shape village resistance to mining and chiefly control of mineral revenues. The primary unique feature in Sefikile's land dispute is its multi-ethnic composition. This phenomenon features prominently in evolving group identities and boundaries that epitomise contemporary

[18] Social units formed on the basis of common connections to property rights.

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disputes over land and mining benefits. The multi-ethnic cast of Sefikile's early history, however, seems to do nothing to allay more contemporary attitudes to migrant mineworkers who have settled on what was once village agricultural land. In this case, the chief is blamed for turning a blind eye to the abrogation of customary law by locals selling land to migrants. Both locals and chiefs seem to invoke customary law in different contexts where it serves their particular interests.

Understanding rural struggles along the platinum belt must begin with accepting that these are no simple disputes between powerful chiefs and powerless 'subjects'. There are also complex particular struggles among ordinary village residents about benefits from mining revenues. The understanding of these struggles is essential if we are to know some of the evolving, complex political and socio-economic shifts that arise with platinum mining's expansion in South African rural areas where holdovers from colonial and apartheid institutions of indirect rule continue to hold legal sway over rural residents. Poverty and conflict will persist in South Africa's platinum belt as long as the state's minerals policy reform continues to ignore the complex social dynamics that come with the rural-based mining expansion.

Finally, I strongly recommend that the mineral policy reform agenda in South Africa become more grounded in empirical knowledge about the socio-political composition of rural communities that occupy and own the country's mineral-rich land.

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TRAVAIL, capital et société 48:1&2 (2015)

Répercussions de la loi sur le Développement des ressources minérales et pétrolières d'Afrique du Sud sur les niveaux d'exploitation minière, l'utilisation du sol et la population

May Hermanus, Joshua Walker, Ingrid Watson et Oliver Barker

Résumé

Le présent article postule que la clause « utilisez ou perdez » [vos titres miniers] de la MPRDA, la loi sud-africaine de développement des ressources minières et pétrolières de 2002, a eu pour effet d'accroître l'empreinte minière au pays. Même si elle a permis à de nouveaux intervenants, autrefois désavantagés, de faire leur entrée dans le secteur et d'éviter la mise en réserve des titres miniers, cette disposition semble avoir eu une portée environnementale et sociale négative inattendue. Nous appuyant sur des données sur l'empreinte minière puisées dans diverses sources, ainsi que sur des études de cas de dégradation environnementale et de conflits sociaux engendrés par l'exploitation minière, nous suggérons qu'il est temps de modifier la MPRDA.

LABOUR, Capital and Society 48:1&2 (2015)

Impact of the South African Minerals and Petroleum Resources Development Act on Levels of Mining, Land Utility and People

May Hermanus, Joshua Walker, Ingrid Watson and Oliver Barker[1]

Abstract

This article argues that the "use it or lose it" clause in the 2002 Minerals and Petroleum Resources Development Act (MPRDA) of South Africa has led to an increased mining footprint. While allowing new, previously disadvantaged actors to enter the mining sector and avoiding "hoarding" of mineral titles, this provision also has unintended, negative social and environmental consequences. Using mining footprint data from a variety of sources, as well as case studies of environmental degradation and social conflict due to mining, we argue that it is time to reform the MPRDA.

Introduction

The Minerals and Petroleum Resources Development Act (MPRDA) heralded a new era of extractives policy in South Africa. When it came into effect in 2004, the state became the official custodian of all mineral resources. A key driver for adoption of the MPRDA was the desire to facilitate equitable access to and sustainable development of the country's mineral resources for the benefit of all. The provisions aimed to change established patterns of mine ownership by enabling black and other historically disadvantaged South Africans to become mine owners and shareholders, while also promoting small-scale projects. Following its adoption, prospecting and mining right applications would ostensibly be processed on a "first come, first served" basis and "hoarding" of mineral rights was to be discouraged through "use it or lose it" provisions aimed at ensuring that mineral resources were exploited and not sterilised.

In this article, we explore the impact of the MPRDA on levels of mining activity and the concomitant social and environmental footprint of mines. We argue that this new legislation has accelerated the pace and scope of mining. This acceleration has brought more land disturbance, which has engendered negative, and clearly unintended, environmental and social consequences.

While the MPRDA has created some democratic dividends, these have come with detrimental effects to public goods and social harmony. It is time to re-evaluate and adjust the MPRDA in light of these effects. While recognising that the negative social and environmental effects of mining did not *begin* with the MPRDA, we argue that these processes have *amplified* since MPRDA came into effect. We demonstrate that the MPRDA has led to an increased and accelerated mining footprint. While currently available data does not allow us to make a direct link between MPRDA and the increased social and environmental conflict, we argue that the increased mining following MPRDA has had even more impact on these conflicts. We define conflict as "the coexistence of aspirations, interests, and world views that cannot be met simultaneously, or that actors do not perceive as being subject to simultaneous satisfaction, and is viewed in this assessment as ranging from low-level tension to escalated situations involving a complete relationship breakdown or violence" (Franks et al.:8).

When the MPRDA was conceived, it was designed to create the conditions for meaningful participation in the minerals sector by previously disadvantaged persons. Indeed, the new legislation governing South Africa's mineral sector *has* led to an increase in the dispensation of mining rights and permits, allowing a greater diversity and number of South Africans to participate in and reap the benefits of the country's mineral wealth. However limited the effect, the MPRDA has been able to expand the scope of economic and social citizenship. Yet these changes have had unintended consequences: social conflicts over mineral rights, and largely unaddressed environmental degradation.

The subtext of this article thus concerns land-use choices: what are the social and environmental consequences of giving priority to mining to the detriment of other possible land uses in South Africa? For purposes of space and clarity, we have chosen to focus principally on two resources and provinces: coal mining in Mpumalanga, and platinum mining in North West. We begin with an overview of the policies and legislation preceding the MPRDA, followed by statistical and cartographic data on its effects, a discussion of environmental and social conflict, and finally, concluding remarks.

Policy and legislative changes leading up to the MPRDA: The case of land rights

The MPRDA constituted a sea change in the organisation and governance of extractive industry in South Africa. Following the 1994 transition to democracy, the new government sought to create a regime for governing extractive industries that would respond to the claims for the redistribution of land and wealth to the benefit all South Africans that date back at least to the African National Congress (ANC) Freedom Charter of 1955 (Cawood, 2004: 54). The MPRDA represents the culmination of legislative reform in the mineral sector that began with the 1997 Green Paper on Minerals and Mining Policy for South Africa, followed by the 1998 White Paper on Minerals and Mining Policy for South Africa, then the 2000 Draft Minerals Development Bill and finally, the MPRDA in 2002.

Even before these interventions, the post-1994 government had expressed its desire to reform the mining sector in the Reconstruction and Development Programme (RDP) document. This was the first instance in which one of the principal results of the MPRDA—the transfer of private mineral rights to the state—was detailed. This call was echoed in the 1995 Mineral Policy Process Steering Committee (Cawood, 2004: 54).

1997 Green Paper

The Green Paper on Minerals and Mining Policy for South Africa was the first formal document to outline the government's intentions with regard to a future (new) law. It contained three major policy proposals: a long-term objective for mineral rights to be vested in the state; the promotion of minerals development via a "use it or lose it" principle; and that the right to prospect and mine for all minerals be vested in the state (Cawood, 2004: 55). It was published on 3 February 1998, at which time the public was invited to respond. The Department of Minerals and Energy received more than a hundred written submissions from the public, in addition to submissions from interested parties that were held during hearings of the Parliamentary Portfolio Committee on Minerals and Energy (Republic of South Africa, 1997). Many of these core proposals were carried over into the 1998 White Paper, but not without concerns voiced by groups such as the Chamber of Mines over the spectre of "nationalisation without adequate compensation as guaranteed by the constitution" (McKay, 1998).13

1998 White Paper

The 1998 White Paper was a more substantial document, whose most significant proposal was exclusive state ownership of mineral rights (Cawood, 2004: 55). Article 1.3.6.2, clause i, makes this clear: "The Right to prospect and to mine for all minerals will vest in the State." The mechanism and terms by which the transfer of mineral rights from the mix of private and state ownership to the state alone was left to be determined in the Minerals Development Bill (which ultimately became the MPRDA). The White Paper aimed to do three things with regard to mineral rights: ensure security in respect of prospecting and mining operations; prevent hoarding of mineral rights and sterilization of mineral resources; and change the current system of mineral rights ownership with as little disruption to the mining industry as possible. It reflected the Green Paper suggestion of creating a "use it or lose it" system, in order to prevent "sterilization of mineral resources," as mentioned above (Cawood, 2004: 55-56).

Beyond the core principle of giving mine ownership to the state, the White Paper also introduced questions related to social justice and Black Economic Empowerment (BEE), a post-apartheid affirmative action programme designed to increase the participation of previously disadvantaged persons in the South African economy. This included the promotion of small-scale mining through a special licensing arrangement, access for small-scale miners to government information and technical expertise, and the desire to change ownership patters in the minerals sector by focusing on BEE (Cawood, 2004:56).

2002 MPRDA

Cawood (2004, 59-61) has a useful summary of the differences between the 1991 Minerals Act and the 2002 MPRDA. The main innovations of the MPRDA were to make significant changes in the duration of prospecting rights, mining rights, and mining permits, with the idea to implement a "use it or lose it" policy (as mentioned above) in order to prevent large companies from holding mining rights without using them for many years. Thus, the important changes between the 1991 Minerals Act and the 2002 MPRDA were: a) to make prospecting rights last for a maximum of five years, and only renewable once for a further period of three years; b) to make mining rights' duration a maximum of thirty years,

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renewable until the end of the economic life of the mine; and c) to create a separate category of mining permits (i.e. for properties smaller than 1.5 hectares), that are granted for a maximum of two years, renewable only three times for one year at a time, as opposed to the previous system in which they were easily renewable for two years at a time. The significance of the "use it or lose it" clause cannot be understated: it has created the conditions for an acceleration of mining to the detriment of environmental and social considerations by compelling companies to start mining without having yet received environmental permits in order not to lose their title (for example in 2010, 125 mines were operating illegally without water use licenses, by 2014 this had decreased to 103). This is therefore the most significant aspect of the MPRDA for the purposes of our article. Indeed, even in the proposed Amendment to the MPRDA, the "use it or lose it" provisions will remain intact.

Free Entry Principles

For the purposes of our argument, one of the other salient aspects of land use policy with regard to minerals in South Africa concerns the priority with which mineral rights take precedence over other kinds of land use. In this sense, South Africa's system somewhat resembles the "free-entry" system in places like Canada. There, free-entry principles have caused numerous problems for mining regulation (Canel et al., 2010; Laforce, 2010). Although not generally referred to as a "free-entry" system, South Africa's MPRDA clearly gives precedence to other mining rights and titles in determining whether a new permit may be issued. For example, MPRDA 16:2(b) states, "The Regional Manager must accept an application for a prospecting right if no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land." The same is true for the application for a mining right under sub-section 22:2(b) of the MPRDA. What becomes clear here is the current system in South Africa creates a hierarchy of land-use values, with mining at the top, and little regard in practice for the social and environmental consequences of this land use hierarchy.

Level of mining activity

The resulting changes in legislation governing South Africa's mining sector have thus had numerous consequences not only for the distribution of mining titles, but also on the communities affected by mining and their environments.

In this section, we examine the fluctuations in the number of mining titles accorded by the Department of Mineral Resources and the footprint of mining. Neither of the data set gives a fully accurate picture of actual mining activities, because they merely indicate the possession of mining rights or titles without necessarily indicating actual activity. Such data are extremely difficult to obtain. However, these data do suggest that mining activity has largely increased since the adoption of the MPRDA.

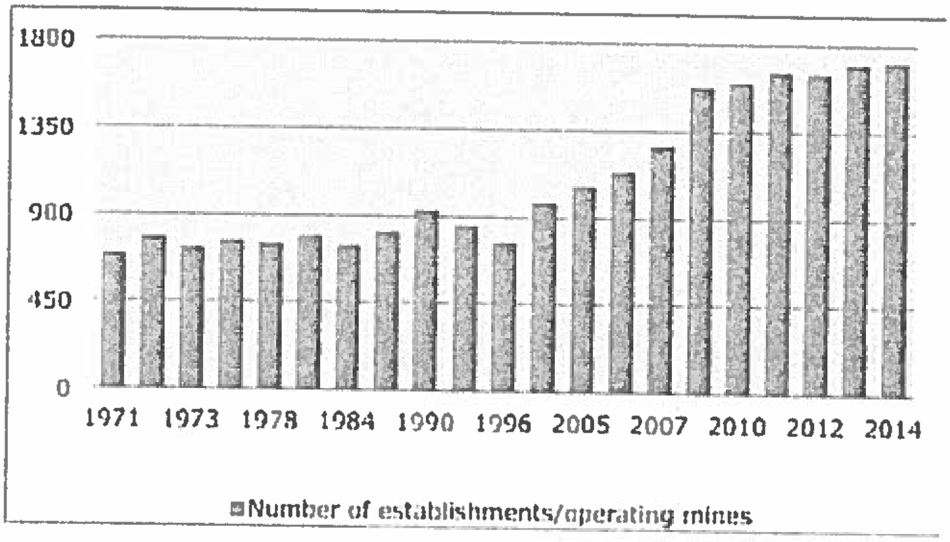


Figure 1: Number of mining establishments in South Africa (Source: Statistics South Africa, 1996 and DMR, 2004, 2005, 2006, 2007, 2009, 2010, 2011, 2012, 2013, 2014). Note: The DMR terminology changed in its reports. Earlier reports described "number of mining establishments," while later reports speak of "number of operating mines."

It is evident from Figure 1 that the number of operating mines has increased since 2004, initially at a high rate, but slowing to a lower rate of increase from 2009. Coal mining followed the general trend of mining activities in South Africa during the early 1990s, which saw a steep drop lasting until at least 1995. Secondly, and more importantly for the purposes of this article, the number of operating coal mines has steadily increased since 2004, the year of the MPRDA's adoption (Figure 2).

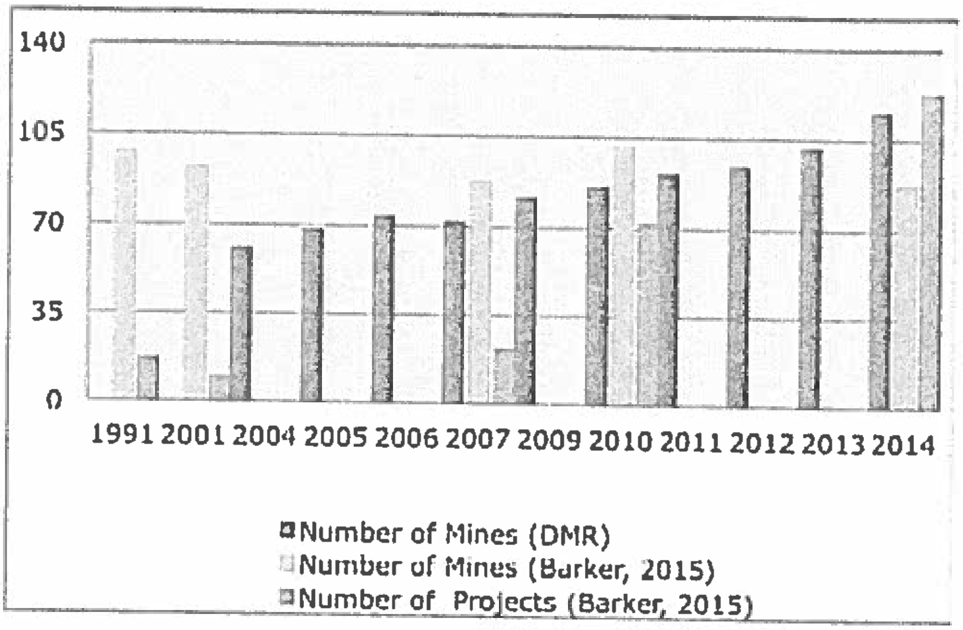
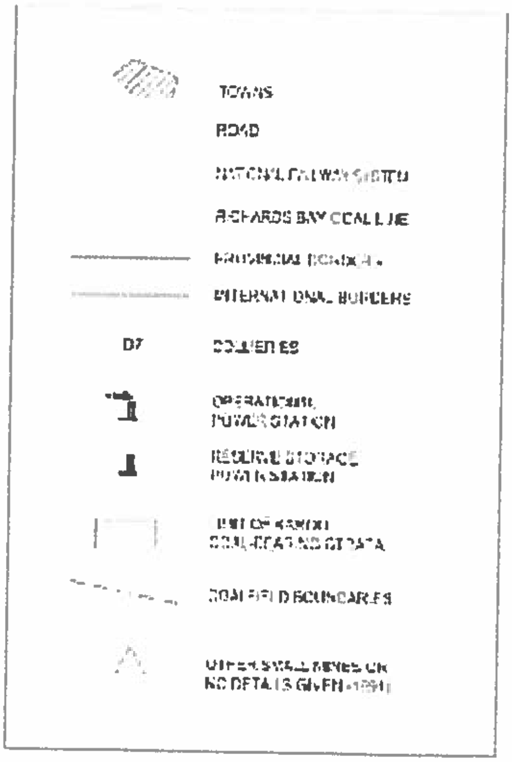


Figure 2: Coal Mining in Mpumalanga (Source: DMR, 2004, 2005, 2006, 2007, 2009, 2010, 2011, 2012, 2013, 2014 and Barker, 2015)

The increasing number of operating coal mines and the proliferation of applications for prospecting rights in Mpumalanga (McCarthy,2011:5) have translated into a growing physical footprint of mining, with up to 61 per cent of the provincial land area being subject to mining and prospecting rights and rights applications (Davies, 2014). This increase is evident when comparing areas under license between 1991 (Figure 3), 2001 (Figure 4), and 2014 (Figure 5). This was driven in part by the increased demand for coal, particularly from Asia. While increased demand obviously increases interest in mining, it is the system of licensing that translates these demands into mining activity.

Legend for all the maps that follow:



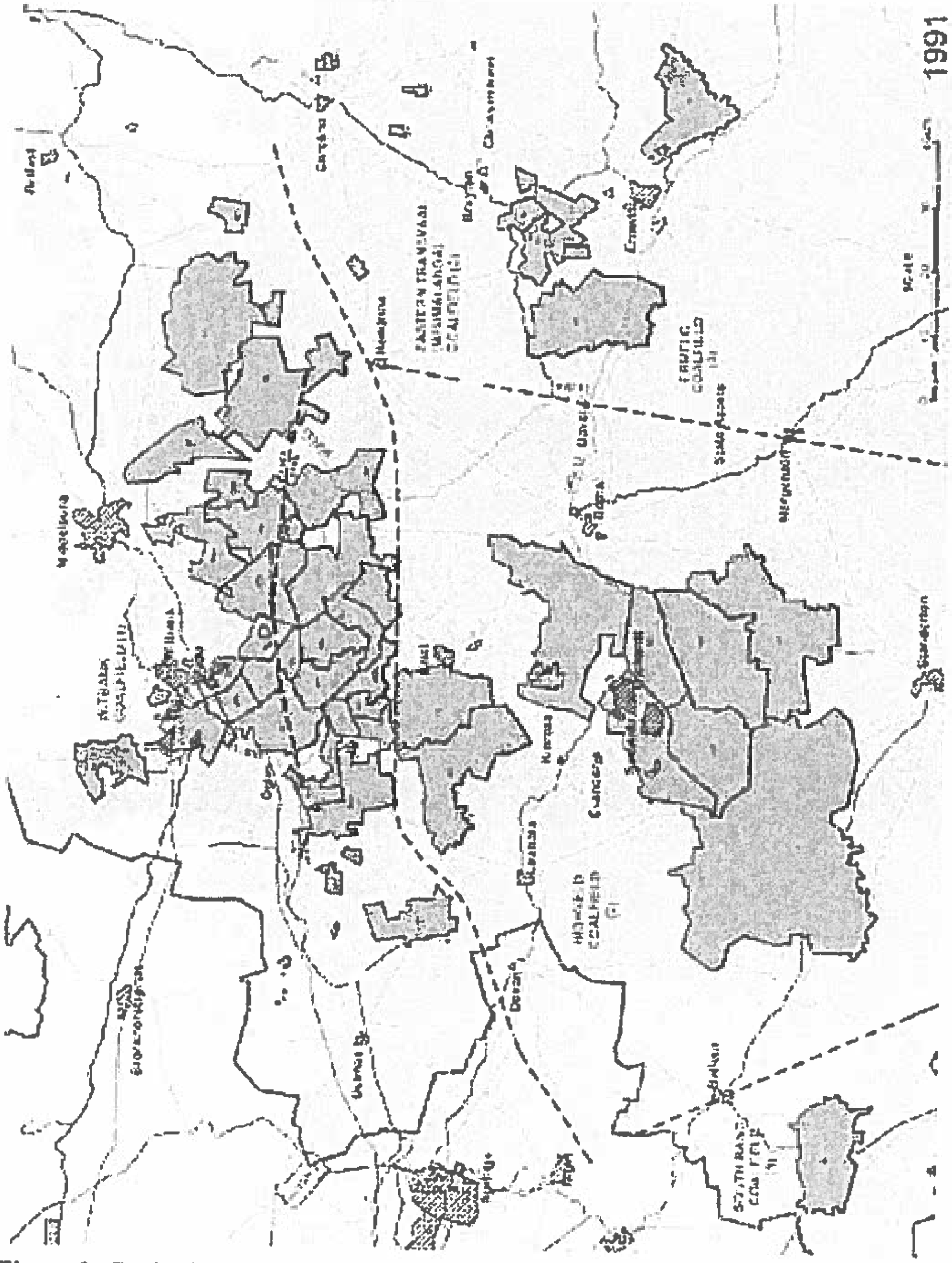


Figure 3. Coal mining footprint - 1991 (Source: Barker, 1991)

During this period we also see a change in the size of the mining rights and an increasing number of companies involved in coal mining, as illustrated in Figure 6 and Figure 7. In 2001 there were 22 companies operating mines in Mpumalanga. This increased to 34 in 2014 (Barker, 2015). Of particular concern is the smaller sizes of the rights granted, being too small to be financially viable in the long term. Smaller mines have fewer reserves than the larger

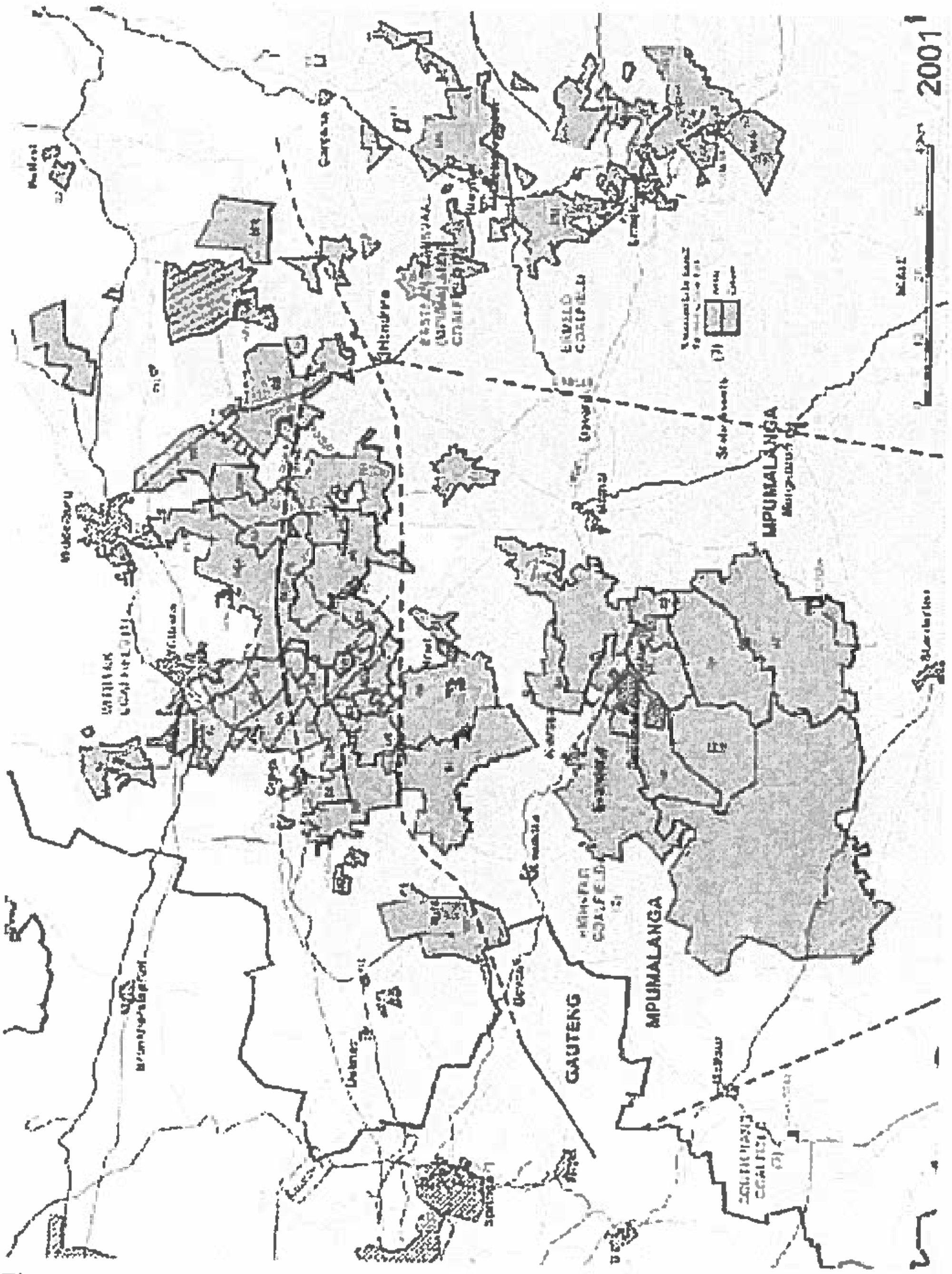


Figure 4. Coal mining footprint – 2001 (Source: Barker, 2001)

mines, lower production, a shorter mine life and they close down sooner, adding to the increasing number of defunct mines (personal communication. Xavier Prevost, Senior Coal Analyst, XMP Consulting, 22 January 2015).

Similarly, as illustrated in Figure 8, there has been an increase in the number of platinum mines and projects. This was in part driven by the increased price of platinum. Land covered by

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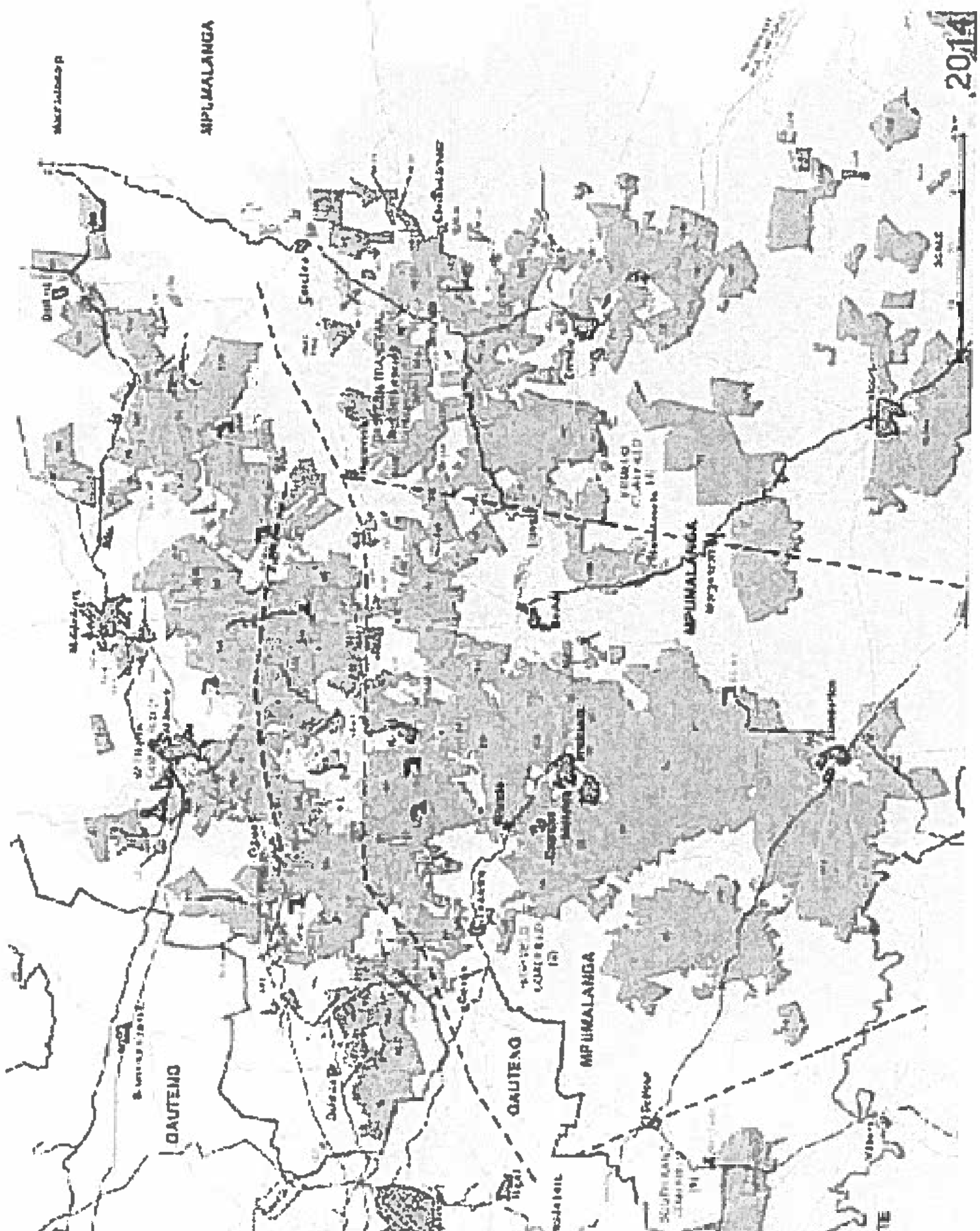

Figure 5. Coal mining footprint – 2014 (Source: Barker, 2014)

mining in the North West province more than doubled between 1994 and 2006, the majority of this occurring in the east of the province (NWDACER, 2009: 17), including an increase in tailing dams, mine dumps and return water ponds, and a decrease in vegetation cover. Related to this is the expansion of the built-up area due to the development of transport networks and formal and informal

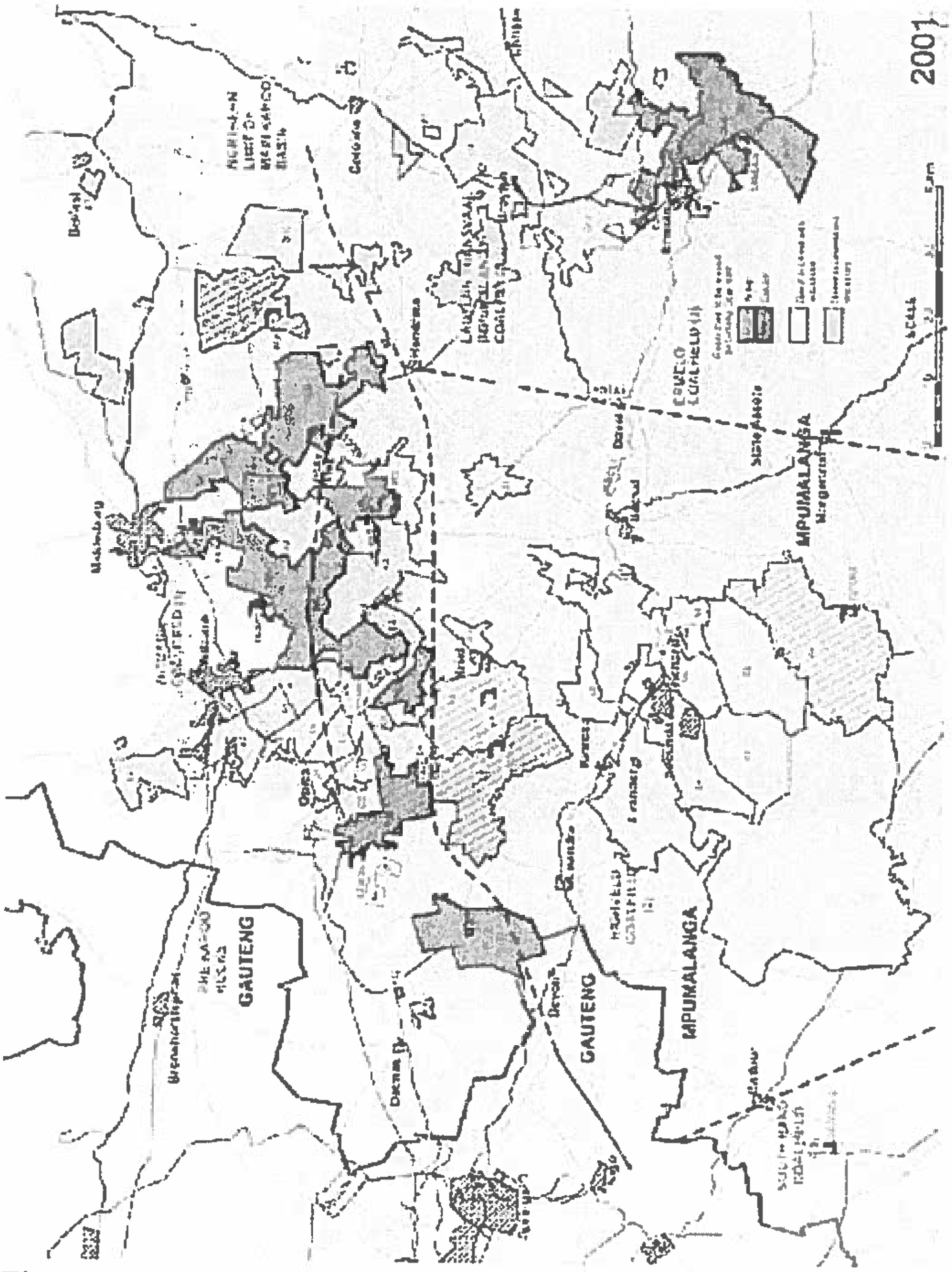

Figure 6. Coal mining ownership – 2001 (Source: Barker, 2001)

settlements (Ololade et al, 2008:3). The urban footprint almost tripled over the same time period (NWDACER, 2009: 17).

Environmental and social impacts of mining

Large-scale natural resource extraction projects profoundly transform environments, communities, and economies, and often generate social conflict. In the case of mineral extraction, the vast majority of these conflicts occur during the operational phase of

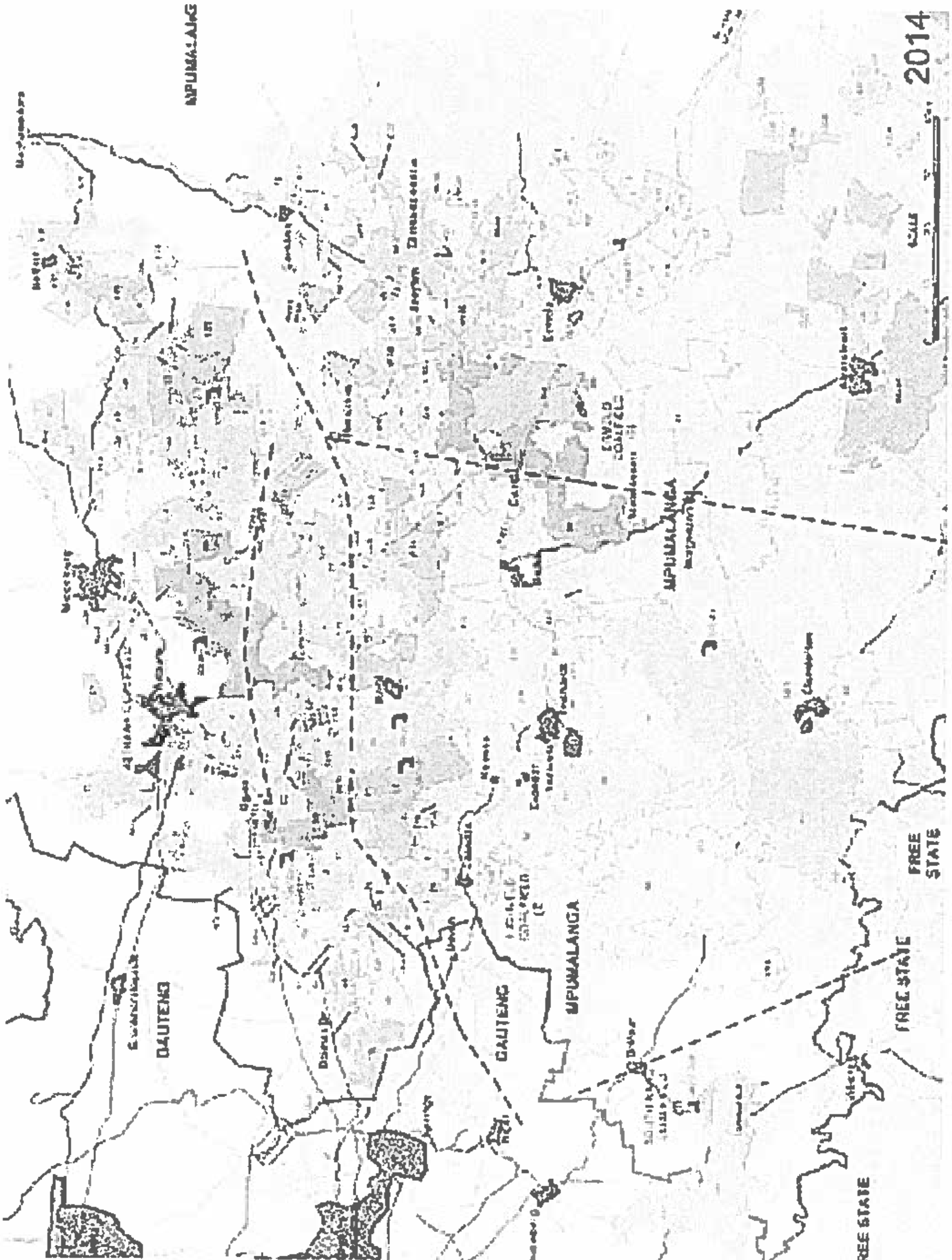

Figure 7. Coal mining ownership – 2014 (Source: Barker, 2014)

mining, with environmental issues being central to disputes with communities (Franks et al, 2014: 2).

These relate to the pollution of, competition over, and access to natural resources. The most common underlying issues, those that affect the nature of the relationship, are social and economic in character. They relate specifically to the distribution of benefits, differences in culture and custom between corporate and and community actors, and the absence or quality of on-going

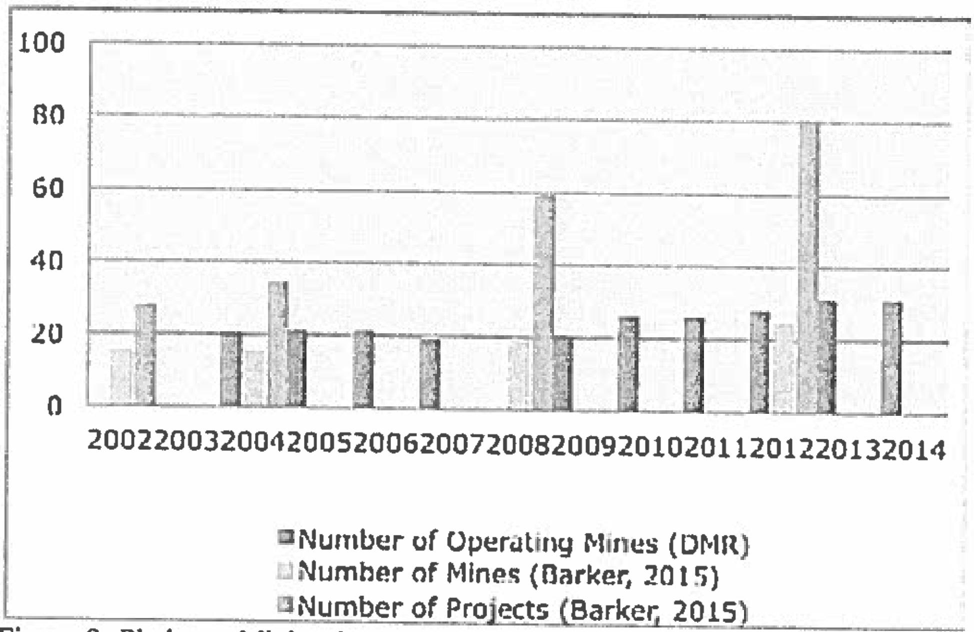

Figure 8. Platinum Mining in North West Province (Source: DMR, 2004, 2005, 2006, 2007, 2009, 2010, 2011, 2012, 2013, 2014 and Barker, 2015)

processes for consultation and communication (Franks et al, 2014: 4). Similar issues are highlighted in the 2002 report *Breaking New Ground,* a project commissioned by the International Institute for the Environment and Development (IIED) on mining, minerals, and sustainable development. Local communities in particular encounter significant challenges as mines inevitably bring social, economic, and environmental change to nearby areas. National rights to wealth and other benefits derived from mining are therefore in tension with the rights of local communities which, it could be justifiably argued, deserve a larger share of compensation through the benefits described above. They carry a disproportionate share of the costs and risks, including fundamental change to their traditions and sources of livelihoods (IIED, 2002). In mining areas, social conflicts arise from flawed or superficial consultation and engagement processes, inadequate information and understanding of the impacts of mining, loss of control of development choices, unfulfilled expectations of the economic benefits of mining, inequitable benefit flows, and economic hardship when mines close.

A survey of recent newspaper articles adds credence to the idea that conflict surrounding mining activities in South Africa has been growing in recent years: "Limpopo farmers are feeling powerless as the minerals department greedily consumes agricultural land and with it, the water supply" (Mail & Guardian, 13 Mar 2015b);

"No mining in our backyard, villagers say" (Mail & Guardian, 05 Dec 2014); "Mine lays claim to Mpumalanga water catchment area" (Mail & Guardian, 30 Jan 2015a). While such anecdotal evidence needs to be confirmed by further empirical research, these articles suggest the increase in mining footprint following the adoption of MPRDA has nevertheless created new conditions for social unrest and environmental conflict, as elaborated in the following section.

Environmental impacts

The implications of the increasing rate and footprint of mining are significant from an environmental perspective. The main concerns are around land, land use and water. Where land is being mined, it excludes and limits other land uses. Even if the mining activity does not cover or destroy the entire parcel of land for which a company has been granted a license, it has an impact on the surface of that and adjacent land through the generation of dust, polluted water runoff, drawdown of groundwater and subsidence. The exact extent and scale of the environmental impacts of mining are dependent on local geological conditions, the depth of mining and the mining method (surface or underground). Those most likely to bear the brunt of environmental changes are the rural poor.

Land and land use

With 61 per cent of the surface of Mpumalanga under mining or prospecting, the amount of land available for agricultural production is reduced. This is especially relevant as the bulk of South Africa's high potential agricultural land is in the Mpumalanga Highveld. A report by the Bureau for Food and Agricultural Policy (Van der Burgh et al, 2012.:5) concluded that at the current rate of coal mining in Mpumalanga, 12 per cent of South Africa's total high potential arable land (an area of over 300,000 hectares) will be transformed, while a further 13.6 per cent is under prospecting. Rehabilitation of mines at closure seldom, if ever, restores the agricultural potential of soil (Limpitlaw et al., 4-5). Based on current and near future mining activities, Van de Burgh and co-authors predict a loss of maize production of 284,844 tons per annum, with a further loss of 162,736 tons if prospecting areas are transformed (Van der Burgh et al, 2012-5). This would influence the availability and price of a South African staple food. Underground coal fires, collapsing ground and acidification are additional concerns

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that create dangerous ground conditions and make the surface unstable, rendering the land unsuitable for other uses (McCarthy and Pretorius, 2009:58). In the communal areas of the North West, the increasing mining footprint has decreased the amount of, and increased competition for, productive land available for grazing. This observation again raises the question of the implicit hierarchy of land-use values.

Water

Land transformation has an impact on the provision of ecological services, such as the provision of clean water. Rainfall and evapo-transpiration, and so runoff, across South Africa is unequally distributed—12 per cent of the land area generates 50 per cent of surface water (Colvin et al, 2011: i). The higher rainfall region in the eastern and central Highveld is the major source of water for both the Vaal and Olifants river systems, the former feeding the industrial heartland of South Africa (McCarthy, 2011: 2). This is also the area where the majority of South African coal deposits lie. Grasslands and associated wetlands play a key role in regulating the provision of clean water. During periods of high rainfall, wetlands hold water and release it during drier periods, supplying water to streams and rivers. These areas also act as sinks and buffers against polluted water. Removing vegetation and disturbing the structure disrupt these natural water retention and purification services.

Underground and open cast coal mining, and related activities such as coal washing and transportation in the headwaters of major rivers, have an impact on both the quantity and quality of runoff. This is well documented in the 2011 WWF report *Coal and water futures in South Africa. The case for protecting headwaters in the Enkangala grasslands*. Also documented in this report, and possibly the most serious problem arising from coal mining, is the generation of sulphuric acid (acid mine drainage) as a result of a chemical reaction between pyrite present in the coal and oxygen-bearing water (McCarthy and Pretorius, 2009: 58).

Water quality from these catchments is deteriorating, with dams in the area showing a steady increase in total dissolved solids (TDS) and sulphate concentrations (McCarthy, 2011:5). According to McCarthy and Pretorius (2009:61), mining has resulted in a ten-fold increase in TDS in water bodies in Mpumalanga. A range of other activities in these catchments, including agriculture, coal-

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fired power generation, industrial activities and poor waste water treatment, exacerbate this problem (CSIR: 1). It is not only operating mines that influence the environment, acid mine drainage continues to decant from rehabilitated opencast mines (McCarthy,2011: 6).

The contamination of the water supply to the town of Carolina in January 2012 is an example of how these environmental issues, if not adequately managed, have a direct impact on communities. The pH of the dam supplying water to Carolina dropped, almost overnight, to 3.7. This was accompanied by elevated levels of iron, aluminium, manganese and sulphate, rendering the water toxic and unsuitable for use (McCarthy and Humphries, 2013: 1). As a consequence, an estimated 17,000 people from Carolina had to contend with an inconsistent water supply of dubious quality for up to eight months, when municipal water and sanitation services once again started working adequately (Templehoff et al, 2014: 81). The sudden change in water quality is attributed to mining activities—catalysed by an unusually heavy downpour that flushed coal mine seepage that had accumulated in a wetland into the dam. The rain also caused pollution control ponds on surrounding mines to overflow into the catchment.

This is but one of an increasing number cases where water supply has been affected by mining activities. The Bench Marks Foundation (2014) documents such concerns in the Policy Gap 9: South African coal mining report, with other civil society organisations (i.e. Centre for Environmental Rights and GroudUp) also documenting the "devastation" that coal mining is having in the region.

Other environmental concerns relate to air emissions, dust and mining waste. Many of these environmental issues are at the root of the social impacts discussed below. Indeed, it is impossible to speak about the environmental impact of mining's increased footprint without also speaking of its social impact, and vice versa. We turn to the other side of this equation below.

Social Impacts

Historical context

For historical reasons, the types of conflict triggered locally by the social, cultural, and environmental changes wrought by large scale mining operations and described by Franks et al. (2014:4) and Canel (2010:8-11) were not seen in South Africa until recently.

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The dispossession of indigenous South Africans of their land began with the arrival of European settlers at the Cape in 1652 and continued over three centuries. Today more than a century after the start of large scale mining in South Africa, indigenous communities dispossessed and displaced under colonial conquest and rule, find themselves on land which can be mined for its minerals.

When the agricultural sector expanded under colonial rule land law became another instrument for dispossession and Africans were either turned into tenants or forced into wage labour. By the time mining got underway in South Africa, much of the land was already under the control of colonial powers or occupied by Europeans, including the diamond and gold mining regions of the country and most African cultivators had become wage labourers. (Cousins and Walker, 2015: 6-8; Ntsebeza, 2010:2; Mafeje, 2003: 14-16; Bundy, 1988/1979: 1, 44-45, 165-174, 197-200; Lipton, 1985: 17, 85).

Land dispossession and the forcible removal of people, in large numbers and in successive waves, preceded and vastly overshadowed the advancement of mining in the former Transvaal, Natal and the Orange Free State and its impacts on land utility. As the remote areas of the country set aside for the occupation of Africans became established, the migrant labour system came to epitomise the social cost of mining. As Wilson (1972:1-13) writes, mining in the late 1800s signalled a new phase in the country's development and "intensified the push-pull dichotomy" with Africans first pushed off the land into overcrowded reserves, and then recruited to work at low wages as farm- and mineworkers in designated white areas.

In the twentieth century, up to the advent of democracy in 1994, land policy as expressed in the Natives Land Act of 1913 and the Native Trust and Land Act of 1936 continued to be directed towards maintaining white ownership of the land and consolidating marginalised African settlements into tribally based homelands or Bantustans (Ntesbeza, 2010: 2; Beneirt and Delius, 2015: 25-27; Dodson, 2013: 29-30).

Historically, competition between mining and other (white) land users was negligible. In the context of low quality soils, failing rains, droughts, locusts and cattle diseases (Lipton, 1985: 85), white farmers willingly sold their land to mining companies. Yet mining impacts did not entirely escape notice or go unchallenged. White farmers in the gold mining region of the Witwatersrand started complaining in 1905 to the government about changes in the quality and quantity of their water. These complaints were ignored until 1956, when the government established an inter-departmental committee (IDC) to study the effects of dewatering by the mines. The IDC in turn established a sub-committee to investigate the farmers' concerns. These were set aside in 1960, when the government accepted the final report of the IDC sub-committee known as the Jordaan Commission. The Commission concluded that the dewatering of the dolomites was necessary because the economic benefits of gold mining would far outweigh the consequences of dewatering (Alder et al, 2007: 33-34). Here we see one of many instances of the overlap between environmental and social concerns resulting from South African mining activities.

Overall, while individual farming operations were affected by mining, collectively white farmers benefitted from "gold-fuelled growth" which financed mechanisation subsidies, irrigation projects, training and agricultural extension services (Nattrass and Seekings, 2010:13-14). In the period 1911 to 1936, of the £148m raised in taxes from mines, the government spent £112m on subsidies to agriculture (Lipton, 1985: 260). Thus, while the early environmental impact of mining on the Witwatersrand had a general effect, it was also mitigated for some, along racial lines.

While the Land Act of 1913 was never fully enforced, the relationship between white and black people became increasingly that of landowner and poorly paid worker respectively (Beneirt and Delius, 2015: 27, 37). Against this backdrop and the ensuing struggles against apartheid and its aftermath, it is difficult to isolate clashes and injustices caused by mining or within the mining sector from other sources of conflict such as the continued economic marginalisation of black South Africans. Consequently, it is difficult to separate the negative social impacts of the MPRDA from other causes.

Current situation

In recent years, reports of conflicts directly attributed to mining have emerged piecemeal, from newspaper articles, the NGO accounts, court papers, and studies conducted in mining areas. These reports emanate from both mined-out as well as new mining areas, indicating that the concerns of people affected by mining stem from developments prior, and subsequent to, the advent of MPDRA.

For example, communities in the Free State, a mature gold mining region which was opened to mining in the late 1940s, currently face problems associated with mine closure and failures in the post-mining economy. Marais (2013:370-371) examined the experiences of communities and of mining companies to develop a post-mining economy while mines were downscaling and closing. He concluded that developments in the Free State were consistent with international experience, in that neither mining companies nor local communities were well prepared for mine closures; endeavours to develop successful post-mining economies were largely unsuccessful. The local factors affecting the fate of the Free State communities were: the absence of integrated planning exacerbated by poor governance, political infighting, and the absence of trust between mining companies and communities, as well as between mining companies and government. Exclusion of agencies outside of government from development planning and processes, as well as the late start to planning the post-mining economy also contributed to the poor results.

Since the promulgation of the MPDRA, newer mining areas in South Africa have tended to reflect the full complexity of the issues at play when mining collides with established settlements and affects critical ecosystems. Conflicts have variously and simultaneously involved differences over who may lay claim to the economic benefits of mining, who may make decisions on behalf of communities, and whether mining should take place at all. Problems have surfaced associated with the relocation of communities, the contamination and availability of water, and the general deterioration of the physical environment around mines. Mining has also triggered waves of in-migrating mine employees and job seekers, with attendant difficulties and failures in the delivery of basic services and infrastructure. These kinds of social consequences are also part and parcel of South Africa's challenges with urbanisation: yet the conflicts around the provision of services, urbanisation, and mining play out differently in different parts of the country. In some cases, the intercession of traditional authorities creates additional complexities.

In the Rustenburg area of the North West, Manson (2013:411, 417-418,422-423) found that fraught, complex economic and political forces were unleashed as traditional authorities became the intercessors for local communities involved in mining. Households

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and communities became divided as ethnic affiliations were revived, and demands were made for houses and jobs on grounds of ethnicity by people living within the area, as well as those with links to the area but had long lived outside it. Furthermore, the roles assumed by traditional authorities in engaging mining companies foster the corporatisation of ethnically defined groups, exacerbating disputes over the control of mining related assets. Public violence and ongoing discontent over the distribution of benefits accrued from mining has become endemic, with most black and rural social groups caught up in the fray.

Rogerson (2012:129-131), who examined the quality of partnerships between mining companies and local governments across South Africa, observed that the social and labour planning provisions of the MPRDA were inadequate. This led to unrealised and unrealistic expectations. He proposed that relationships between mines and local government be institutionalised. Alternatively such relationships could be established between mines and intermediary organisations, which could act on behalf of local governments lacking in capacity to effectively engage mines.

Ololade and Annegarn (2013:568) analysed and compared the views of community members and mining companies on sustainability in the Rustenburg district. They found that the claims of the mining companies' sustainability reports did not tally with the perceptions of residents. They concluded that the concept of sustainability in mining was idealised and that if more realistic concepts were adopted, the mining sector could approach its social responsibilities activities more successfully. Furthermore the combined or cumulative effects of the mining industry were not addressed through the collective interventions of individual mines. The whole industry needed to move away from the notions of "local environmental protection and limited social responsibility".

That many mining companies are small and less able to fund the costs of mining impacts is another important factor contributing to the externalities associated with the sector and the potential for social conflict. The decline of the gold mining industry in South Africa coincided with the advent of democracy and the introduction of the MPDRA. By this time, large-scale mining had already been underway for a century, and larger mining companies were starting to withdraw from well-worked gold and coal fields. Smaller operators with more modest capital requirements were able to take over these mines (Hermanus and de Jager, 2011: 6-7) and apply for licences to mine smaller areas as provided for in the Act. These companies tend to have fewer resources and are thus unable to address environmental problems or community concerns and interests.

The issues typically faced by communities and gaps in the MPRDA provisions which disadvantage other land users and uses relative to miners were outlined in a submission to the Parliamentary Portfolio Committee on Mineral Resources. It was made by several NGOs, namely the Centre for Environmental Rights, groundWork South Africa, Earthlife Africa, Johannesburg Branch, Environmental Monitoring Group, Vaal Environmental Justice Alliance and the Federation for a Sustainable Environment. They took issue with a number of the bill's provisions, setting out amendments to the MPDRA in 2012. They argued that the MPRDA as it stood, and with the planned amendments, did not adequately provide for consultation or access to information as required by the constitution and that such provisions were vital, since mining was severely disruptive and distressing to the people who are affected by it. Without effective consultation and with limited information, vulnerable rural communities and emerging farmers were unable to challenge mining applications or ensure that the impacts of mining were properly mitigated. Examples of the information that interested the affected communities were denied, as were the social and labour plans (which mining companies were obligated to develop), as well as DMR decisions to grant rights to mining companies on owned and occupied land. These issues had been raised without effect for many years and that mining has become closely associated with social conflict in South Africa.

At the planning level in government, the Mpumalanga province report on its economic and development pathway highlighted the importance of agriculture, mining and tourism to its economy, and acknowledged that mining activities threatened arable land, water resources, food security and tourism (Mpumalanga Government, 2011: 41, 49, 58). These threats were ascribed to inadequate measures to contain water pollution and maintain soil fertility during and after mining, and to preserve the integrity of the province's landscape. According to a report in the City Press (6 October 2012), the province's economic department was at a loss as to how to reconcile the competing needs of the economic sectors. Commenting on coal mining, environmental strategist

Koos Pretorius of The Federation for a Sustainable Environment (FSE), who is based in Mpumalanga, said, "The solution is to mine more selectively and refrain from mining on land suitable for food production" (miningmx, undated). Here again we encounter the important question of the hierarchy of land uses. Clearly, the MPRDA requires amendment in order to acknowledge that the distribution of social and economic benefits of mining must be viewed not purely in monetary terms, but in the building and maintaining of sustainable communities.

Conclusion

David Harvey (2009) recently argued that the crises of capitalism are engendered, in part, by surpluses in capital and labour—in other words, by "accumulation by dispossession" (a term he invented), in which crisis occurs because of over accumulation of capital and labour in particular areas and sectors. He argues that this contemporary mode of capitalist accumulation cannot be divorced from Marx's idea of primitive accumulation. This includes:

> *"commodification and privatization of land and the forceful expulsion of peasant populations; conversion of various forms of property rights—common, collective, state, etc.—into exclusive property rights; suppression of rights to the commons; commodification of labour power and the suppression of alternative, indigenous, forms of production and consumption; colonial, neo-colonial and imperial processes of appropriation of assets, including natural resources; monetization of exchange and taxation, particularly of land; slave trade; and usury, the national debt and ultimately the credit system" (Harvey,2009:74).*

Arrighi et al (2010) have addressed how accumulation by dispossession plays out in Southern Africa. Yet they focus principally on agriculture and the labour question. In this article, we have mainly emphasized land uses, with specific emphasis on mining (although we understand how land and labour are deeply imbricated, as described above with regard to the beginnings of South Africa's mining industry and, more generally, land use). The history of South Africa's mining industry from its inception may thus be said to be one of accumulation by dispossession, particularly with regard to the conversion of property rights from collective

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or common ones into private ones—which was accompanied by the displacement of labour. Yet with the MPRDA, we see a twist. Here, exclusive property rights are, at least formally, *re*converted into state property rights, then allocated as private concessions for a fixed period of time. This puts an alternative spin on accumulation by dispossession: rather than the perpetuation of the outright theft of lands that characterised the early period of South African mining (and, even earlier, agriculture), we see a reconfiguration in which the state attempts to simply make private titles more widely accessible to a greater variety of actors. This represents an evolution, in which accumulation by dispossession continues and is transformed through a narrow form of redistribution. We therefore argue that the current hybrid, semi-private, semi-public system of mining title provision, set against the backdrop of an implicit land-use hierarchy that places mining as the priority, is doomed to continue to reproduce conflicts both environmental and social. The question, as Arrighi et al (2010:435) rightly note, is how to reverse the impact of accumulation by dispossession without "major disruptions in the established flow of economic and social life."

The accounts of environmental degradation and social conflict presented in this paper suggest the MPRDA, with its emphasis on promoting mining, and without sight of the trade-offs typically associated with mining, did not anticipate that opening up the sector could give rise to conflict and endanger other natural resource stocks. It is possible that these conflicts have only recently become clear, as people are displaced, as damage to ecosystems accumulates, as levels of dissatisfaction rise over imbalances in the distribution of impacts and benefits of mining, and as the importance of securing water resources and arable land are appreciated.

Thus, while certain democratic dividends may have been created via the MPRDA, it has come with detrimental costs to public goods that reflect a narrow view of the benefits of mining activities. It is time to re-evaluate and adjust MPRDA in light of these effects. Indeed, there appears to be evidence that, in trying to create a better future for all South Africans, MPRDA has partly contributed to doing the opposite, by putting the mining industry in direct conflict with the same people who are supposed to be reaping the benefits of democracy in the new South Africa. The observations in this article, we believe, open up avenues for further research: more empirical work on mining footprint; fine-grained studies on the relationship between social and environmental conflict and mining under MPRDA; and a greater attention to questions of inclusion and exclusion, the meanings of democratic citizenship, and mining in contemporary South Africa.

Endnotes

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Scorecard for the Broad Based Socio-Economic Empowerment Charter for the South African Mining Industry (including the Charter)

GNR 1639 OF 13 AUGUST 2004

ARRANGEMENT OF REGULATIONS

Introduction

- The proposed scorecard gives effect to the provisions contained in the Broad Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry.
- The scorecard is designed to facilitate the application of the Charter in terms of the Mineral and Petroleum Resources Development Act requirements for the conversion of all the "old order rights" into new rights within a five-year conversion window period, but recognising the full 10-year period.
- In adjudicating the scorecard the Minister of Minerals and Energy will need to take into account the entire scorecard in decision making.
- The scorecard is intended to reflect the "spirit" of the Broad Based Socio-Economic Empowerment Charter for the Mining Industry.
- Progress by stakeholders in achieving the aims of the Charter as enunciated in the Scorecard can be measured in two ways:
  - The specific targets set in the Charter.
  - The targets set by companies.

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ANNEXURE A
SCORECARD FOR THE BROAD BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY

Notes	Description	5 year target				10 year target
1	Human Resource Development					
	• Has the company offered every employee the opportunity to be functionally literate and numerate by the year 2005 and are employees being trained?	Yes		No		
	• Has the company implemented career paths for HDSA employees including skills development plans?	Yes		No		
	• Has the company developed systems through which empowerment groups can be mentored?	Yes		No		
2	Employment Equity					
	• Has the company published its employment equity plan and reported on its annual progress in meeting the plan?	Yes		No		
	• Has the company established a plan to achieve a target for HDSA participation in management of 40% within five years and is implementing the plan?					
	• Has the company identified a talent pool and is it fast tracking it?	Yes		No		
	• Has the company established a plan to achieve the target for woman participation in mining of 10% within the five years and is implementing the plan?					
3	Migrant Labour					
	• Has the company subscribed to government and industry agreements to ensure non-discrimination against foreign migrant labour?	Yes		No		
4	Mine Community and Rural Development					
	• Has the company co-operated in the formulation of integrated development plans and is the company co-operating with the government in the implementation of these plans for communities where mining takes place and for major labour sending areas? Has there been effort on the side of the company to engage the local mine community and major labour sending area communities? (Companies will be required to cite a pattern of consultation, indicate money expenditures and show a plan.)	Yes		No		

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Element	Description	5 year target		10 year target
5	Housing and Living Conditions			
	• For company provided housing has the mine, in consultation with stakeholders established measures for improving the standard of housing, including the upgrading of the hostels, conversion of hostels to family units and promoted home ownership options for mine employees? Companies will be required to indicate what they have done to improve housing and show a plan to progress the issue over time and is implementing the plan?	Yes	No	
	• For company provided nutrition has the mine established measures for improving the nutrition of mine employees? Companies will be required to indicate what they have done to improve nutrition and show a plan to progress the issue over time and is implementing the plan?	Yes	No	
6	Procurement			
	• Has the mining company given HDSA's preferred supplier status?	Yes	No	
	• Has the mining company identified current level of procurement from HDSA companies in terms of capital goods, consumables and services?	Yes	No	
	• Has the mining company indicated a commitment to a progression of procurement from HDSA companies over a 3 – 5 year time frame in terms of capital goods, consumables and services and to what extent has the commitment been implemented?	Yes	No	
7	Ownership & Joint Ventures			
	• Has the mining company achieved HDSA participation in terms of ownership for equity or attributable units of production of 15 percent in HDSA hands within 5 years and 26 percent on 10 years?	15%		26%
8	Beneficiation			
	• Has the mining company identified its current level of beneficiation?	Yes	No	
	• Has the mining company established its base line level of beneficiation and indicated the extent that this will have to be grown in order to qualify for an offset?	Yes	No	
9	Reporting			
	• Has the company reported on an annual basis its progress towards achieving its commitments in its annual report?	Yes	No	

Notes

1. The commitment of the mining companies is to have offered each employee the opportunity to become functionally literate and numerate. The critical test is if a human resource development system has been established and resourced so that people are being trained.
2. The mentoring of empowerment groups refers to that mining company's HDSA employees and HDSA linked partners at the levels of ownership and procurement. It does not preclude mining companies being involved in mentoring programmes outside of its own operations.
3. The aspirational target for HDSA participation in management is a 5-year target. If companies want to convert to licenses within a much shorter time frame, then a phase in approach will be adopted with the companies committing to a 40 percent by the fifth year. The key decision point here is whether the company has established a plan to achieve the target and is implementing the plan.
4. The aspirational target for women participation in mining is a five-year target and the phase in approach will be used. The key decision point here is whether the company has established a plan to achieve the target and is implementing the plan.
5. The commitment of stakeholders to ensure non-discrimination against foreign migrant labour can be approached from the perspective that each company subscribes to industry and government agreements on the matter.
6. In terms of companies establishing measures for improving the standard of housing – the company will be required to indicate what it has done to improve housing and show a plan to progress the issue over time and are implementing the plan.
7. In terms of companies establishing measures for improving the standard of nutrition – the company will be required to indicate what it has done to improve nutrition and show a plan to progress the issue over time and are implementing the plan.
8. In terms of procurement the mining company should commit to an increase of procurement from HDSA companies over the 3-5 year time frame and agree to a monitoring system.
9. The Scorecard represents the 5-year targets and it has been agreed that within 10-years the level of HDSA participation will rise to 26 percent.
10. In terms of beneficiation commitments and the offset option the key issue is to capture the actual beneficiation activities of a company and to convert it to the same unit of measurement of ownership e.g. attributable units of production/or % measure of value as the case may be and offset accordingly. The attributable ounces that are beneficiated above the base state may be offset against HDSA ownership targets. *Considering that some 59 different minerals are mined in South Africa – the detailed discussions on the base state for each mineral are ongoing.*

BROAD BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY

VISION

All the actions and commitments set out below are in the pursuit of a shared vision of a globally competitive mining industry that draws on the human and financial resources of all South Africa's people and offers real benefits to all South Africans. The goal of the empowerment charter is to create an industry that will proudly reflect the promise of a non-racial South Africa.

PREAMBLE

Recognising:

- The history of South Africa, which resulted in blacks, mining communities and women largely being excluded from participating in the mainstream of the economy, and the formal mining industry's stated intention to adopt a proactive strategy of change to foster and encourage black economic empowerment (BEE) and transformation at the tiers of ownership, management, skills development, employment equity, procurement and rural development;

- The imperative of redressing historical and social inequalities as stated by the Constitution of the Republic of South Africa, in *inter alia* section 9 on equality (and unfair discrimination) in the Bill of Rights;
- The policy objective stated in the Mineral and Petroleum Resources Development Act to expand opportunities for historically disadvantaged persons to enter the mining and minerals industry or benefit from the exploitation of the nation's mineral resources;
- The scarcity of relevant skills has been identified as one of the barriers to entry into the mining sector by historically disadvantaged South Africans (HDSA's);
- The slow progress made with employment equity in the mining industry compared to other industries.

Noting that

- It is government's stated policy that whilst playing a facilitating role in the transformation of the ownership profile of the mining industry it will allow the market to play a key role in achieving this end and it is not the government's intention to nationalise the mining industry.
- The key objectives of the Mineral and Petroleum Resources Development Act and that of the Charter will be realised only when South Africa's mining industry succeeds in the international market place where it must seek a large part of its investment and where it overwhelmingly sells its product and when the socio-economic challenges facing the industry are addressed in a significant and meaningful way.
- The transfer of ownership in the industry must take place in a transparent manner and for fair market value.
- That the following laws would also assist socio-economic empowerment:
  - The Preferential Procurement Framework Act (No. 5 of 2000);
  - The Employment Equity Act (No. 55 of 1998);
  - The Competition Act (No. 89 of 1998) (Also ref. To the Amendment Act No. 35 of 1999 and subsequent amendments);
  - The Skills Development Act (No. 97 of 1998).

Therefore

The signatories have developed this Charter to provide a framework for progressing the empowerment of historically disadvantaged South Africans in the Mining and Minerals Industry. The signatories of this Charter acknowledge:

Section 100 (2) (*a*) of the Mineral and Petroleum Resources Development Act, which states that, to insure the attainment of Government's objectives of redressing historical social and economic inequalities as stated in the Constitution, the Minister of Minerals and Energy must within six months from the date on which this Act takes effect develop a Broad Based Socio-Economic Empowerment (BBSEE) Charter.

1. Scope of application.—This Charter applies to the South African mining industry.

2. Interpretation.—For the purposes of interpretation, the following terms apply:

Broad Based Socio-Economic Empowerment (BBSEE) refers to a social or economic strategy, plan, principle, approach or act, which is aimed at:

- Redressing the results of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such industries; and

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- Transforming such industries so as to assist in, provide for, initiate, facilitate or benefit from the:
  - Ownership participation in existing or future mining, prospecting, exploration and beneficiation operations;
  - Participation in or control of management of such operations;
  - Development of management, scientific, engineering or other skills of HDSA's;
  - Involvement of or participation in the procurement chains of operations;
  - Integrated Socio-economic development for host communities, major labour sending areas and areas that due to unintended consequences of mining are becoming ghost towns by mobilising all stakeholder resources.

The term Historically Disadvantaged South Africans (HDSA) refers to any person, 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.

HDSA Companies are those companies that are owned or controlled by historically disadvantaged South Africans.

Major labour sending areas refer to areas from where a significant number of mineworkers are or have been recruited.

Ghost towns refer to areas whose economies were dependent on mining and therefore could not survive beyond the closure or significant downsizing of mining activities.

Ownership of a business entity can be achieved in a number of ways:

- a majority shareholding position, i.e. 50% + 1 share;
- Joint ventures or partnerships (25% equity plus one share);
- Broad based ownership (such as HDSA dedicated mining unit trusts, or employee share ownership schemes).

3. **Objectives.**—The objectives of this charter are to:

- Promote equitable access to the nation's mineral resources to all the people of South Africa;
- Substantially and meaningfully expand opportunities for HDSA's including women, to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources;
- Utilise the existing skills base for the empowerment of HDSA's;
- Expand the skills base of HDSA's in order to serve the community;
- Promote employment and advance the social and economic welfare of mining communities and the major labour sending areas; and
- Promote beneficiation of South Africa's mineral commodities.

4. **Undertakings.**—All stakeholders undertake to create an enabling environment for the empowerment of HDSA's by subscribing to the following:

4.1 Human Resource Development

The South African labour market does not produce enough of the skills required by the mining industry. Stakeholders shall work together in addressing this skills gap in the following manner:

- Through the standing consultative arrangements they will interface with statutory bodies such as the Mines Qualifications Authority (MQA), in the formulation of comprehensive skills development strategies that include a skills audit;
- By interfacing with the education authorities and providing scholarships to promote mining related educational advancement, especially in the fields of mathematics and science at the school level;

- By undertaking to ensure provision of scholarships and that the number of registered learnerships in the mining industry will rise from the current level of some 1200 learners to not less than 5000 learners by March 2005; and
- Through the MQA shall undertake to provide skills training opportunities to miners during their employment in order to improve their income earning capacity after mine closure.

Government undertakes that:

- In its bi-lateral relations with relevant countries, undertakes to secure training opportunities for HDSA companies' staff, as well as exchange opportunities with mining companies operating outside of South Africa;
- Through the MQA and in collaboration with academic institutions, DME associated institutions, NGO's, and the Gender Commission, shall provide training courses in mining entrepreneur's skills.

Companies undertake:

- To offer every employee the opportunity to become functionally literate and numerate by the year 2005 in consultation with labour;
- To implement career paths to provide opportunities to their HDSA employees to progress in their chosen careers; and
- To develop systems through which empowerment groups can be mentored as a means of capacity building.

4.2 Employment Equity

Companies shall publish their employment equity plans and achievements and subscribe to the following:

- Establish targets for employment equity, particularly in the junior and senior management categories. Companies agree to spell out their plans for employment equity at the management level. The stakeholders aspire to a baseline of 40 percent HDSA participation in management within 5-years;
- South African subsidiaries of multinational companies and South African companies, where possible, will focus their overseas placement and/or training programmes on historically disadvantaged South Africans;
- Identification of a talent pool and fast tracking it. This fast tracking should include high quality operational exposure;
- Ensuring higher levels of inclusiveness and advancement of women. The stakeholders aspire to a baseline of 10 percent of women participation in the mining industry within 5-years; and
- Setting and publishing targets and achievements.

4.3 Migrant Labour

Stakeholders undertake to:

- Ensure non-discrimination against foreign migrant labour.

4.4 Mine Community and Rural Development

Stakeholders, in partnership with all spheres of government, undertake to:

- Co-operate in the formulation of integrated development plans for communities where mining takes place and for major labour-sending areas, with special emphasis on development of infrastructure.

4.5 Housing and Living Conditions

Stakeholders, in consultation with the Mine Health and Safety Council, the Department of Housing and organised labour, undertake to:

- Establish measures for improving the standard of housing including the upgrading of hostels, conversion of hostels to family units and the promotion of home ownership options for mine employees; and
- Establish measures for improving of nutrition of mine employees.

4.6 Procurement

Procurement can be broken down into three levels, namely: capital goods; services; and consumables.

Stakeholders undertake to give HDSAs a preferred supplier status, where possible, in all three levels of procurement. To this end stakeholders undertake to:

- Identify current levels of procurement from HDSA companies;
- Commit to a progression of procurement from HDSA companies over a 3 to 5-year time frame reflecting the genuine value added by the HDSA provider;
- Encourage existing suppliers to form partnerships with HDSA companies, where no HDSA Company tenders to supply goods or services; and
- Stakeholders commit to help develop HDSA procurement capacity and access Department of Trade and Industry (DTI) assistance programmes to achieve this.

List of suppliers: It is envisaged that information on all HDSA companies wishing to participate in the industry will be collected and published. All participants in the industry will assist the DTI in compiling such a list that will *inter alia* be published by government on the Internet and updated regularly.

4.7 Ownership and Joint Ventures

Government and industry recognise that one of the means of effecting the entry of HDSA's into the mining industry and of allowing HDSA's to benefit from the exploitation of mining and mineral resources is by encouraging greater ownership of mining industry assets by HDSA's. Ownership and participation by HDSA's can be divided into active or passive involvement as follows:

Active involvement:

- HDSA controlled companies (50 per cent plus 1 vote), which includes management control.
- Strategic joint ventures or partnerships (25 per cent plus 1 vote). These would include a Management Agreement that provides for joint management and control and which would also provide for dispute resolution.
- Collective investment, through ESOPS and mining dedicated unit trusts. The majority ownership of these would need to be HDSA based. Such empowerment vehicles would allow the HDSA participants to vote collectively.

Passive involvement:

- Greater than 0 percent and up to 100 percent ownership with no involvement in management, particularly broad based ownership like ESOPs.

  In order to measure progress on the broad transformation front the following indicators are important:
- The currency of measure of transformation and ownership could, *inter alia*, be market share as measured by attributable units of South African production controlled by HDSA's.
- That there would be capacity for offsets which would entail credits/offsets to allow for flexibility.

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- The continuing consequences of all previous deals would be included in calculating such credits/offsets in terms of market share as measured by attributable units of production.
- Government will consider special incentives to encourage HDSA companies to hold on to newly acquired equity for a reasonable period.

In order to increase participation and ownership by HDSA's in the mining industry, mining companies agree:

- To achieve 26% HDSA ownership of the mining industry assets in 10 years by each mining company; and
- That where a company has achieved HDSA participation in excess of any set target in a particular operation then such excess may be utilised to offset any shortfall in its other operations.

All stakeholders accept that transactions will take place in a transparent manner and for fair market value. Stakeholders agree to meet after 5-years to review the progress and to determine what further steps, if any, need to be made to achieve the 26% target.

4.8 Beneficiation

This Charter will apply to mining companies in respect of their involvement in beneficiation activities, specifically activities beyond mining and processing. These include production of final consumer products.

Mining companies will be able to offset the value of the level of beneficiation achieved by the company against its HDSA ownership commitments.

Mining companies agree to:

- Identify their current levels of beneficiation.
- Indicate to what extent they can grow the baseline level of beneficiation.

4.9 Exploration and Prospecting

Government will support HDSA companies in exploration and prospecting endeavours by, *inter alia*, providing institutional support.

4.10 State Assets

Government will ensure compliance with the provisions of this Charter and be exemplary in the way in which it deals with state assets.

4.11 Licensing

To facilitate the processing of licence conversions there will be a scorecard approach to the different facets of promoting broad based socio-economic empowerment in the mining industry. This scorecard approach would recognise commitments of the stakeholders at the levels of ownership, management, employment equity, human resource development, procurement and beneficiation. These commitments have been spelt out in sections 4.1 to 4.9 above.

The HDSA participation required to achieve conversion within the five year period on a company specific basis will be specified in the score-card, hereto attached as Annexure A.

4.12 Financing Mechanism

The industry agrees to assist HDSA companies in securing finance to fund participation in an amount of R100 billion within the first 5-years. Participants agree that beyond the R100 billion-industry commitment and in pursuance of the 26 per cent target, on a willing seller – willing buyer basis, at fair market value, where the mining companies are not at risk, HDSA participation will be increased.

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4.13 Regulatory Framework and Industry Agreement

Government's regulatory framework and industry agreements shall strive to facilitate the objectives of this Charter.

4.14 Consultation, Monitoring, Evaluation and Reporting

It is recognised that the achievement of the objectives set out herein entails an ongoing process.

Companies undertake to report on an annual basis their progress towards achieving their commitments, with these annual reports verified by their external auditors. A review mechanism will be established which again provides flexibility to the company commitments.

Parties hereto agree to participate in annual forums for the following purposes:

- Monitoring progress in the implementation of plans;
- Developing new strategies as needs are identified;
- Ongoing government/industry interaction in respect of these objectives;
- Developing strategies for intervention where hurdles are encountered;
- Exchanging experiences, problems and creative solutions;
- Arriving at joint decisions;
- Reviewing this Charter if required.

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Amendment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry

[GN 838 of 20 September 2010] [Date of Commencement 13 September 2010]

Preamble

Publication of the amendment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry
(*Government Gazette* No. 33573)

The Minister of Minerals and Energy has in terms of section 100 (1) (*b*) of the Mineral and Petroleum Resources Development Act, 2002, (Act 28 of 2002), developed the Codes of Good practice for the minerals industry as set out below.

TABLE OF CONTENTS

Preamble

The systematic marginalisation of the majority of South Africans, facilitated by the exclusionary policies of the apartheid regime, prevented Historically Disadvantaged South Africans (HDSAs) from owning the means of production and from meaningful participation in the mainstream economy. To redress these historic inequalities, and thus give effect to section 9 (equality clause) of the Constitution of the Republic of South Africa Act 108 of 1996 (Constitution), the democratic government has enacted, *inter alia*, the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA).

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The objective of the MPRDA is to facilitate meaningful participation of HDSAs in the mining and minerals industry. In particular, section 100 (2) (a) of the MPRDA provides for the development of the Mining Charter as an instrument to effect transformation with specific targets. Embedded in the Mining Charter of 2002 is the provision to review the progress and determine what further steps, if any, need to be made to achieve its objectives.

In line with this provision, the DMR has concluded a comprehensive assessment to ascertain the progress of transformation of industry against the objectives of the Charter in the mining industry. The findings of the assessment identified a number of shortcomings in the manner in which the mining industry has implemented the various elements of the Charter, viz. ownership, procurement, employment equity, beneficiation, human resource development, mine community development, housing and living conditions, all of which have not embraced the spirit of the Charter to the latter. To overcome these inadequacies, amendments are made to the Mining Charter of 2002 in order to streamline and expedite attainment of its objectives. Additionally, the review of the Charter introduces an element of sustainable growth of the mining industry, which seeks to ensure sustainable transformation and growth of the mining industry.

VISION

To facilitate sustainable transformation, growth and development of the mining industry.

MISSION

To give effect to section 100 (2) (a) of the MPRDA and section 9 of the Constitution.

Definitions

"BEE entity" means an entity of which a minimum of 25% + 1 vote of share capital is directly owned by HDSA as measured in accordance with flow through principle;

"Beneficiation" means 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 "beneficiation" is often used interchangeably with mineral "value-addition" or "downstream beneficiation";

"Broad-Based Socio-Economic Empowerment (BBSEE)" means a socio-economic strategy, plan, principle, approach or act, which is aimed at—

(a) Redressing the results of past or present discrimination based on race, sex and disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such industries; and

(b) Transforming such industries so as to assist in, provide for, initiate, facilitate or benefit from the—

- Ownership participation in existing or future mining, prospecting, exploration and beneficiation operations;
- Participation in or control of management of such operations;
- Development of management, scientific, engineering or other skills of HDSA's;
- Involvement of or participation in the procurement chains of operations;
- Integrated socio-economic development for mine workers, host communities, major labour sending areas and areas that due to unintended consequences of mining are becoming ghost towns by mobilising all stakeholder resources;

"Calendar year" is defined as the one year period that begins on January 1st and ends on December 31st;

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

"Demographics" means the numerical characteristics of a population (e.g. population size, age, structure, sex/gender, race, etc.)

"Effective ownership" means the meaningful participation of HDSAs in the ownership, voting rights, economic interest and management control of mining entities;

"EMP" means an approved environmental programme contemplated in section 39 of the Mineral and Petroleum Resources Development Act, 2002 (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;

"ESOPs" mean Employees 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 which should be representative of the demographics of the country;

"Labour sending area" areas from which a majority of mineworkers, both historical and current are or have been sourced;

"Level of management" refers to 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—

- BEE transactions shall be concluded with clearly identifiable beneficiaries in the form of BEE entrepreneurs, workers (including ESOPs) and communities;
- Barring any unfavourable market conditions, some of the cash flow should flow 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 proportion to vested interest over the life of the transaction in order to facilitate sustainable growth of BEE entities;
- BEE shall have full shareholder rights such as being entitled to full participation at annual general meetings and exercising of voting rights, regardless of the legal form of the instruments used;
- 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;

"Shareholder" shall mean a person who is entitled to exercise any voting rights in relation to a company, irrespective of the form, title or nature of the securities to which those voting rights are attached;

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"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;.

"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;

"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. Objectives

The Broad Based Socio-Economic Empowerment Charter for the South African Industry, hereafter referred to as "the Mining Charter", is a Government instrument designed to effect sustainable growth and meaningful transformation of the mining industry. The Mining Charter seeks to achieve the following objectives:

(*a*) To promote equitable access to the nation's mineral resources to all the people of South Africa;

(*b*) To substantially and meaningfully expand opportunities for HDSA to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources;

(*c*) To utilise and expand the existing skills base for the empowerment of HDSA and to serve the community;

(*d*) To promote employment and advance the social and economic welfare of mine communities and major labour sending areas;

(*e*) To promote beneficiation of South Africa's mineral commodities; and

(*f*) Promote sustainable development and growth of the mining industry.

2. Elements of the Mining Charter

2.1 Ownership

Effective ownership is a requisite instrument to effect meaningful integration of HDSA into the mainstream economy. In order to achieve a substantial change in racial and gender disparities prevalent in ownership of mining assets, and thus pave the way for meaningful participation of HDSA for attainment of sustainable growth of the mining industry, stakeholders commit to—

- Achieve a minimum target of 26 percent ownership to enable meaningful economic participation of HDSA by 2014;
- The only offsetting permissible under the ownership element is against the value of beneficiation, as provided for by section 26 of the MPRDA and elaborated in the mineral beneficiation framework.

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.

2.2 Procurement and Enterprise Development

Local procurement is attributable to competitiveness and transformation, captures economic value, presents opportunities to expand economic growth that allows for creation of decent jobs and widens scope for market access of South African capital goods and services. In order to achieve this, the mining industry must procure from BEE entities in accordance with the following criteria, subject to the provisions of clause 2.9—

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- 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;
- Procure 70% of services and 50% of consumer goods from BEE entities by 2014.

The targets above are exclusive of non-discretionary procurement expenditure.

2.3 Beneficiation

Beneficiation seeks to translate comparative advantage in mineral resources endowment into competitive advantage as fulcrum to enhance industrialisation in line with State developmental priorities. In this regard, mining companies must facilitate local beneficiation of mineral commodities by adhering to the provision of Section 26 of the MPRDA and the mineral beneficiation strategy—

- Mining companies may offset the value of the level of beneficiation achieved by the company against a portion of its HDSA ownership requirements not exceeding 11 percent.

2.4 Employment Equity

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 HDSA at all decision-making positions and core occupational categories in the mining industry, every mining company must achieve a minimum of 40% HDSA demographic representation at—

- Executive Management (Board) level by 2014;
- Senior management (EXCO) level by 2014;
- Core and Critical skills 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.

2.5 Human Resource Development

The mining industry is knowledge based and thus hinges on human resource development, constituting an integral part of social transformation at workplace and sustainable growth. To achieve this objective, the mining industry must—

- Invest a percentage of annual payroll (as per relevant legislation) in essential skills development activities reflective of the demographics, but excluding the mandatory skills levy, including support for South African based research and development initiatives intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation; as follows—
  - Target for 2010 = 3%;
  - Target for 2011 = 3.5%;
  - Target for 2012 = 4%;
  - Target for 2013 = 4.5%;
  - Target for 2014 = 5%.

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2.6 Mine Community Development

Mine communities form an integral part of mining development, there has to be meaningful contribution towards community development, both in terms of size and impact, in keeping with the principles of the social license to operate. Stakeholders must adhere to the following—

- Consistent with international best practices in terms of rules of engagement and guidelines, mining companies must invest in ethnographic community consultative and collaborative processes prior to the implementation/develop-ment of mining projects;
- Mining companies must conduct an assessment to determine the developmental needs in collaboration with mining communities and identify projects within the needs analysis for their contribution to community development in line with Integrated Development Plans (IDPs), the cost of which should be proportionate to the size of investment.

2.7 Housing and Living Conditions

Human dignity and privacy for mineworkers are the hallmarks to enhance productivity and expedite transformation in the mining industry in terms of housing and living conditions. In this regard mining companies must implement measures to improve the standards of housing and living conditions for mineworkers as follows—

- Convert or upgrade hostels into family units by 2014;
- Attain the occupancy rate of one person per room by 2014;
- Facilitate home ownership options for all mine employees in consultation with organised labour by 2014.

2.8 Sustainable Development and Growth of the Mining Industry

Mineral resources are non-renewable in nature, forthwith exploitation of such resources must emphasise the importance of balancing concomitant economic benefits with social and environmental needs without compromising future generations, in line with Constitutional provisions for ecological, sustainable development and use of natural resources. To this end, with consideration to clause 2.9, every mining company must implement elements of sustainable development commitments included in the "*Stakeholders' Declaration on Strategy for the sustainable growth and meaningful transformation of South Africa's Mining Industry of 30 June 2010 and in compliance with all relevant legislation*", as follows—

- Improvement of the industry's environmental management by—
  - Implementing environmental management systems that focus on continuous improvement to review, prevent, mitigate adverse environmental impact;
  - Undertake continuous rehabilitation on land disturbed or occupied by mining operations in accordance with appropriate regulatory commitments;
  - Provide for the save storage and disposal of residual waste and process residues;

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "Provide for the save storage" is intended to be "Provide for the safe storage".)

  - Design and plan all operations so that adequate resources are available to meet the closure requirements of all operations.
- Improvement of the industry's health and safety performance by—
  - Implementing a management systems focused on continuous improvement of all aspects of operations that have a significant impact on the health and safety of employees, contractors and communities where mining takes place;

- Providing all employees with health and safety training and require employees of contractors to have undergone such training;
- Implement regular health surveillance and risk-based monitoring of employees.

- Stakeholders undertake to enhance the capacity and skills in relevant South African research and development facilities in order to ensure quality, quick turn around, cost effectiveness and integrity of such facilities. To this extent, mining companies are required to utilise South African based facilities for the analysis of samples across the mining value chain.

2.9 Reporting (Monitoring and Evaluation)

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.

The Department shall monitor and evaluate, taking into account the impact of material constraints which may result in not achieving set targets.

3. Non-compliance

Non-compliance with the provisions of the Charter and the MPRDA shall render the mining company in breach of the MPRDA and subject to the provisions of Section 47 read in conjunction with sections 98 and 99 of the Act.

4. Amendments

The Minister of the Department of Mineral Resources may amend the Mining Charter as and when the need arises.

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SCORECARD FOR THE BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY

	ELEMENT	DESCRIPTION	MEASURE	COMPLIANCE TARGET BY 2014	PROGRESS ACHIEVED BY					Weighting
					2010	2011	2012	2013	2014	
1	Reporting	Has the company reported the level of compliance with the Charter for the calendar year	Documentary proof of receipt from the department	Annually	March 2011	March 2012	March 2013	March 2014	March 2015	Y/N
2	Ownership	Minimum target for effective HDSA ownership	Meaningful economic participation	26%	15%	→	→	→	26%	Y/N
			Full shareholder rights	26%	15%	→	→	→	26%	
3	Housing and living conditions	Conversion and upgrading of hostels to attain the occupancy rate of one person per room	Percentage reduction of occupancy rate towards 2014 target	Occupancy rate of one person per room	Base-line	25%	50%	75%	100%	Y/N
		Conversion and upgrading of hostels into family units	Percentage conversion of hostels into family units	Family units established	Base-line	25%	50%	75%	100%	
4	Procurement & Enterprise Development	Procurement spent from BEE entity	Capital goods	40%	5%	10%	20%	30%	40%	5%
			Services	70%	30%	40%	50%	60%	70%	5%
			Consumable goods	50%	10%	15%	25%	40%	50%	2%
		Multinational suppliers contribution to the social fund	Annual spend on procurement from multinational suppliers	0.5% of procurement value	0.50%	0.50%	0.50%	0.50%	0.50%	3%
5	Employment Equity	Diversification of the workplace to reflect the country's demographics to attain competitiveness	Top Management (Board)	40%	20%	25%	30%	35%	40%	3%
			Senior Management (EXCO)	40%	20%	25%	30%	35%	40%	4%
			Middle Management	40%	30%	35%	40%	40%	40%	3%
			Junior Management	40%	40%	40%	40%	40%	40%	1%
			Core Skills	40%	15%	20%	30%	35%	40%	5%

continued

	ELEMENT	DESCRIPTION	MEASURE	COMPLIANCE TARGET BY 2014	PROGRESS ACHIEVED BY					Weighting
					2010	2011	2012	2013	2014	
6	Human Resource Development	Development of requisite skills, incl. support for South African based research and development initiatives intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation	HRD expenditure as percentage of total annual payroll (excl. mandatory skills development levy)	5%	3%	3.5%	4.0%	4.5%	5.0%	25%
7	Mine community development	Conduct ethnographic community consultative and collaborative processes to delineate community needs analysis	Implement approved community projects	Up-to-date project implementation	Implementation of projects will serve to enhance relationships amongst stakeholders leading to communities owing patronage to projects					15%
8	Sustainable development & growth	Improvement of the industry's environmental management	Implementation of approved EMPs	100%	Annual progress achieved against approved EMPs					12%
		Improvement of the industry's mine health and safety performance	Implementation of the tripartite action plan on health and safety	100%	Annual progress achieved against commitments in the tripartite action plan on health and safety					12%
		Utilisation of South African based research facilities for analysis of samples across the mining value chain	Percentage of samples in South African facilities	100%	establish baseline	25%	50%	75%	100%	5%
9	Beneficiation	Contribution of a mining company towards beneficiation (this measure is effective from 2012)	Additional production volume contributory to local value addition beyond the base-line	Section 26 of the MPRDA (percentage above baseline)	The beneficiation strategy and its modalities of implementation outline the beneficiation requirements per commodity extracted in South Africa					—
	TOTAL SCORE									100%

Y/N applies to pillars that are ring-fenced.

Legend

- 0-25% (Gross non-compliance)
- 25-50% (Non-compliance)
- 50-75% (Marginal to acceptable performance)
- 75-100% (Excellent performance)

SCORECARD FOR THE BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY: REPORTING TEMPLATE

	ELEMENT	DESCRIPTION	MEASURE	COMPLIANCE TARGET BY 2014	PROGRESS ACHIEVED BY					Weighting
					2010	2011	2012	2013	2014	
1	Reporting	Has the company reported the level of compliance with the Charter for the calendar year	Documentary proof of receipt from the department	Annually						Y/N
2	Ownership	Minimum target for effective HDSA ownership	Meaningful economic participation	26%						Y/N
			Full shareholder rights	26%						
3	Housing and living conditions	Conversion and upgrading of hostels to attain the occupancy rate of one person per room	Percentage reduction of occupancy rate towards 2014 target	Occupancy rate of one person per room						Y/N
		Conversion and upgrading of hostels into family units	Percentage conversion of hostels into family units	Family units established						
4	Procurement & Enterprise Development	Procurement spent from BEE entity	Capital goods	40%						5%
			Services	70%						5%
			Consumable goods	50%						2%
		Multinational suppliers contribution to the social fund	Annual spend on procurement from multinational suppliers	0.5% of procurement value						3%

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	ELEMENT	DESCRIPTION	MEASURE	COMPLIANCE TARGET BY 2014	PROGRESS ACHIEVED BY					Weighting
					2010	2011	2012	2013	2014	
5	Employment Equity	Diversification of the workplace to reflect the country's demographics to attain competitiveness	Top Management (Board) level	40%						3%
			Senior Management (Exco)	40%						4%
			Middle Management	40%						3%
			Junior Management	40%						1%
			Core Skills	40%						5%
6	Human Resource Development	Development of requisite skills, incl. support for South African based research and development initiatives intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation	HRD expenditure as percentage of total annual payroll (excl. mandatory skills development levy).	5%						25%
7	Mine community development	Conduct ethnographic community consultative and collaborative processes to delineate community needs analysis	Implement approved community projects	Up-to-date project implementation	Implementation of projects will serve to enhance relationships amongst stakeholders leading to communities owing patronage to projects					15%

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	ELEMENT	DESCRIPTION	MEASURE	COMPLIANCE TARGET BY 2014	PROGRESS ACHIEVED BY					Weighting
					2010	2011	2012	2013	2014	
8	Sustainable development & growth	Improvement of the industry's environmental management	Implementation of approved EMPs	100%	Annual progress achieved against approved EMPs					12%
		Improvement of the industry's mine health and safety performance	Implementation of the tripartite action plan on health and safety	100%	Annual progress achieved against commitments in the tripartite action plan on health and safety					12%
		Utilisation of South African based research facilities for analysis of samples across the mining value chain	Percentage of samples in South African facilities	100%						5%
9	Beneficiation	Contribution of a mining company towards beneficiation (this measure is effective from 2012)	Additional production volume contributory to local value addition beyond the base-line	Section 26 of the MPRDA (percentage above baseline)	The beneficiation strategy and its modalities of implementation outline the beneficiation requirements per commodity extracted in South Africa					—
	TOTAL SCORE									100%

Y/N applies to pillars that are ring-fenced.

Legend

- 0-25% (Gross non-compliance)
- 25-50% (Non-compliance)
- 50-75% (Marginal to acceptable performance)
- 75-100% (Excellent performance)

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SCORECARD FOR THE BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY
CATEGORY: HUMAN RESOURCE DEVELOPMENT

DESCRIPTION	MEASURES	SPREAD OF MEASURE CATEGORY	REPORTING TEMPLATE							
			YEAR:							
			African		Coloured		Indian		White	Total
			Male	Female	Male	Female	Male	Female	Female	
Development of requisite skills, incl. support for South African based research and development initiatives intended to develop solutions in mining, processing, and exploration technology effeciency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation.	HRD expenditure as percentage of total annual payroll (excl. mandatory skills development levy)	Learnership and Bursaries (of core and critical skills)								
		Artisans								
		ABET training (level I, II, III, IV and NQF 1)								
		Other training initiatives (school support & post matric programmes)								
		Support for South African based research and development initiatives								

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SCORECARD FOR THE BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY
CATEGORY: EMPLOYMENT EQUITY

DESCRIPTION (ACTION)	MEASURE	REPORTING TEMPLATE YEAR:								
		African		Coloured		Indian		White		Total
		Male	Female	Male	Female	Male	Female		Female	
Diversification of the workplace to reflect the country's demographics to attain competitiveness	Top management (Board level)									
	Senior Management (EXCO)									
	Middle Management									
	Junior Management									
	Core Skills									

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF MINERAL RESOURCES

NO. 581 15 JUNE 2017

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

I, **Mosebenzi Joseph Zwane, MP**, Minister of Mineral Resources, hereby in terms of section 100 (2) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), as amended, publish the Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry, 2016 (Reviewed Mining Charter, 2017) for implementation.

The Reviewed Mining Charter shall come into operation from the date of publication of this notice in the Government Gazette.

A copy of the Reviewed Mining Charter, 2017 is attached hereto.

Mr Mosebenzi Joseph Zwane, MP.
Minister of Mineral Resources.
Date: 15/06/2017.

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BROAD-BASED BLACK SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING AND MINERALS INDUSTRY, 2017

June 2017

CONTENTS

PREAMBLE

The systematic marginalization of the majority of South Africans, facilitated by exclusionary policies of the apartheid regime, prevented Black Persons, as defined herein, from owning the means of production and from meaningful participation in the mainstream economy. To redress these historic inequalities, and thus give effect to section 9 (equality clause) of the Constitution of the Republic of South Africa, 1996 (Constitution), the democratic government enacted, *inter alia*, the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA).

The objective of the MPRDA is to ensure the attainment of Government's objectives of redressing historical, socio-economic inequalities and ensuring broad based and meaningful participation of Black Persons in the mining and minerals industry. In particular, section 100 (2) (a) of the MPRDA provides for development of the broad-based black economic empowerment charter for the South African mining and minerals industry as an instrument to effect transformation with specific targets.

In 2009 the Department of Mineral Resources conducted a comprehensive assessment to ascertain the progress of transformation of the mining and minerals industry against the objectives of the Mining Charter of 2002 in the mining and minerals industry. The findings of the assessment identified a number of shortcomings in the manner in which the mining and minerals industry has implemented the various elements of the Mining Charter of 2002, viz. ownership, procurement, employment equity, beneficiation, human resource development, mine community development, and housing and living conditions. To overcome these inadequacies, the Mining Charter of 2002 was amended in order to streamline and expedite attainment of its objectives. Further, the sustainable development element, which sought to ensure sustainable transformation and growth of the mining and minerals industry was introduced.

In 2014 a second assessment of the levels of compliance by mining companies with the Mining Charter of 2010 was conducted. This second assessment has revealed the following:

- Although there was a noticeable improvement in levels of compliance, there remains a long way for the mining and minerals industry to be fully transformed.
- Notwithstanding a paucity of companies of all sizes that have fully embraced the spirit of the Mining Charter, companies have adopted extremely varied degrees of performance most of which seem 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 the 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 Black Persons. The trickle flow of benefits that ought not only to service any debt funding, but also include cash-flow directly to BEE Partners, is vastly limited. To this end, the interests of mineworkers and communities are typically held in trusts, which constrain the flow of benefits to intended beneficiaries. As a result, the mining and minerals industry has broadly

been faced with increasing tensions with both workers and host communities.

It is against this backdrop that Government initiated another comprehensive review process in 2015 aimed at strengthening the efficacy of the Mining Charter as one of the tools for effecting broad based and meaningful transformation of the mining and minerals industry.

The review process took into account the need to integrate Government policies to remove ambiguities in respect of interpretation and create regulatory certainty. In this regard, the principles of this Mining Charter of 2017 are harmonised with the provisions of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) and the Codes of Good Practice (Dti Codes), the Employment Equity Act, 1998 (Act No. 55 of 1998) and other relevant regulatory framework.

The Mining Charter of 2017 introduces new definitions, terms and targets to effect the abovementioned harmonisation. The harmonisation of these policies is intended to ensure meaningful participation of Black Persons in accordance with the objects of the MPRDA and the Mining Charter and provide for policy and regulatory certainty sought to invest in the development of the industry.

VISION

To facilitate sustainable transformation, growth and development of the mining and minerals industry.

MISSION

To give effect to section 100 (2) (a) of the MPRDA, section 9 of the Constitution and harmonise Government's transformation policies.

DEFINITIONS

Government has identified a need to align and integrate the transformation regulatory framework contained in the Mining Charter of 2017 in order to remove ambiguities in respect of interpretation and bring about regulatory certainty. In this regard, this section defines terms and concepts used in this Mining Charter of 2017 so as to provide clarity as to their meaning.

"BBBEE Act" means the Broad-Based Black Economic Empowerment Act 2003 (Act No. 53 of 2003) as amended from time to time;

"Beneficiation" has the meaning ascribed to that term in the MPRDA;

"BEE Compliant Manufacturing Company", in relation to the procurement element contemplated herein, means a company that manufacturers goods and has minimum BEE level 4 of the Dti Codes and minimum 26% black ownership;

"BEE Entrepreneur" means a Black Owned Company or a Black Person who acquires an equity interest in a Holder through a BEE Transaction;

"BEE Partner" means a Black Person that holds equity in a mining company as a result of a BEE Transaction;

"BEE Transaction" means the issue of equity instruments to Black Persons or a group of Black Persons based on the principles of broad-based black economic empowerment the aim of which includes-

(*a*) to redress the results of past or present discrimination based on the race of historically disadvantaged persons in the mining and minerals industry; and

(*b*) to transform such industries so as to assist in, provide for, initiate or facilitate—

(i) the ownership, participation in or the benefiting from existing or future mining, prospecting, exploration or production operations;

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(ii) the participation in or control of management of such operations;

(iii) the development of management, scientific, engineering or other skills of historically disadvantaged persons;

(iv) the involvement or participation in the procurement chains of operations;

(v) the ownership of and participation in the beneficiation of the proceeds of the operations or other upstream or downstream value chains in such industries;

(vi) the socio-economic development of mine communities; and

(vii) the socio-economic development of all historically disadvantaged Black South Africans from the proceeds or activities of such operations;

"Black Person" is a generic term which means Africans, Coloureds and Indians-

(a) Who are citizens of the Republic of South Africa by birth or descent; or

(b) Who became citizens of the Republic of South Africa by naturalisation:

(i) before 27 April 1994; or

(ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date;

(c) A juristic person which is managed and controlled by person/s contemplated in paragraph (a) and/or (b) and the person/s collectively or as a group own and control all issued share capital or members' interest, and are able to control the majority of the members' vote;

"Black Owned Company" means a juristic person having shareholding or similar interest that is controlled by a Black Person/s and in which such Black Person/s enjoy/s a right to economic interest that is at least 50% + 1 of the total shareholding;

"Companies Act" means the Companies Act, 2008 (Act No. 71 of 2008) as amended from time to time;

"Core and Critical Skills" means high level technical skills across all organisational levels within both the production and operational parts of the Holders' value-chain;

"Demographics" means the numerical characteristics of a national and/or provincial population and includes but is not limited to population size, age, structure, sex/gender, race;

"Dti" means the Department of Trade and Industry;

"Economic Interest" means the entitlement of a BEE Partner to distributions (including but not limited to dividends), capital gains and other economic rights of shareholders;

"Effective Ownership" means the meaningful participation of Black Persons in the net value ownership, voting rights, economic interest and/or management control of mining entities;

"ESOPs" refers to black employee share ownership plans, a vehicle used to empower employees of a mining company who are Black Persons, excluding employees who already hold shares in the same company as a condition of their employment agreement except where such condition is a Mining Charter requirement;

"Foreign Supplier" means a foreign controlled and registered company, supplying the South African mining and minerals industry with mining goods and services, which does not have at least a level 4 Dti Codes BEE status and 25%+ 1 vote black ownership;

"Historical BEE Transactions" means those BEE Transactions concluded prior to the coming into operation of the Mining Charter of 2017 that achieved a minimum 26% Black shareholding or more;

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"Holder" has the same meaning as is ascribed to that term in the MPRDA;

"Housing and Living Conditions Standards" means the Housing and Living Conditions Standards for the Mining and Minerals Industry developed in terms of Section 100 (1) (a) of the MPRDA;

"Labour-Sending Areas" means areas from which a majority of South African mineworkers both historical and current, are or have been sourced;

"Leviable amount" has the same meaning as is ascribed to that term in the Skills Development Levies Act, 1999 (Act No. 9 of 1999);

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

(a) BEE Transactions shall be concluded with clearly identifiable partners in the form of BEE Entrepreneurs, Mine Communities and workers;

(b) A percentage of Effective Ownership must accrue to partners who are Black Persons;

(c) Taking into account the provisions of the Companies Act, some of the distributions by mining companies should flow to the Black Person partners throughout the term of the investment the structure of the BEE Transaction financing should be in a manner where a percentage of the cash-flow is used to service the funding of the structure;

(d) Accordingly, BEE Partners are enabled to leverage equity henceforth in proportion to vested interest over the life of the BEE Transaction in order to facilitate sustainable growth of Black Person partners;

(e) BEE Partners shall have full shareholder rights such as being entitled to full participation at annual general meetings, shareholders meetings and exercising of voting rights in all aspects at shareholders meetings;

"Mine Community" refers to communities where mining takes place, major Labour Sending Areas, as well as adjacent communities within a local municipality, metropolitan municipality and/or district municipality;

"Mining Transformation and Development Agency" refers to an agency to be established by the Minister during the period set out in paragraph 2.11(a);

"Minister" means the minister of the Department of Mineral Resources;

"Mining Charter" means this broad-based black socio-economic empowerment charter for the South African mining and minerals industry, 2017, developed in terms of section 100 (2) (a) of the MPRDA;

"Mining Goods" refers to tangible goods used by the Holder, or by a contractor on behalf of the Holder, for mineral extraction, materials handling, environmental control, mineral processing, drilling, digging, and earthmoving. This also includes aftermarket components and products that are used and/or consumed in daily operations;

"MPRDA" means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) as amended from time to time;

"the Republic" means the Republic of South Africa;

"Services" refers to work contracted out by the Holder, or by a contractor on behalf of a Holder, which includes but is not limited to, mining production services, drilling, mineral trading, mineral marketing, shipping, transportation, information technology services, security, payroll, finance, medical, cleaning, insurance and any other services which are supplementary or optional to the mine;

"Scorecard" means the scorecard set out in paragraph 2.16 below;

"SLP" means the social and labour plan contemplated in section 23 of the MPRDA;

"South African Based Company" refers to a company incorporated in the Republic in terms of the Companies Act and which has offices in the Republic;

"South African Historically Black Academic Institutions" means institutions of higher learning which were historically solely for Black Persons;

"South African Manufactured Goods" means goods where at least 60% of the value added during the assembly and/or manufacturing of the product is realised within the borders of the Republic. The calculation of value added for the purposes of this definition excludes profit mark-up, intangible value (such as brand value) and overheads;

"Top Up" means the increasing of shareholding of a Black Person in order to reach the minimum thresholds required by the Mining Charter;

"Youth" for the purposes of this Mining Charter refers to Black Persons between the ages of 18 to 35 years old.

1. OBJECTIVES OF THE MINING CHARTER

This Mining Charter, is a government instrument designed to achieve mutually symbiotic sustainable growth and broad based and meaningful transformation of the mining and minerals industry. The Mining Charter seeks to achieve the following objectives:

(a) Recognition of the internationally accepted right of the State to exercise sovereignty over all the mineral resources within the Republic;

(b) Deracialising of ownership of the mining and minerals industry by redressing the imbalances of the past injustices;

(c) Substantially and meaningfully expanding opportunities for Black Persons to enter the mining and minerals industry and to benefit from the exploitation of the State's mineral resources;

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(d) Utilising and expanding the existing skills base for the empowerment of Black Persons;

(e) Advancing employment and diversifying the workforce in order to achieve competitiveness and productivity of the mining and minerals industry;

(f) Enhancement of the social and economic welfare of Mine Communities and major Labour Sending Areas in order to achieve social cohesion;

(g) Promotion of sustainable development and growth of the mining and minerals industry;

(h) Catalysing growth and development of the local mining inputs sector by leveraging the procurement spend of the mining and minerals industry; and

(i) Promoting Beneficiation of South Africa's mineral commodities by South African Based Companies.

2. ELEMENTS OF THE MINING CHARTER

2.1 OWNERSHIP

In order to give effect to Meaningful Economic Participation and the integration of Black Persons into the mainstream economy; and ensure Black Persons' effective ownership of the State's mineral resources, a Holder must comply with the following:

2.1.1 NEW PROSPECTING AND MINING RIGHTS HOLDERS

2.1.1.1 A Holder of a new prospecting right must have a minimum of 50% + 1 Black Person shareholding which shareholding shall include voting rights, per prospecting right or in the company which holds the right.

2.1.1.2 A Holder of a new mining right must have a minimum of 30% Black Person shareholding which shall include economic interest plus a corresponding percentage of voting rights, per right or in the mining company which holds the right.

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2.1.1.3 The 30% Black Person shareholding must be distributed in the following manner:

(a) a minimum of 8% of the total issued shares of the Holder shall be issued to ESOPs (or any similar employee scheme structure);

(b) a minimum of 8% of the total issued shares of the Holder shall be issued to Mine Communities (in the form of a community trust); and

(c) a minimum of 14% of the total issued shares of the Holder shall be issued to BEE Entrepreneurs.

2.1.1.4 To the extent that any Black Person holds shares within one of the categories set out in paragraph 2.1.1.3 above, such Black Person shall ensure that in the event of transferring the shares, the party to whom the shares are transferred must fall within the same category as the transferring Black Person as set out paragraph 2.1.1.3 above. Such that the Black Person shareholding distribution set out in paragraph 2.1.1.3 above shall always be maintained by the Holder.

2.1.1.5 The Holder shall ensure that any reduction of shareholding of existing shareholders through the issue of new shares, shall not reduce the Black Person shareholding distribution as set out in the paragraph 2.1.1.3 above.

2.1.1.6 The portion of the 30% Black Person equity shareholding referred to in paragraph 2.1.1.3 which has not yet vested shall vest in no more than 10 years and by no less than 3% annually of the total issued share capital of the Holder, proportionate to the respective non-vested shareholding of the employees, Mine Communities and BEE Entrepreneurs. Such vesting shall be paid for from the proceeds of dividends received by the Black Person shareholders, provided that if the total dividends received by any of the Black Person shareholders is not sufficient to discharge the amount required for full vesting, the balance owing in respect thereof, shall be written off by the Holder or vendor of the shares to the Black Person as the case may be.

2.1.1.7 Subject only to the solvency and liquidity requirements as set out in the Companies Act, a Holder of a new mining right must pay a minimum 1% of its annual turnover in any given financial year to the Black Person shareholders, prior to and over and above any distributions to the shareholders of the Holder.

2.1.1.8 Subject to the provisions of paragraph 2.1.1.4, the BEE Entrepreneurs shall be allowed to dilute a maximum of 49% shareholding in the Holder, provided that 100% of the proceeds from the dilution are used by the BEE Entrepreneurs to develop another asset.

2.1.1.9 The shareholding of the Mine Community must be held in a trust created and managed by the Mining Transformation and Development Agency, from a date to be published by the Minister.

2.1.1.10 The Mining Transformation and Development Agency shall report to the Minister. on an annual basis.

2.1.1.11 The 30% Black Person shareholding must be held in an entity/ies or by person/s which is/are separate from the right Holder.

2.1.1.12 The Black Person shareholders shall directly and actively control their share of equity interest in the empowering company, including the transportation as well as trading and marketing of the proportionate share of the production.

2.1.1.13 The only offsetting permissible under the ownership element is against the value of Beneficiation as provided for in paragraph 2.1.4 below. Such offsetting shall account for a maximum of 11% against the ownership target where such offsetting has been approved by the Department of Mineral Resources.

2.1.2 EXISTING PROSPECTING AND MINING RIGHTS HOLDERS

2.1.2.1 A Historical BEE Transaction shall be recognised for the reporting period ending on the date on which this Mining Charter is published in the *Government Gazette*.

2.1.2.2 The provisions of paragraph 2.1.2.1 shall apply to an existing Holder whose BEE Partner/s has exited the BEE Historical Transaction; or the contract between the Holder and the BEE Partner/s has lapsed; or the previous BEE Partner/s transferred its shares to a person/s other than a Black Person.

2.1.2.3 A Holder who claims the recognition of Historical BEE Transactions is required to Top Up its Black Person shareholding from the existing level to a minimum of 30% Black Person shareholding, at the Holder level within the twelve (12) months transitional period. Such Top Up need not be in proportion to the shareholding distribution set out in paragraph 2.1.1.3 above.

2.1.2.4 An existing Holder, who after the coming into operation of the Mining Charter of 2017, has maintained a minimum of 26% Black Person shareholding shall be required to Top Up its Black Person shareholding to a minimum of 30% within the twelve (12) months transitional period. Such Top Up need not be in proportion to the shareholding distribution set out in paragraph 2.1.1.3 above.

2.1.2.5 An existing Holder who has acquired and maintained more than 30% Black Person shareholding shall be allowed to maintain its existing structure until such time as the BEE Partner/s exits or upon renewal of such right.

2.1.2.6 The required Top Up stipulated in paragraphs 2.1.2.3 and 2.1.2.4 shall be effected by a reduction of the remaining shareholders who are not Black Persons in proportion to their respective shareholding in the company.

2.1.2.7 The Black Person shareholding Top Up referred to in 2.1.2.3 and 2.1.2.4 shall be given proportionally to the Holder's existing BEE Partner/s. To the extent that BEE Partner/s has exited the BEE Historical Transaction; or the contract between the Holder and the BEE Partners has lapsed; or the BEE Partners have transferred the shares to a person other than a Black Person, then the Top Up shall be to a BEE Entrepreneur.

2.1.2.8 A Holder referred to in 2.1.2.3 to 2.1.2.5 must, within the transitional period of twelve (12) months, ensure that its BEE Partners directly and actively control their share of equity interest in the Holder, including the transportation as well as trading and marketing of the proportionate share of the production.

2.1.2.9 The recognition of Historical BEE Transactions shall include the recognition of historical deals concluded on units of production, share asset deals (including deals where the BEE Partner/s have sold their shareholding) and all Historical BEE Transactions deals which formed the basis upon which new order mining rights were granted.

2.1.2.10 The Historical BEE Transactions referred to above may be at company level, asset level or cover all operations.

2.1.2.11 The recognition of Historical BEE Transactions shall not apply to transactions which did not achieve a minimum of 26% empowerment by the date on which this Mining Charter is published in the *Government Gazette*.

2.1.2.12 After the date of publication of this Mining Charter in the *Government Gazette* the recognition of Historical BEE Transactions shall not apply to applications for a new mining right or prospecting right or applications for the renewal of such rights, or to applications in terms of section 11 of the MPRDA affected by such recognition.

2.1.3 Sale of South African Mining Assets

In order to ensure effective and meaningful participation of Black Persons in the mining and minerals industry, a Holder who sells its mining assets must give Black Owned Company/s a preferential an option to purchase.

2.1.4 MINERAL BENEFICIATION

In order to give effect to government policies and contribute to the Republic's national developmental imperatives relating to Beneficiation of the Republic's mineral resources:

(a) A Holder may offset a maximum of 11% of Black Persons ownership by financially investing in and contributing to Beneficiation over and above the provisions of Section 26 of the MPRDA.

(b) The offsetting referred to in paragraph 2.1.4 (a) shall not exceed 11% irrespective of the formulae, methods and/or mechanisms identified.

(c) A Holder claiming an offset pursuant to Beneficiation must meet the following criteria:

- The Holder must have, since 2004, in addition to section 26 requirements of the MPRDA, invested in Beneficiation;
- The activities that are deemed to be Beneficiation are in line with the baseline contemplated in the definition of Beneficiation in the MPRDA; and
- The Department of Mineral Resources must approve the proposed activities to ensure that such activities are in line with Beneficiation policies published by it from time to time.

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(d) Offsetting shall not apply to any Beneficiation project which existed post 2004 but which has since ceased to exist and or has been terminated.

(e) Offsetting may only be claimed where the Holder's contribution to Beneficiation is still ongoing.

The processes and mechanisms that shall determine the offset of each mineral value chain, shall be provided for by the Minister, by way of *Government Gazette*, as envisioned in section 26 (2) of the MPRDA.

2.2 PROCUREMENT, SUPPLIER AND ENTERPRISE DEVELOPMENT

Leveraging maximum benefit from the Republic's mineral resources will require strengthening linkages between the mining and minerals industry and the broader economy. This element seeks to strengthen these linkages through procurement of South African Manufactured Goods and sourcing of Services from South African Based Companies. Procurement of South African Manufactured Goods and Services presents opportunities to expand economic growth that allows for the creation of decent jobs and widens the scope for market access of South African Manufactured Goods and Services. A Holder must identify what goods and services are available within the community where its mining operation takes place and, where feasible, give preference to suppliers within that community.

To achieve this, a Holder must identify all goods and services that will be required in its operations and must ensure that its procurement policies adhere to the following criteria:

Mining Goods

A Holder must spend a minimum of 70% of total mining goods procurement spend on South African Manufactured Goods. The abovementioned 70% of the total goods procurement spend shall be apportioned in the following manner:

(a) A minimum of 21% of total mining goods procurement spend must be set aside for sourcing South African Manufactured Goods from Black Owned Companies;

(b) A minimum of 5% of total mining goods procurement spend must be set aside for sourcing South African Manufactured Goods from Black Owned Companies with a minimum of 50%+1 vote female Black Person owned and controlled and/or 50% +1 vote Youth owned and controlled; and

(c) A minimum of 44% of total mining goods procurement spend must be set aside for sourcing South African Manufactured Goods from BEE Compliant Manufacturing Companies.

Services

A minimum of 80% of the total spend on services must be sourced from South African Based Companies. The abovementioned 80% of the total services procurement spend shall be apportioned in the following manner:

(a) A minimum of 65% of the total spend on services must be sourced from Black Owned Companies;

(b) A minimum of 10% of the total spend on services must be sourced from Black Owned Companies with a minimum of 50%+1 vote female Black Person owned and controlled companies; and

(c) A minimum of 5% of the total spend on services must be sourced from Black Owned Companies with a minimum of 50%+1 vote Youth owned and controlled companies.

Processing of samples

(a) A Holder must utilise South African Based Companies for the analysis of 100% of all mineral samples across the mining value chain, except in cases where samples are analysed for the purpose of verification of the accuracy of local laboratories.

(b) A Holder may not conduct sample analysis using foreign based facilities and/or companies without the prior written consent of the Minister.

Verification of local content

(a) A Holder shall, when submitting the annual Mining Charter report contemplated in paragraph 2.9 to the Department of Mineral Resources, provide proof of local content for goods and services in the form of certification from the South African Bureau of Standards (SABS).

(b) The responsibility to verify local content lies with the supplier of goods and/or services.

Contribution by Foreign Suppliers

A Foreign Supplier must contribute a minimum of 1% of its annual turnover generated from local mining company/ies towards the Mining Transformation and Development Agency.

2.3 EMPLOYMENT EQUITY

The purpose of the Employment Equity Act, 1998, (Act No. 55 of 1998) (EE Act) is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workforce.

Consistent with the EE Act, workplace diversity and equitable representation at all levels are catalysts for social cohesion, transformation and competitiveness within the mining and minerals industry. In order to create a conducive environment to ensure diversity as well as participation of Black Persons at all decision-making positions and core occupational categories in the mining and minerals industry, a Holder must employ a minimum threshold of Black Persons which is reflective of the Demographics of the country as follows:

Board

A minimum of 50% Black Persons with exercisable voting rights, 25% of which must be female Black Persons.

Executive/Top Management

A minimum of 50% Black Persons at the executive directors' level as a percentage of all executive directors, 25% of which must be female Black Persons.

Senior Management

A minimum of 60% Black Persons in senior management, 30% of which must be female Black Persons.

Middle Management level

A minimum of 75% of Black Persons in middle management, 38% of which must be female Black Persons.

Junior Management level

A minimum of 88% Black employees in junior management, 44% of which must be female Black Persons.

Employees with disabilities

A minimum of 3% employees with disabilities as a percentage of all employees, reflective of national and/or provincial Demographics.

Core and Critical skills

A Holder must ensure that a minimum of 60% Black Persons are represented in the Holder's Core and Critical Skills by diversifying its existing pools. Core and Critical Skills must include technical representation across all organisational levels. To achieve this, the Holder must identify and implement its existing pools in line with the approved SLP and such implementation must be reflective of the Demographics of the Republic.

Career progression (aligned with SLP)

A Holder must develop and implement a career progression plan consistent with the Demographics of the Republic by:

(a) Developing career development matrices of each discipline (inclusive of minimum entry requirements and timeframes);
(b) Developing individual development plans for employees;
(c) Identifying a talent pool to be fast tracked in line with the needs; and
(d) Providing a comprehensive plan with targets, timeframes and how the plan will be implemented.

The targets indicated under this element may change in order to address employment equity measures.

2.4 HUMAN RESOURCE DEVELOPMENT

The mining and minerals industry is knowledge based and thus hinges on human resource development which constitutes an integral part of social transformation in the workplace as well as sustainable growth. The objective is to improve the employment prospects of Black Persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education.

A Holder must invest 5% of the Leviable amount on essential skills development. To achieve this objective, a Holder must invest the 5% in the following manner:

(a) 2% on essential skills development activities such as artisanal training, bursaries, literacy and numeracy skills for employees and non-employees (community members);

(b) The skilling referred to in paragraph (a) must be a representative of national and/or provincial demographics and must be biased towards low level employees;

(c) 1% towards South African Historically Black Academic Institutions for research and development initiatives intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), Beneficiation as well as environmental conservation and rehabilitation. A Holder may make representations to the Minister for exemption from the 1% referred to in this paragraph (c) if the Holder has partnered and supported a State owned entity in respect of mining related research and development; and

(d) 2% towards the Mining Transformation and Development Agency.

2.5 MINE COMMUNITY DEVELOPMENT

Mine Communities form an integral part of mining development, which requires a balance between mining and the Mine Community's socio-economic development. A Holder must meaningfully contribute towards the development of the Mine Community (with a bias towards communities where mining takes place) both in terms of impact, and also in keeping with the principles of the social license to operate.

Mine Community development projects referred to above must include infrastructure projects, income generating projects and enterprise development.

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District, metropolitan, and local municipalities as constitutionally, mandated institutions for community development, have a responsibility to develop integrated development plans (IDP's) in consultation with all relevant stakeholders in a transparent and inclusive,manner in terms of applicable legislation. A Holder must contribute towards Mine Community development by identifying priority project/s as per the approved IDP.

(a) In this regard a Holder's contribution towards Mine Community development must be proportionate to the size of the investment.

(b) A Holder must meaningfully contribute towards Mine Community development in terms of its approved SLP which is to be published in English and other languages commonly used within the Mine Community.

(c) All project management and consultation fees incurred during the execution of Mine Community development projects shall be capped at 8% of the total budget.

(d) Holders may collaborate on projects where more than one right Holder operates in the same area informed by their SLPs, which are aligned to the district, metropolitan and local municipality's IDP's for maximum socio- economic developmental impact.

2.6 SUSTAINABLE DEVELOPMENT AND GROWTH OF THE MINING AND MINERALS INDUSTRY

Mineral resources are non-renewable in nature. Accordingly, exploitation of such resources must emphasise the importance of balancing concomitant economic benefits with social and environmental needs without compromising future generations, in line with the provisions of the Constitution for ecologically sustainable development and use of natural resources. To this end, in consideration of clause 2.12~~2.9~~ (reporting), a Holder must implement elements of sustainable development commitments included in the "Stakeholders' Declaration on Strategy for the sustainable growth and meaningful transformation of South

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Africa's Mining Industry" of 30th June 2010, and in compliance with all relevant legislation, as follows:

2.6.1 Improvement of the industry's environmental management

In order to preserve and improve the environment, a Holder must comply with and implement environmental management systems that focus on continuous improvement to review, prevent and mitigate adverse environmental impacts in line with the environmental management plan approved in terms of the National Environmental Management Act 1998 (Act 107 of 1998) and its Regulations.

2.6.2 Improvement of the industry's health and safety performance

The stakeholders within the mining and minerals industry have committed themselves to the goal of zero harm. The key driver to achieve zero harm will be the implementation of the 2016 Occupational Health and Safety Summit Milestones and taking into consideration the following:

(a) Implementing a management system focused on continuous improvement of all aspects of operations that have a significant impact on the health and safety of employees and communities where mining takes place;

(b) Providing all employees with health and safety training; and

(c) Implementing regular health surveillance and risk-based monitoring of employees.

The Holder must comply with the following milestones:

(a) Elimination of occupational lung diseases in accordance with agreed timelines and taking into account occupational exposure limits;

(b) Elimination of noise-induced hearing loss in accordance with agreed timelines and taking into account occupational exposure limits;

(c) Prevention and management of tuberculosis and HIV/AIDS in accordance with agreed timelines;

(d) Elimination of fatalities and injuries in accordance with agreed timelines; and

(e) Implementing the approved Culture Transformation Framework pillars aimed at significantly improving the culture towards health and safety across the mining sector, in accordance with agreed timelines.

A Holder must further put in place a management system focused on continuous improvement of all aspects of operations that have a significant impact on the health and safety of employees, contractors and communities where mining takes place. A Holder must continue providing all employees with health and safety training and require employees of contractors to have undergone such training.

2.6.3 Research and Development Spend

(a) Where a Holder intends to undertake research and development, the Holder must spend at least 70% of their research and development budget in the Republic.

(b) 50% of the 70% indicated above must be spent on South African Historically Black Academic Institutions.

2.7 HOUSING AND LIVING CONDITIONS

Human dignity and privacy for mineworkers are still the hallmarks to enhance productivity and expedite transformation in the mining and minerals industry in terms of housing and living conditions. In this regard Holders must improve the standards of housing and living conditions for mine workers as stipulated in the Housing and Living Conditions Standards. The Housing and Living Conditions Standards provide for, amongst others, the following principles:

2.7.1 Principles of Housing Conditions

- Decent standards of housing;
- Centrality of home ownership;

- Provision for social, physical and economic integrated human settlements;
- Measures to address housing demand;
- Involvement of employees in the housing administrative system; and
- Secure tenure for the employees in housing institutions.

2.7.2 Principles of Working Conditions

- Proper health care services;
- Affordable, equitable and sustainable health system; and
- Proper nutrition requirements and standards.

A Holder shall further be required to submit a housing and living conditions plan which must be approved by the Department of Mineral Resources after consultation with the Department of Housing and organised labour and the Department of Human Settlement.

2.8 APPLICATION OF THE MINING CHARTER TO LICENCES GRANTED UNDER THE PRECIOUS METALS ACT, 2005 AND THE DIAMONDS ACT, 1986.

The Diamonds Act 1986 (Act 56 of 1986) and the Precious Metals Act 2005 (Act 37 of 2005) make provision for the South African Diamond and Precious Metals Regulator (as defined therein) to have regard to the requirements of this Mining Charter of 2017 when considering applications lodged in terms of those acts.

The targets and elements of the Mining Charter shall therefore apply to licenses under those Acts in line with the table below:

CATEGORY/SIZE OR CLASS	QUALIFYING CRITERIA	EXEMPT FROM THE FOLLOWING TARGETS	REQUIRED TO COMPLY WITH THE FOLLOWING TARGETS
Exempted Micro Enterprises (including students)	Estimated max turnover less than R1 Million.	Ownership	Sustainable Development and growth of the minerals industry.
		Human Resource Development	
		Procurement	
		Employment Equity	
		Mine Community Development	
Qualifying Small and Micro Enterprises (QSME's)	Estimated max turnover R1 Million to R3.8 Million.	Ownership	Employment Equity
		Mine Community Development	Human Resource Development
			Procurement and supplier and enterprise development.
			Sustainable Development and growth of the minerals industry.
			Ownership

Medium and Large Entities	Estimated max turnover greater than R3.8 million.	Mine Community Development	Employment Equity[2]
			Human Resource Development[3]
			Procurement and supplier and enterprise development
			Sustainable Development and growth of the minerals industry.

ELEMENTS OF THE MINING CHARTER APPLICABLE TO LICENSEES UNDER THE PRECIOUS METALS ACT, 2005 AND THE DIAMONDS ACT, 1986 AS AMENDED

2.8.1 OWNERSHIP

(a) In line with Government policies to encourage Beneficiation of the Republic's mineral resources, offsetting shall be permissible under the ownership element against the value of Beneficiation up to a maximum of 11% against the ownership target. As such the ownership target for the downstream diamonds and precious metals industry is a minimum of 19% in the hands of Black Persons per licensee to enable meaningful economic participation of Black Persons.

(b) The Black Person shareholding indicated above shall comprise of BEE Entrepreneurs and workers and must be 40% ownership of net value based upon the time based graduation factor.

(c) Taking into account the extent of the exemption in terms of the above table, a permit or license holder in terms of the Precious Metals Act and the Diamonds Act is required to comply with all the relevant elements and targets as set out in this Mining Charter of 2017.

2.8.2 REPEAL OF PARAGRAPH 3 OF THE CODES OF GOOD PRACTICE FOR THE MINERALS INDUSTRY

Paragraph 3 of the *Codes of Good Practice for the Minerals Industry* published in *Government Gazette* No. 32167 of 29 April 2009 is hereby repealed.

2.9 REPORTING (MONITORING AND COMPLIANCE)

A Holder must report its level of compliance with this Mining Charter of 2017 annually, as provided for by Section 28 (2) (c) of the MPRDA. The Department shall monitor and evaluate the Holder's implementation of this Mining Charter of 2017, taking into account the impact of material constraints which may result in not achieving the set target.

The ownership, Mine Community development and human resources development elements are ring fenced and require 100% compliance at all times.

2.10 APPLICABILITY OF TARGETS

All targets stipulated in this Mining Charter of 2017 shall be applicable throughout the duration of a mining right (including prospecting and other exploration rights), unless a specific element specifies otherwise.

2.11 TRANSITIONAL ARRANGEMENTS

The following provisions shall only apply to existing Holders:

(a) An existing mining right holder has a maximum of twelve (12) months to comply with the revised targets of this Mining Charter of 2017 from the date of publication of this Mining Charter of 2017. Save that the twelve (12) month period in relation to paragraph 2.1.1.3 (b) as read with paragraph 2.1.1.9, shall commence upon a date to be published by the Minister.

(b) The Holder must align existing targets cumulatively from the Mining Charter of 2014 targets within the transitional period referred to above to meet the revised targets in line with the attached Scorecard.

(c) The transitional arrangements period for the procurement element targets is three years. The Holder must within three (3) years from the date of publication of this reviewed Mining Charter of 2017, submit a three (3) year plan indicating progressive implementation of the provisions of this reviewed Mining Charter of 2017 insofar as they relate to procurement.

(d) The transition period for the procurement target may upon request by the Holder be extended by a further two (2) years to allow the Holder sufficient time to develop the 50%+1 vote Black Owned Company suppliers in accordance with the procurement targets.

(e) Compliance with procurement targets within the transitional period shall be as follows:

- The first year target is set at 15% of the 70%, second year target is set at 45% of the 70% and the third year target is set at 70%.

(f) A Holder must comply with the Housing and Living Conditions Standards and ensure that it maintains single sex units and family units and any other agreement which has been reached with workers pending the finalisation of the Reviewed Housing and Living Conditions Standards.

(g) The Holder's performance shall be reported and audited against each element in respect of implementation for the applicable transitional period.

2.12 NON-COMPLIANCE

A Holder who has not complied with the ownership, Mine Community development and human resource development elements and falls between level 5 and 8 of the Scorecard will be regarded as non-compliant with the provisions of the Mining Charter and in breach of the MPRDA and will be dealt with in terms of section 93 read in conjunction with section 47, 98 and 99 of the MPRDA.

2.13 REVIEW OF THE CHARTER

The Minister may, by notice in the *Government Gazette* review this Mining Charter.

2.14 REPEAL OF PREVIOUS MINING CHARTERS

This Charter repeals the 2004 and the 2010 Mining Charters.

2.15 INTERPRETATION OF THE MINING CHARTER

The Mining Charter shall be read and interpreted in conjunction with MPRDA and the BBBEE Act where words are not defined and a meaning thereof has been ascribed in the aforementioned legislation.

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2.16 SCORECARD: MINING CHARTER REVIEW

Revised Mining Charter Scorecard	Weighting %
Ownership	Y/N
Human Resource Development	Y/N
Mine Community Development	Y/N
Procurement supplier & Enterprise Development	30%
Employment Equity	35%
Sustainable Development and growth	35%
Total	100%

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OWNERSHIP

Element Description	Measure	Compliance Target %	Weighting %
Minimum target for representation of Black people ownership.	ESOP's	30% BBBEE Ownership	Y/N (Ring-fenced element)
	BEE Entrepreneurs		
	Mine Community		

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HUMAN RESOURCE DEVELOPMENT

Element Description	Measure	Compliance Target %	Weighting / [illegible]
Development of requisite core and critical skills, literacy and numeracy and South African Historically Black Academic Institutions in respect of human resources development initiatives intended to develop solutions in exploration, mining, processing, technology efficiency, beneficiation as well as environmental conservation.	Percentage of the total annual Leviable amount contributed to essential skills development activities	2%	Y/N (Ring-fenced element)
	Percentage of the total annual Leviable amount contributed to Mining, Transformation and Development Agency.	2%	
HRD expenditure as percentage of total annual Leviable amount (excl. mandatory skills development levy)	Percentage of the total annual Leviable amount contributed to South African Historically Black Academic Institutions	1%	

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MINE COMMUNITY DEVELOPMENT

Element description	Measure	Compliance Target%	Weighting %
Implement locally approved community projects, which are aligned to the district, metropolitan and local municipality's IDPs of revenue projection for two and half years, applicable to a SLP's for five (5) years cycle.	Contribution towards mine community development must be proportionate to the size of the investment		Y/N (Ring-fenced element)

PROCUREMENT SCORECARD

Element Description	Measure	Compliance Target	Weighting
	Percentage of the total mining goods procurement spend on South African manufactured goods from 50% + 1 vote Black owned and controlled companies.	21%	5%
Goods Procurement: A minimum of 70% of the total mining goods procurement spend must be spent on South African manufactured goods must be sourced from a BEE compliant manufacturing companies. Calculation of goods and services spend does not include spend on buildings, roads, utilities (electricity and water) and land rates.	Percentage of the total goods procurement spend on South African manufactured goods from companies with a minimum of 50%+1 vote Black women owned and controlled and/or 50% +1 vote youth ownership;	5%	1%
	Percentage of the total goods procurement spend on South African manufactured goods from companies that are at least at level 4 BEE +26% ownership	44%	9%
Services Procurement: A minimum of 80% of the total spend on services must be sourced from South	Percentage of total spend on services from South African based services companies.	65%	5%

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African based companies. The abovementioned 80% of the total services procurement spend shall be apportioned in the following manner.[1]	Percentage of total spend on services from companies with a minimum of 50%+1 vote Black women owned and controlled companies.	10%	2%
	Percentage of total spend on services from companies with a minimum of 50%+1 vote youth owned and controlled companies.	5%	2%
Percentage of samples analyses using South African based facilities: Utilise South African based facilities for the analysis of mineral samples across the mining value chain except in cases where samples are analysed for the purpose of verification of the accuracy of local laboratories.	Percentage of samples analysed using South African based facilities	100%	3%
Contribution by Foreign Suppliers Mining companies to submit supplier development plans.	Percentage of annual turnover generated from local mining companies contributed towards the Mining Transformation and Development Agency	1%	3%
Total			30%

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EMPLOYMENT EQUITY

Element Description			Compliance Target %	Weighting %
Board				
Africans	Coloureds	Indians	50%	3%
Black Females as a percentage of all Board representatives			25%	3%
Executive/ Top Management				
Africans	Coloureds	Indians	50%	3%
Black Females as a percentage of all executive directors.			25%	3%
Senior Management				
Africans	Coloureds	Indians	60%	4%
Black Females as a percentage of all senior managers.			30%	4%
Middle Management				
Africans	Coloureds	Indians	75%	3%
Black Females as a percentage of all middle managers.			38%	3%
Junior Management				
Africans	Coloureds	Indians	88%	1%

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Black Females as a percentage of all junior managers.			44 %	3%
Employees with disabilities				
Africans	Coloureds	Indians	3%	2%
Core and Critical Skills				
Africans	Coloureds	Indians	60%	3%
Total				35%

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SUSTAINABLE DEVELOPMENT

Element Description	Measure	Compliance Target	Weighting %
Improve the Industry's environmental compliance	Complaince with the approved Environmental Management Plans	100%	10%
A minimum of 70% of the right holder's research and development budget must be spent in South Africa	Percentage of research and development budget spent in South Africa	70%	3%
	Percentage of the research budget spent locally and spent on South African Historically Black Academic Institutions.	50%	2%
Total			15%

Element Description	Measure	Compliance Target	Weighting %
	(a) Percentage of all exposure measurement results for respirable crystalline silica below the milestone	95%	1%
	(b) Percentage of all exposure measurement results for platinum dust respirable particulate below the milestone	95%	1%
	(c) Percentage of all exposure measurement results for coal dust respirable particulate below the milestone level	95%	1%
	(d) Tuberculosis incidence rate by 2024	Below National TB incident rate	2%

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Elimination of Occupational Diseases	(e) Percentage of employees offered HIV Counselling and Testing (HCT) annually	100%	2%
	(f) Percentage of all eligible employees linked to an Anti-Retroviral Treatment (ART) programme	100%	2%
Elimination of Occupational fatalities and Injuries	(a) Percentage annual reduction of fatalities	20%	7%
	(b) Percentage annual reduction of injuries	20%	3%
Culture Transformation Framework	(a) Culture Transformation Framework pillars aiming to significantly improve the culture towards Health and Safety across the mining sector, in accordance with agreed timelines	6 Pillars implemented	1%
Total			20%

Annexure A

This annexure provides an alignment between the Dti BBEEE and DMR scorecard

Dti LEVELS	DMR LEVELS	DMR SCORECARD	3 Ring Fenced Elements + percentage weighting
Level 1	Level 1	3 Ring fenced Elements + 100%	Compliant
Level 2	Level 2	3 Ring fenced Elements + 80 -100%	
Level 3	Level 3	3 Ring fenced Elements + 70-80%	
Level 4	Level 4	3 Ring fenced Elements + 60-70%	
[redacted]			

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FRASER ALEXANDER MBUYELO GROUP VERGENOEG Palabora Mining Company Limited Kalagadi AQUARIUS

SAWIMA

THANKS TO THE FOLLOWING COMPANIES FOR THE USE OF THEIR IMAGES: African Rainbow Minerals Limited, De Beers Group of Companies, Sibanye Gold Limited, Impala Platinum Holdings Limited, Harmony Gold Mining Company Limited, Anglo American

MMC

CHAMBER OF MINES
of South Africa

MEDIA STATEMENT

MINISTER SUSPENDS IMPLEMENTATION OF REVIEWED CHARTER PENDING JUDGMENT

Parties agree to revised dates following undertakings by the Minister

Johannesburg, 14 July 2017: The Chamber of Mines advises that the Minister of Mineral Resources has given a written undertaking that the Minister and the Department of Mineral Resources (DMR), will not implement or apply the provisions of the 2017 Reviewed Mining Charter in any way, pending judgment in the urgent interdict application brought by the Chamber of Mines. The Chamber of Mines is seeking an urgent interdict to prevent the implementation of the DMR's Reviewed Charter, published on 15 June 2017.

The Minister has furthermore undertaken that, in the event of any breach of the above undertaking, the Chamber can set the urgent interdict application down for hearing on 48 hours' notice to the Minister.

Based on the written undertaking, the Chamber of Mines has acceded to the DMR's request for extra time to prepare its answering affidavit to the interdict application and for the hearing to take place on a later date. The hearing was scheduled for Tuesday, 18 July 2017. The parties have asked the Deputy Judge President (DJP) of the High Court to allocate a hearing date in September 2017. This date is subject to allocation by the DJP, which is expected to occur by around the end of July.

Chamber of Mines CEO, Roger Baxter notes that this is a satisfactory arrangement for the Chamber and the industry, whose primary objective through the interdict application remains to ensure that the DMR's Charter does not come into effect, pending a court application to have it reviewed and set aside. Mr Baxter reiterated the Chamber and the industry's commitment to transformation, and stressed that it was imperative that meaningful and lasting

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CHAMBER OF MINES
of South Africa

transformation be undertaken in a way that it ensures the sustainability and growth of the industry.

The Chamber's application to have the DMR's latest version of the Mining Charter reviewed in terms of the Promotion of Administrative Justice Act (PAJA) and the Constitution will be lodged as soon as possible after judgment has been handed down in the Chamber's urgent interdict application.

Meanwhile, the Chamber's Application for a Declaratory Order in respect of the recognition of prior BEE transactions under the Original and 2010 Charters, has been re-enrolled by the Deputy Judge President for hearing on 9 and 10 November 2017.

For further information please contact:
Charmane Russell
Russell and Associates
Tel: +27 (0)11 880 3924
Mobile: +27 (0)82 372 5816
Email: charmane@rair.co.za
Web: www.chamberofmines.org.za

PJ

CHAMBER OF MINES
of South Africa

MEDIA STATEMENT

For immediate release

CHAMBER SERVES REPLYING AFFIDAVIT

Johannesburg, 18 August 2017: The Chamber of Mines today served its replying affidavit in the High Court of South Africa (Gauteng, Division, Pretoria) interdict application, in response to the answering affidavit delivered by the Minister of Mineral Resources on Monday, 7 August 2017. This is in respect of the Chamber's application for an urgent interdict against the implementation of the DMR's Reviewed Mining Charter.

The Chamber notes that the Minister's response does not deal with the matter at hand – that is the shortcomings of DMR's Reviewed Charter. Instead, the Minister focused on trying to undermine the credibility of the industry's transformation journey.

The Chamber reiterates its continued commitment to real transformation, implemented with due regard to what is achievable, bearing in mind the realities of the situation the industry faces. The unilateral development and implementation of the DMR's Reviewed Charter would not serve the interests of South Africa and its people. It is aimed at benefitting a select few, will destroy investment, lead to further job losses and will cause irreparable damage to the mining industry.

Primary issues dealt with

The legal documents related to this matter may be found at http://www.notourcharter.co.za/. The full replying affidavit will be made available in due course and may be accessed at the same location. Some of the issues it covers are included below:

- It addresses the DMR's assertion of "extensive" or "vigorous consultation" preceding the publication of the 2017 Charter. Given the nature and extent

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CHAMBER OF MINES
of South Africa

of the Charter, its profound effect on the mining industry and the absence of guidelines about the content of the Charter in the Minerals and Petroleum Resources Development Act (MPRDA), intensive bilateral or multi-lateral negotiations and true engagement, as was the case prior to the publication of the 2004 and 2010 Charters, would have been appropriate. This was not the case this time. The Chamber and its members have therefore been denied their right to a fair administrative procedure guaranteed by Section 3 of the Promotion of Administrative Justice Act (PAJA) as read with Section 33 of the Constitution. The Chamber is therefore seeking that the implementation of the DMR's Reviewed Mining Charter be interdicted, pending the hearing in due course of the Chamber's judicial review application to be instituted soon thereafter. The review application will seek to have the Reviewed Charter set aside as invalid and unlawful.

- The Chamber also disputes the DMR's assertion that the Mining Charter is law. The fact that the Charter is enabled by the MPRDA does not mean that it is a law on its own. The Charter does not operate outside the provisions of the MPRDA as a standalone law of general application, which can confer obligations on rights holders and which can supplement or amend the MPRDA and even override other legislation.

- The DMR's answering affidavit alleges that the Chamber's reference to the Companies Act is a fallacy when in fact numerous provisions of the 2017 Charter are in conflict with sections of the Companies Act.

- In terms of ownership, the Chamber's reply points out that at no stage during the negotiation of the first Mining Charter (which came into effect in 2004) was the concept of mining companies having to sustain HDSA ownership at 26% discussed or agreed between the Chamber and the DMR. There was never any requirement for mining right holders to sustain the 26% level. The primary focus was to create access to ownership by a critical mass of HDSA entities that could become self-perpetuating.

The interdict application will be heard on 14 and 15 September 2017.

CHAMBER OF MINES of South Africa

For further information please contact:

Memory Johnstone

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LAWYERS FOR
HUMAN RIGHTS

Land and Housing Unit
Kutlwanong Democracy Centre 357
Visagie Street, Pretoria 0002

Tel (012) 320 2943
Fax (012) 320 6852
email: Michael@lhr.org.za

9 October 2017

BY EMAIL

ATTN: Minister of Mineral Resources
c/o Office of the State Attorney, Pretoria
SALU Building
255 Francis Baard Street
Pretoria
Email: simathebula@justice.gov.za

ATTN: The Chamber of Mines of South Africa
c/o Norton Rose Fulbright South Africa Inc
15 Alice Lane
Sandton
Email: andre.vos@nortonrosefulbright.com; kirthi.kalyan@nortonrosefulbright.com

Dear Sir / Madam

RE: The Chamber of Mines of South Africa / Minister of Mineral Resources (Case No.: 43621/17)

1. We represent four mining-affected communities located in the Northwest and Limpopo provinces, respectively, and as detailed below ("our clients"). Our clients intend to intervene as co-applicants in the above matter, in terms of Rule 12 of the Uniform Rules of Court, and we request your written consent in this regard. While our clients intend to challenge certain aspects of the Mining Charter proposed by the Minister of Mineral Resources in June 2017 (the "2017 Charter"), they will do so for reasons that differ fundamentally from those advanced by the Chamber of Mines.

2. Our clients have a direct and substantial interest in the outcome of the application to review the 2017 Charter. Each of our client communities host considerable prospecting and/or mining activities in and around their land, including:

   a. The Lesethleng community, the *de facto* owner of the Wilgespruit 2 JQ farm, located in Moses Kotoane Local Municipality, in the North West Province. In 2011, a mining right was granted on the Wilgespruit farm, and in 2015 the Pilanesberg Platinum Mine ("PPM") occupied the farm in order to commence mining. Litigation to evict these residents is currently underway; should this be successful, residents will receive no compensation for the surface rights and no benefit from the mining operation.

PK MTC

b. The Sefikile community, which lives on and farms the Spitskop 410 KQ farm, also located in the Moses Kotane Local Municipality, in the North West Province. Operations at the Swartklip Mine, located on the Spitskop farm, began there in 1946, since which time the community has lost approximately 40% of the surface of its farm without receiving benefit beyond modest infrastructural improvements in the area.

c. The Babina Phuthi Ba ga-Makola community, located in the Steelpoort area of the Limpopo Province, which claims the Boschkloof 331 KT, De Goedeverwachting 332 KT and Mooimeisjesfontein 363 KT farms. The Makola community's land rights were unrecognised during apartheid and residents were finally forced off of the land in 1957. The community submitted a land claim in terms of the Restitution of Land Rights Act, but because mining and prospecting rights have been granted to various mining companies on the land it claims, the land is not viable for restoration.

d. The Kgatlu community, landowners and residents of the Goedetrouw 366 LR farm, located approximately 100 kilometres northwest of Polokwane, in the Limpopo Province. This community is composed of approximately 100 families, who live and graze cattle on their property. The Goedetrouw farm is included in a prospecting right covering a number of properties in the surrounding area, and held by Platinum Group Metals ("PGM"), a Canadian-listed platinum company. Public documents reflect PGM's intention to develop a major, fully mechanized operation there over the course of the next several years.

3. Without unnecessarily expanding on the issues that will be raised in their application, we record that our clients' interests in the matter at hand broadly relate to the following:

   a. The wholesale lack of consultation with communities in general and organizations representing communities with respect to the development of the 2017 Charter;

   b. The failure of previous versions of the Mining Charter to achieve the fundamental objectives of the Mineral and Petroleum Development Act 28 of 2002 to redress historical, social and economic inequalities, including by enabling the active participation of affected communities in the mining operations on and around their land;

   c. Non-compliance with the requirements of previous versions of the Mining Charter due to the lack of proper enforcement and oversight mechanisms; and

   d. The continued failure to address the negative social and environmental impacts of mining disproportionately experienced by surrounding communities.

Ck. MW

4. Our clients' concerns are not alleviated by the proposed 2017 Charter, and these communities will be directly impacted by any order a court may make with respect to it. Adjudication of the 2017 Charter cannot be fairly undertaken without consideration of the interests and views of such mining-affected constituencies. Our clients seek to intervene in this litigation to ensure that these interests are contemplated and safeguarded in the review process.

5. Although we have been carefully following the litigation with respect to the 2017 Charter and have engaged in discussion with the Chamber of Mines, we have not been formally invited to participate in this process. Despite a number of constitutional concerns at issue, neither has a Rule 16A notice been issued in this matter. As we have stated, we therefore request your written consent with respect to our clients' intervention as co-applicants. We have noted the special allocation with respect to this matter, and while we must register our doubts regarding the feasibility of the expedited timeframe agreed to by the parties, we commit to attempting to comply with this schedule.

6. As the legal representatives of the abovementioned communities, Lawyers for Human Rights will accept service on behalf of these co-applicants at the address provided above.

Yours faithfully,

LAWYERS FOR HUMAN RIGHTS

Per: Louise Du Plessis

NORTON ROSE FULBRIGHT
Norton Rose Fulbright South Africa Inc
15 Alice Lane
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South Africa

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Fax +27 11 301 3200

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Direct line
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Email
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Your reference

Our reference
CMI259/Mr AP Vos

11 October 2017

By Email: Michael@lhr.org.za
Louise@communitylaw.co.za

Ms Louise Du Plessis
Lawyers for Human Rights

Dear Madam

The Chamber of Mines of South Africa / Minister of Mineral Resources – High Court of South Africa, Gauteng Division, Pretoria – judicial review application in respect of Reviewed Mining Charter, 2017

1 We refer to your letter of 9 October 2017. We are instructed to respond thereto as set out below.

2 You state your clients' intention to intervene "as co-applicants in the above matter", which in turn references the matter under case number 43621/2017. That is the case number of the application by our client, the Chamber of Mines of South Africa, for an interim interdict pending the determination of a judicial review application. That application did not proceed because the Minister provided an undertaking not to give effect to the 2017 Charter pending the determination of a review to be instituted by the Chamber.

3 The review application has not yet been instituted. In accordance with the directions of the Judge President, the review application has to be instituted by 17 October 2017. Accordingly, there is presently no application in which your clients can apply to intervene.

4 None of the allegations which you advance in paragraph 2 of your letter supports the contention that your clients are entitled to join as co-applicants in the Chamber's prospective review application. At best, these allegations suggest that your clients are interested or affected parties with regard to specific mining rights, which have presumably been granted in terms of the *Mineral and Petroleum Resources Development Act, 2002* (**MPRDA**); that it may have potential remedies in terms of s54 of the MPRDA; that they have potential causes of action before the Land Claims Court in terms of the *Restitution of Land Rights Act*; and that they may have the rights under the Extension of Security of Tenure Act.

5 Further, the issues you mention in paragraph 3 will raise questions of law and fact which are not substantially the same than those which will arise in the review application to be brought by the Chamber of Mines.

6 In any event, if, as you contend in paragraph 1 of your letter, your clients "intend to challenge certain aspects" of the 2017 Charter "for reasons that differ fundamentally from those advanced by the Chamber of Mines", your client ought to bring its own judicial review application, and not seek to join the Chamber's application. The outcome of the Chamber's application will not prejudice your clients' rights or interests and you have not identified in your letter facts which would entitle your clients to join in the review application when it is brought.

PZ. MR

7 It has been well-known in the public domain since the publication on 15 June 2017 in the Government Gazette that the Chamber intended to apply to have the 2017 Charter judicially reviewed and set aside. Yet, your clients express an "interest" in the matter for the first time four months later, after the commencement of the process sanctioned by the Judge President and agreed between the parties. It will not be in the interest of justice or the national interest to allow your client, who for unexplained reasons failed to bring its own proceedings, at this late stage in an agreed process to derail the Chamber's application, as is foreshadowed in the last sentence of paragraph 5 of your letter.

8 In the circumstances, we are instructed that our client does not consent to the intervention of your clients' as co-applicants in the Chamber's intended review application.

9 We copy the Minister's attorney in this letter.

10 All our client's rights are reserved.

Yours faithfully

André Vos
Director
Norton Rose Fulbright South Africa Inc

Copy to: The Honourable Justice D Mlambo
Office of the Judge President
High Court of South Africa
Gauteng Division, Pretoria
Nndungane@judiciary.org.za

And to: Mr Goitse Pilane, Goitseona Pilane Inc Attorneys
Attorneys for respondent
goitse@pilaneinc.co.za

GOITSEONA PILANE ATTORNEYS INC.
Mobile: +27 83 445 3437

Our Ref: Mr G Pilane/MMR0001

Your ref: The Judge President D Mlambo and Deputy Judge President A P Ledwaba

Date: 12 October 2017

The Honourable Justice D Mlambo and Justice A P Ledwaba

Office of the Judge President & the Deputy Judge President

High Court of South Africa

Gauteng Provincial Division, Pretoria

Cnr Madiba & Paul Kruger Streets

Pretoria

By email to: Nndungane@judiciary.org.za

Copied to: KRamokoka@judiciary.org.za

Dear Judge President Mlambo & Deputy Judge President Ledwaba

RE: **Judicial Review Application 2017 Mining Charter: Chamber of Mines of SA v Minister of Mineral Resources, case number 43621/17**

1. We act for the respondent, the Minister of Mineral Resources (**"our client"**) in the above review application.
2. Norton Rose (per Mr Andre Vos) acts for the applicant, the Chamber of Mines of South Africa.
3. We refer to the correspondence from Mr Vos copied to yourself and dated 11 October 2017. We also refer to the various letters written by parties who seek leave to intervene in this review application.
4. We are instructed that our client will abide the decision of the court in relation to every application for intervention by any third party who seeks leave to intervene, provided that the following conditions are abided by:
   - 4.1. To the extent that any third party wishes to make any submission that might warrant a response from our client, their full application must be delivered on the same date as the founding papers of the chamber of mines', and strictly in accordance with the agreed upon timetable;
   - 4.2. No third party should be allowed to deliver any papers that might warrant a response from our client after the due date for delivery of the chamber of mines' founding papers; and
   - 4.3. The application for intervention and intervention of any third party should not in any way jeopardise the agreed upon timetable for the hearing of the matter.

GOITSEONA PILANE ATTORNEYS INC.
Mobile: +27 83 445 3437

5. We respectfully suggest that if the Deputy Judge President is inclined to accept the above proposal, the hearing be extended by a further court day, from the current period of 13 and 14 December, to 15 December 2017. This is simply because of the number of third parties who seek leave to intervene.

6. Should you deem it necessary or desirable to hold a further meeting to deal with the above, our counsel will endeavour to make themselves available at your convenience.

Yours sincerely,

Goitse Pilane

Copied to:

Mr. Andre Vos, Director, Norton Rose Fulbright South Africa Inc.

Andre.Vos@nortonrosefulbright.com

Attorneys for the Applicant (The Chamber of Mines of South Africa)

Copied to:

Mr Finger Phukubje and Mr Modisane, Finger Phukubje Attorneys

chris@fpinc.co.za & mothusi@fpinc.co.za

Attorneys for the Intervening Party (National Union of Mine Workers)

Copied to:

Mr Claassen, Director, Serfontein, Viljoen & Swart Attorneys

id@wvs.co.za

Attorneys for the Intervening Party (Solidarity)

Copied to:

Wandisa Phama, Centre for Applied Legal Studies

Wandisa.Phama@wits.ac.za

Attorneys for Intervening Parties (Mining and Environmental Justice Community Network of South Africa ("MEJCON") and the Mining Affected Communities United in Action ("MACUA"))

GOITSEONA PILANE ATTORNEYS INC.
Mobile: +27 83 445 3437

Copied to:

Michael Clements and Louise Du Plessis, Lawyers for Human Rights

Michael@lhr.org.za & Louise@lhr.org.za

Attorneys for the Intervening Parties (Lesetlheng Community, Sifikile Community, Babina Phuthi-Ba-Ga-Makola Community and Kgatlu Community)

NVC

LAWYERS FOR
HUMAN RIGHTS

Land and Housing Unit
Kutlwanong Democracy Centre 357
Visagie Street, Pretoria 0002

Tel (012) 320 2943
Fax (012) 320 6852
email: Michael@lhr.org.za

13 October 2017

BY EMAIL

ATTN: The Honourable Judge President Mlambo
Attention: The Registrar of the Honourable Judge President
Email: Nndungane@judiciary.co.za

ATTN: The Honourable Deputy Judge President Ledwaba
Attention: The Registrar of the Honourable Deputy Judge President
Email: pvwyk@justice.gov.za; KRamokoka@judiciary.org.za

CC: Norton Rose Fulbright South Africa Inc
Attorneys for the Applicant (Chamber of Mines of South Africa)
Attention: Mr Andre Vos; Ms Kirthi Kalyan
Email: andre.vos@nortonrosefulbright.com; kirthi.kalyan@nortonrosefulbright.com

CC: Goitseonla Pilane Attorneys Inc.
Attorneys for the Respondent (Minister of Mineral Resources)
Attention: Mr Goitse Pilane
Email: goitse@pilaneinc.co.za

CC: Finger Phukubje Attorneys
Attorneys for the Intervening Party (NUM)
Attention: Mr Phukubje, Mr Modisane
Email: chris@fpinc.co.za; mothusi@fpinc.co.za

Dear Judge President and Deputy Judge President

RE: The Chamber of Mines of South Africa / Minister of Mineral Resources (Review Application)

1. We write to you on behalf of four mining-affected communities located in the Northwest and Limpopo provinces, respectively ("our clients"). As you will likely be aware based on correspondence from the attorneys for the Applicant and Respondent, our clients intend filing an application to intervene in this matter as a party, due to their direct and substantial interest in this matter's outcome. While our clients seek to challenge certain aspects of the Mining Charter proposed by the Respondent Minister of Mineral Resources in June 2017 (the "2017 Charter"), they will do so for reasons that differ from those advanced by the Applicant Chamber of Mines of South Africa.

2. Each of our client communities host considerable prospecting and/or mining activities in and around their land and are as such affected by a range of provisions contained in the 2017 Charter. Our clients' interest in the matter at hand also relates to the lack of consultation with mining-affected communities regarding the development of the 2017 Charter, despite that the objectives of this, and previous versions of the Mining Charter, directly affect their rights and interests.

3. On this basis, we were hopeful that the Chamber of Mines and the Minister would be cooperative and constructive regarding our proposed intervention, and at the very least would respect our clients' procedural rights to participate. In order to keep to the present timetable agreed between the existing parties, we wrote to the Minister and the Chamber of Mines, suggesting how our application for intervention and our participation in the main application could be accommodated. I attach our letter in this regard as annexure "A" hereto.

4. The response we received from the Chamber of Mines, which we attach as annexure "B" hereto, unfortunately makes clear that it is not interested in facilitating our participation in the matter. The Chamber of Mines in part appears to oppose our participation on the basis that we have registered our interest in the case at a "late stage". While we will avoid prolixity for purposes of this letter, we must summarize the following:

    a. In June 2017, we took note of the Chamber of Mines' urgent application for an interim interdict. We considered our clients' legal position, and took the view that the application for an interim interdict was likely to succeed. In any event, our clients did not seek that interdict, and were satisfied to engage with the review application in due course. Nevertheless, we briefed counsel and began to determine the contours of our possible intervention in the matter. We assumed that the main review application would be lodged shortly after the hearing of the urgent interim application, and would follow the ordinary time periods provided for in the rules.

    b. We continued to observe the dispute as it evolved between the parties over the following months, taking note that the interim interdict hearing was scheduled for 14 September 2017. On that date, we instead became aware of the parties' settlement agreement with respect to the urgent application, and the expedited timeframe within which the review application was then to be heard.

    c. We immediately completed the task of obtaining the relevant written mandates from our geographically disparate clients, and met several times with counsel. We alerted the parties in this matter to our intention to intervene three weeks after we learned of the expedited timeframe. A full account of our efforts in this respect will be dealt with in our intervention application.

5. We further note that while the Minister has agreed to abide by the court's decisions with respect to the intervention of additional parties, he suggests that such parties must deliver their full applications by next Tuesday, 17 October 2017. See annexure "C" attached hereto. While we are mindful of the purported urgency of the matter from the perspective of the Applicant and Respondent, it is essential that the voices of communities such as our clients are heard in this matter and that space be made for judicial consideration of their interests. We also assume that the review application, like the urgent application, will raise a number of constitutional issues, and we believe the Applicant must therefore comply with the provisions of Rule 16A.

6. We therefore request a further pre-trial conference in this matter to deal with the intervention of mine-affected communities and with their continued participation in this matter.

7. We will avail ourselves for such a pre-trial conference on any date, but would suggest a day after 17 October 2017, by which time the parties will be in possession of the Chamber of Mines' application, and therefore will be able to better assess their clients' positions.

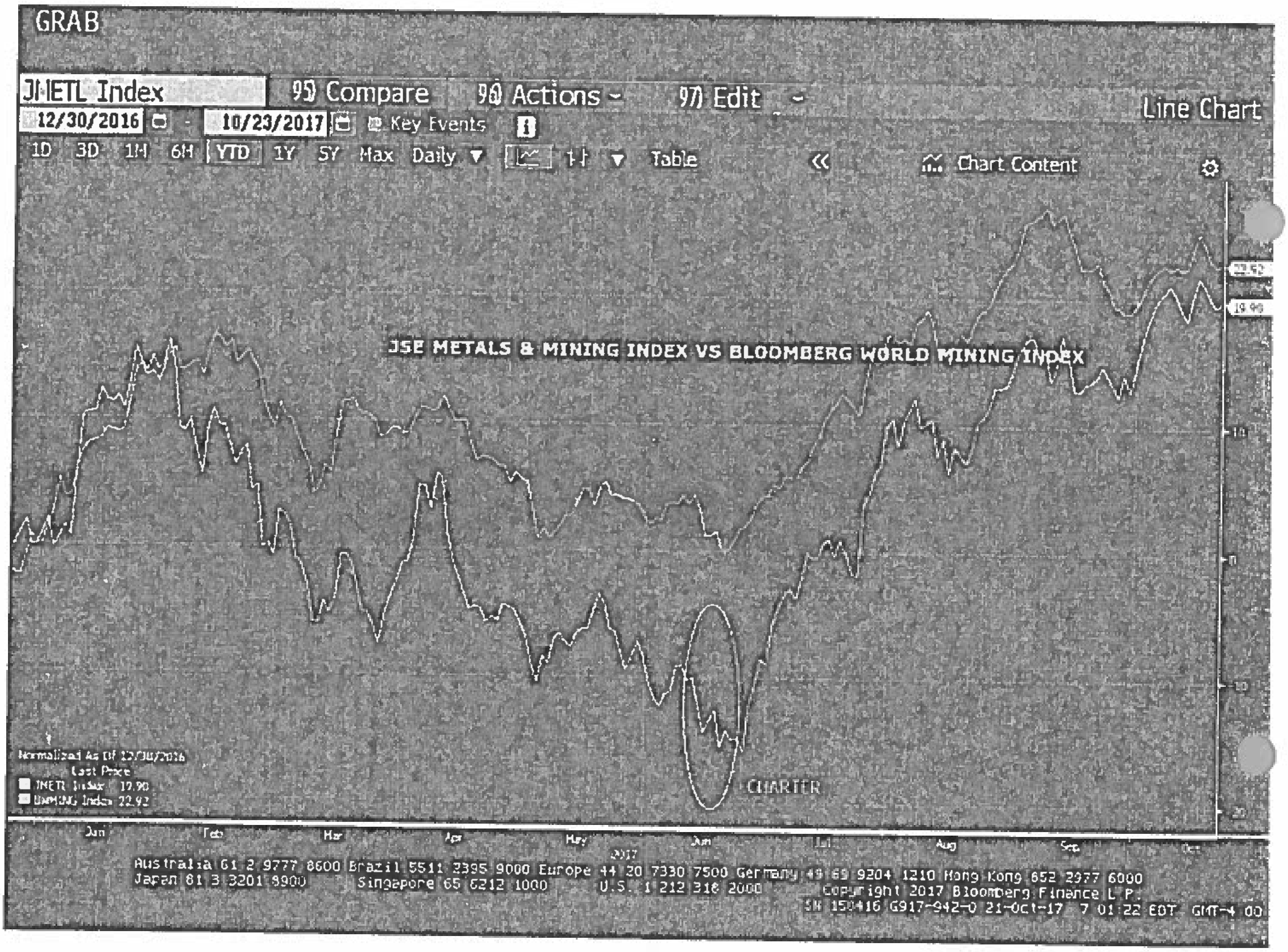
8. As previously indicated, we are prepared to comply with the expedited timeframe agreed to by the parties, and propose that we deliver our clients' papers on 31 October 2017. The issues addressed in our submission will be limited.

Yours faithfully,

pp

LAWYERS FOR HUMAN RIGHTS

Per: Louise Du Plessis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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER:

In the matter between

BAKGATLA BA SEFIKILE COMMUNITY	First Applicant
LESETHLENG COMMUNITY	Second Applicant
BABINA PHUTHI BA GA-MAKOLA COMMUNITY	Third Applicant
KGATLU COMMUNITY	Fourth Applicant
	(Applicants for leave to intervene)

and

CHAMBER OF MINES OF SOUTH AFRICA	First Respondent
MINISTER OF MINERAL RESOURCES	Second Respondent

In re: Case no 71147/2017

CHAMBER OF MINES OF SOUTH AFRICA	Applicant
and	
MINISTER OF MINERAL RESOURCES	Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

JOSEPH DONNY MATSHEGO

hereby make oath and state:

1. I am an adult male Manager who works at Rustenburg Local Municipality situated at corner Beyers Naude and Nelson Mandela Drive, Rustenburg and I am a member of the executive committee of the Second Applicant.

2. The facts herein fall within my personal knowledge unless otherwise stated or apparent and are both true and correct.

3. I have read the main founding affidavit of Obakeng Keromeng and I confirm the correctness of the facts that relate to the Second Applicant Community and myself.

Deponent

SIGNED and SWORN to BEFORE me at ~~Pretoria~~ Rustenburg on this the 26 day of October 2017, the deponent having acknowledged that he/~~she~~ understands the contents of this affidavit, has no objection to taking the prescribed oath, considers the oath binding on his/~~her~~ conscience and that the provisions of the regulations as contained in Government Notice No R1258 dated 21 July 1972 and Government Notice R1648 of 19 August 1977, as amended, have been complied with.

COMMISSIONER OF OATHS

Full names:

Capacity:

Address:

CHARMAIN SMIT
PRACTISING ATTORNEY
COMMISSIONER OF OATHS : EX OFFICIO
LEGAL AID SOUTH AFRICA
RUSTENBURG JUSTICE CENTRE
OFFICE No. 21 TLHABANE COMMUNITY
COMPLEX - TLHABANE

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER:

In the matter between

BAKGATLA BA SEFIKILE COMMUNITY	First Applicant
LESETHLENG COMMUNITY	Second Applicant
BABINA PHUTHI BA GA-MAKOLA COMMUNITY	Third Applicant
KGATLU COMMUNITY	Fourth Applicant
	(Applicants for leave to intervene)

and

CHAMBER OF MINES OF SOUTH AFRICA	First Respondent
MINISTER OF MINERAL RESOURCES	Second Respondent

In re: Case no 71147/2017

CHAMBER OF MINES OF SOUTH AFRICA	Applicant
and	
MINISTER OF MINERAL RESOURCES	Respondent

CONFIRMATORY AFFIDAVIT

JLJ. MTC

I, the undersigned,

FREDDY KGAUME MAKOLA

hereby make oath and state:

1. I am an adult male currently residing at Stand Number 30046, Eenzaam Village Nebo District, Limpopo and a member of the executive committee of the Third Applicant.

2. The facts herein fall within my personal knowledge unless otherwise stated or apparent and are both true and correct.

3. I have read the main founding affidavit of Obakeng Keromeng and I confirm the correctness of the facts that relate to the Third Applicant Community and myself.

Deponent

SIGNED and SWORN to BEFORE me at Pretoria on this the 26th day of October 2017, the deponent having acknowledged that he/she understands the contents of this affidavit, has no objection to taking the prescribed oath, considers the oath binding on his/her conscience and that the provisions of the regulations as contained in Government Notice No R1258 dated 21 July 1972 and Government Notice R1648 of 19 August 1977, as amended, have been complied with.

MfC

COMMISSIONER OF OATHS

Full names: RENDANI CHARLES MAPHARI

COMMISSIONER OF OATHS

Capacity: Ex Officio Practicing Attorney

MAPHARI ATTORNEYS

Address: 357 Visagie Street, Pretoria

Tel: 012 772 0039 Cell: 083 439 2798

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER:

In the matter between

BAKGATLA BA SEFIKILE COMMUNITY	First Applicant
LESETHLENG COMMUNITY	Second Applicant
BABINA PHUTHI BA GA-MAKOLA COMMUNITY	Third Applicant
KGATLU COMMUNITY	Fourth Applicant
	(Applicants for leave to intervene)

and

CHAMBER OF MINES OF SOUTH AFRICA	First Respondent
MINISTER OF MINERAL RESOURCES	Second Respondent

In re: Case no 71147/2017

CHAMBER OF MINES OF SOUTH AFRICA	Applicant
and	
MINISTER OF MINERAL RESOURCES	Respondent

CONFIRMATORY AFFIDAVIT

Jmy.

MVC

I, the undersigned,

JOSEPH MANAMELA

hereby make oath and state:

1. I am an adult male currently residing at 95 Samora Machel Street, Hospital View Tembisa 1632 and a member of the executive committee of the Fourth Applicant.

2. The facts herein fall within my personal knowledge unless otherwise stated or apparent and are both true and correct.

3. I have read the main founding affidavit of Obakeng Keromeng and I confirm the correctness of the facts that relate to the Fourth Applicant Community and myself.

Deponent

SIGNED and SWORN to BEFORE me at Pretoria on this the 24th day of October 2017, the deponent having acknowledged that he/she understands the contents of this affidavit, has no objection to taking the prescribed oath, considers the oath binding on his/her conscience and that the provisions of the regulations as contained in Government Notice No R1258 dated 21 July 1972 and Government Notice R1648 of 19 August 1977, as amended, have been complied with.

MIC

COMMISSIONER OF OATHS

Full names: RENDANI CHARLES MAPHARI

Capacity: COMMISSIONER OF OATHS

Ex Officio Practicing Attorney

Address: MAPHARI ATTORNEYS

357 Visagie Street, Pretoria

Tel: 012 772 0039 Cell: 083 439 2796

Profile

Vision, Mission and Values Vision SAMDA's vision is to be the vehicle for the development of a vibrant and sustainable junior mining sector which contributes towards the growth and prosperity of the mining industry. Its mission is: to create an enabling environment for: raising finance; developing technical and other skills; practicing responsible environmental management and sustainable development; and the maintenance of standards of good practice in the junior mining sector to lobby; government; organised labour; and other stakeholders and institutions to promote mutual understanding to encourage local and international investment to conduct research to understand the sectors needs to promote beneficiation to build African and global alliances and to facilitate the transformation of the mining industry by promoting emerging junior mining operations and those who are historically disadvantaged.

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CATEGORIES

"PA 19"

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	NON - JOINED INTERESTED PARTY [References to the answering papers are provided]]	**REPRESENTATIVE, where applicable**	**NON-JOINED PARTY's LEGAL INTEREST**	**EXAMPLES OF HOW SETTING ASIDE OF THE IMPUGNED PROVISIONS OF THE CHARTER WILL "*NECESSARILY PREJUDICE*" THE NON – JOINED PARTY's LEGAL INTEREST**
HOST COMMUNITIES (INCLUDING WOMEN) 5% non transferable carried interest or minimum 5%, equity equivalent benefits (these are defined terms in the 2018 Charter – see '*carried interest*' at page 177 and '*equity equivalent benefit*' at page 178)				
1)	Mining Affected Communities United in Action Mining (**MACUA**) References in the Answering Affidavit ("AA") and the Annexures thereto: Par 22 page 489 Par 23 page 489 Par 30.1 page 490 AA 4 page 619 AA 6 page 628 – 630; 636 – 637 AA 7 page 657, 667 AA 11 page 699, 700, 702, 703, 704,	Centre for Applied Legal Studies, Wits University ('CALS')	In AA7 (page 657) Lawyers for Human Rights (LHR) describes MACUA, WAMUA and MEJCON as follows: "**<u>The country's three main mining-affected community networks</u>**, Mining Affected Communities United in Action (MACUA), Women Affected by Mining United in Action (WAMUA), and the Mining and Environmental Justice Community Network of South Africa (MEJCON), represented by the Centre for Applied Legal Studies, also successfully intervened in the matter." (emphasis added)"	Amended Notice of Motion ('aNOM') page 0.2 paragraphs 1.1, 1.2 – 1.7 and 1.9. Representative of "host communities" as defined in Section 1 of the Charter (page 178): "*a community within a local or metropolitan municipality adjacent to the mining area, as. defined in the MPRDA*". The Council seeks the setting aside of the following provisions of the 2018 Charter which will have a direct prejudicial impact on host communities (who are specifically mentioned as beneficiaries in the impugned provisions sought to be set aside):

	NON - JOINED INTERESTED PARTY [References to the answering papers are provided]]	REPRESENTATIVE, where applicable	NON-JOINED PARTY's LEGAL INTEREST	EXAMPLES OF HOW SETTING ASIDE OF THE IMPUGNED PROVISIONS OF THE CHARTER WILL "*NECESSARILY PREJUDICE*" THE NON – JOINED PARTY's LEGAL INTEREST
	709, 711, 716, 718, 749 AA 12 page 754, 757, 758, 762, 773, 775, 869.		Mining-Affected Communities United in Action (MACUA) is a voluntary movement specialising with capacitating communities and activists on issues of the environment when dealing with corporations, transitional corporations and government. MACUA operates in all nine provinces affected by mining in South Africa: AA 6 at page 628.	• **clauses 2.1.1.2, 2.1.1.5, 2.1.1.6 and 2.1.6.2 [page 181]**, insofar as they concern the position upon renewal of a mining right *Recognition of continuing consequences shall not apply to renewal of mining rights and the mining right requirements applicable at the time of renewal will have to be complied with.* Host communities could become beneficiaries upon renewal of mining rights, because the 2018 Charter will have to be complied with. • **Clause 2.1.1.4** [page 181] *"The recognition of continuing consequences, in respect of an existing mining right, shall not be transferrable and shall lapse upon transfer of such mining right or part thereof. The recognition of continuing*
2)	Women from Mining Affected Communities United in Action (**WAMUA**) References in the Answering Affidavit ("AA") and the Annexures thereto:	CALS	'In most community based organisations women's voices are not heard. It became of paramount importance women to mobilise against mining that tends to be exploitative to mining affected communities. Women need to be at the forefront of championing those struggles as they are there ones who carry the burdens of mining or	

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	Par 22 page 489 Par 23 page 489 Par 30.1 page 490 <u>AA 4</u> page 619 <u>AA 6</u> page 628 – 630; 636 – 637 <u>AA 7</u> page 657 <u>AA 11</u> page 715, 749 <u>AA 12</u> page 761 – 762, 869.		environmental degradation on land and mining resources. As a result, a women's movement was established as part of MACUA. WAMUA was founded on 5 December 2012. Our membership is spread across 8 provinces within the country where MACUA has its own presence.' AA6 at page 628 - 629	*consequences in respect of an existing mining right is not transferrable and lapses upon transfer of such right or part thereof.*" It follows that communities will become beneficiaries upon transfers of mining rights, because the 2018 Charter will have to be complied with. • **Clause 2.1.3.2** "*NEW MINING RIGHTS:* *2.1.3.2 A minimum of 30% BEE shareholding must be distributed in the following manner:… (ii) A minimum of 5% non-transferable carried interest or a minimum 5%, equity equivalent benefits defined herein to* ***<u>host communities</u>*** *from the effective date of a mining right;…*" [emphasis added]
3)	Mining Environmental Justice Community Network of South Africa (**MEJCON**) Par 22 page 489 Par 23 page 489 Par 30.3 page 491 <u>AA 4</u> page 619	CALS and independently	'The Mining and Environmental Justice Community Network of South African (MEJCON-SA), is a network of communities, community based organisations and community members whose environmental and human rights are affected, directly or indirectly, by mining and mining-related activities.' AA 6 at page 628	

	NON - JOINED INTERESTED PARTY [References to the answering papers are provided]]	**REPRESENTATIVE, where applicable**	**NON-JOINED PARTY's LEGAL INTEREST**	**EXAMPLES OF HOW SETTING ASIDE OF THE IMPUGNED PROVISIONS OF THE CHARTER WILL "*NECESSARILY PREJUDICE*" THE NON – JOINED PARTY's LEGAL INTEREST**
	AA 6 page 628 – 630; 636 – 637, 648, AA 7 page 657, 667 AA 8 pages 677 - 681 AA 11 page 715 AA 12 page 857 AA 22 page 869 AA 23 page 876		On 31 August 2018 MEJCON submitted its own written submission on the 2018 Charter. Paragraph 1 reads as follows: "The steering Committee of the mining and Environmental Justice Community Network of South Africa ("MEJCON"), make these submissions to you on behalf of our members and affiliates who are communities, community based organisations and community members from different parts of south Africa whose environmental and human rights are affected, directly or indirectly, by mining activities. MEJCON is a non-profit voluntary association, formally established in October 2012." See AA 8 at page 677. In the same document, MEJCON's goal and objectives	• **Clause 2.1.4 (page 183)** *EQUITY EQUIVALENT BENEFIT FOR HOST COMMUNITIES:* A trust shall administer the equity equivalent benefit for host communities which equates to 5% equivalent of the issued share capital of the mining right holder at no cost to a trust or similar vehicle set up for the benefit of host communities. • **Clause 2.1.5.2 (page 184)** *The prescribed minimum target of 30% shall apply for the duration of a mining right.* It follows that beneficiaries are protected from dilution of shareholding during the duration of the mining right.

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			are described – see pages 677 – 678.	• **The proviso to clause 2.1.6.1, in clauses 2.1.6.1.1 to 2.1.6.1.4 (page 184)** *Where a BEE shareholding or part thereof is disposed of below the prescribed minimum shareholding, a mining right holder's empowerment credentials is recognised for the duration of the mining tight. However, at the time of disposal, the holder must comply with the requirements of the 2018 Charter and the BEE shareholder must have held the empowerment shares for a certain period and empowerment recognition will only be for measured effective ownership realised to the BEE shareholder. An agreement detailing settlement of financial obligations of the BEE shareholder ahs to be submitted to the DMR.*
4)	**Sefikile Community** <u>AA</u> par 22 page 489 <u>AA</u> par 30.2 page 491 <u>AA 5</u> page 624 <u>AA 6</u> page 630, 654, 656, 657, 658, 665 <u>AA 11</u> page 707	Lawyers for Human Rights (LHR)	The Bakgatla Sefikile community is comprised of approximately 4 000 people, who live and farm on the farm Spitzkop 410 KQ, and farms adjacent thereto, located in the Moses Kolane in the North West Province: AA 7 at page 654	
5)	**Lesethleng Community** <u>AA</u> par 22 page 489 <u>AA</u> par 30.2 page 491 <u>AA 5</u> page 624 <u>AA 6</u> page 630, 654, 656, 657, 658, 665	LHR	The Lesethleng Community is comprised of approximately 40 families, who together are the de facto owners of the farm Wilgespruit 2 JQ, also located in the Moses Kotane Municipality in the North West Province. AA 7 at page 654 and see Maledu v Itereleng Bakgatla Mineral Resources	

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	AA 11 page 706		(Pty) Ltd 2019 (2) SA 1 (CC) paragraphs [6] and [7] (in which the Lesethleng Community	*It follows that BEE shareholders are offered a form of protection from dilution of shareholding* • **the heading of clause 2.1.6** (page 184) insofar as it refers to "existing rights *The proviso above is also applicable to existing rights.* *It follows that, whilst holders of existing mining rights enjoy the benefit of continued BEE recognition for previous transactions, they are required to comply with the 2018 Charter upon dilution post the commencement of the 2018 Charter.* • **Clause 2.2 (page 185)** *"Procurement of South African manufactured goods and services provide opportunities for expanding*
6)	**Sabina Phuti Ba Ga-Makola Community** AA par 22 page 489 AA par 30.2 page 491 AA 5 page 624 AA 6 page 630, 654, 656, 658, 665	LHR	The Babina Phuthi Ba Ga-Mokola community is comprised of 134 households, located in the Steelport Valley, in Limpopo Province. The Makola community has lodged land claims over the farms Boschkloof 331 KT, De Goedeverwatchting 332 KT, and Mooimeisjesfontein 363 KT farms. The Makola community historically held indigenous tittle to the land, but because these land rights were not recognised during colonialism and apartheid, the community was forcibly removed from these properties in 1957. The Makola community has fought ever since to have its ownership recognised, while major mining operations have been initiated on its land.	

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			AA 7 at page 654.	*economic growth, creating decent jobs and widening market access to the country's goods and services.* *A mining right holder is required to promote economic growth through the development or nurturing of small, medium and micro enterprises and suppliers of mining goods and services. In instances where a mining right holder procures goods and services of a contractor to undertake extraction or processing, (crushing and concentration) of minerals on their behalf, such goods and services will be deemed to have. been procured by the mining right holder.* *To achieve inclusive procurement, supplier and enterprise development, a mining right holder must identify all goods and services that will be required in its operations and ensure*
7)	**Kgatlu Community** AA par 22 page 489 AA par 30.2 page 491 AA 5 page 624 AA 6 page 630, page 654, page 656, page 658, page 665	LHR	The Kgatlu community is comprised of approximately 100 families, and located northwest of Polokwane in Limpopo Province. The community owns the farm Goedetrouw 366LR farm, which has been included in a prospecting right granted in 2015 to a local subsidiary of Platinum Group Metals, a publicly traded company listed on the Toronto Stock Exchange. The community understands on the basis of discussions with the company and its publicly available documents that PTM envisions that its farm will in future host a major platinum operation. AA 7 at page 655.	

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				that its procurement policies adhere to the criteria set out in clause 2.2."[1] *A minimum of 70% of total mining goods procurement spend must be on SA manufactured goods of which (a) 21% to be produced by HDP entities (b) 5% by women and youth entities (c) 44% by BEE compliant entities.* *A minimum of 80% of total spent on services sourced from SA based companies of which (a) 50% to be spent on services supplied by HDP entities (b) 15% on woman owned and controlled entities (c) 5% on services supplied by youth (d) 10% spent on services supplied by BEE compliant entities.* *An Offset of 30% of total procurement budget on mining goods is available for supplier development and an offset*

[1] FA4(1)

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				of 10% of total procurement budget on services is allowed for supplier and enterprise development. **IMPUGNED PROVISIONS RELATING TO WOMEN EMPOWERMENT**. The Council seeks the setting aside of the following provisions of the 2018 Charter which will have a direct prejudicial impact on host communities, women in particular (who are specifically mentioned as beneficiaries in the impugned provisions sought to be set aside): • **Clause 2.1.3.2 (page 182)** *As for the breakdown of the 30% BEE ownership requirement, par (iv) provides for "(A) minimum of 20% effective ownership in the form of shares to a BEE Entrepreneur,*

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				5% of which must preferably be for women. • **Clause 2.2.1.1.2 (page 186)** *A minimum of 70% of total mining goods procurement spend must be on SA manufactured goods of which 5% must be procured from women and youth entities.* • **Clause 2.2.2.1.2 (page 186)** *As for mining services, a minimum of 80% of total spent on services must be sourced from SA based companies of which 15% must be spent on woman owned and controlled entities.* • **Clause 2.2.2.3 (page 187)** *"A mining right holder must ensure that the terms and conditions offered to women owned and*

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				controlled companies .... are not less favourable than those offered to other suppliers."
QUALIFYING EMPLOYEES 5% non-transferable carried interest (Defined terms in the 2018 Charter – see '*carried interest*' at page 177 and '*qualifying employees*' at page 180.)				
8)	**AMCU** (the Association of Mineworkers and Construction Union) AA par 22 page 489 AA par 32 page 491 AA par 130 page 519 AA 9 page 682		AMCU website: "The Union's core responsibility is to aid employees with labour related plights towards employers. To date the organisation has close to 200 000 members from all sectors that it represents, namely construction, mining, security, cleaners and logistics and the number continues to grow." https://amcu.co.za/press-statements/about-us/	Amended Notice of Motion ('aNOM') page 0.2 paragraphs 1.1 & 1.4 **Definition "qualifying employees" (page 180)**: *"Qualifying employees" for the purposes of the ownership element, refers to employees of a mining company, excluding employees who already hold shares in the same company as a condition of their employment agreement*."

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	AA 11 page 714, 716 AA 24 page 1000, page 1008 AA 30 page 1099, page 1101			The Council seeks the setting aside of the following provisions of the 2018 Charter which will have a direct prejudicial impact on employees (who are specifically mentioned as beneficiaries in the impugned provisions sought to be set aside): • **Clause 2.1.3.2 (page 182)** "A *minimum of 30% BEE shareholding must be distributed in the following manner: ...* *(i) A minimum of 5% non-transferable carried interest to qualifying employees from the effective date of a mining right".*
9)	**UASA** (the acronym represents "United Association of South Africa"),		UASA is registered at the Department of Labour as a trade union in accordance with the Labour Relations Act 66 of 1995 as amended in 2002. It has a membership of approximately	

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	AA par 22 page 489 AA par 32 page 491 AA par 130 page 519 AA 9 p 682, 687 AA 11 page 702, 715, 717 AA 24 page 1000, page 1008 AA 27 page 1042, page 1050 AA 28 page 1059		75,000 and is affiliated with the Federation of Unions of South Africa (FEDUSA) which represents approximately 556,000 members. UASA plays an important role in the international labour arena, joining hands with various international federations that promote global solidarity among workers of the world in their struggle against the negative effects of globalisation. Through its affiliation with ITF and the International Trade Union Confederation (ITUC), UASA has active representation at various international forums.	

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9	**NUM** (National Union of Mineworkers); AA par 22 page 489 AA par 32 page 491 AA par 130 page 519 AA 9 p 682 AA 11 page 714, 716 AA 24 page 1000, 1008 AA 30 page 1099, page 1101		NUM was founded by President Ramaphosa in 1982. It has approximately 300 000 members. Par 1.7 of NUM's Constitution provides inter alia for the following objectives: "1.7 Aims and Objectives 1.7.1 to recruit and unite into a single labour organisation all workers employed in the mining, energy, construction and allied industries in order to enhance their economic and social welfare;…"	

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10)	**Solidarity** AA par 22 page 489 AA par 32 page 491 AA par 36 page 492 AA par 51.1 page 498 AA par 112 page 596 AA par 130 page 519 AA 9 p 682, 685 AA 10 p 693 AA 11 page 701, page 705, page 714, page 716 AA 19 p 848 AA 21 p 856		Solidarity Website information [https://solidariteit.co.za/en/who-are-we/] "The Solidarity of today dates back to 22 June 1902 when the Transvaal Miners' Association was founded. Solidarity therefore has more than 110 years' experience in South Africa's labour market." "Solidarity currently offers a dependable service to approximately 140 000 members in all occupational fields, collectively and professionally, and has the passion and knowledge to look after its	

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	AA 24 p 1000, p 1008 AA 27 p 1042, p 1050 AA 28 p 1059 AA 30 p 1099, p 1100		members' interests and to ensure that their rights are protected in the workplace. The union has more than 20 offices countrywide and members are served by more than 300 staff members and 1 275 union representatives in thousands of companies."	

BEE ENTREPRENEUR 20% effective share ownership (5% thereof preferably for women) – 2018 Charter paragraph 2.1.3.2 page 182				
11	**SAMDA** (the South African Mining Development Association) References to the Answering Affidavit ("AA") and the Annexures thereto: AA par 22 page 489 Par 32 at page 491 Par 62 at page 502 Par 112 at page 596 AA 9 page 682, 685 AA 24 page 1000	SAMDA	SAMDA is a junior mining chamber. SAMDA grew out of a committee formed by a group of Junior and BEE companies who wished to make an input into the draft Green Paper on a new Mining and Minerals policy for South Africa (released in 2000). This committee wished to support the state as the custodian of the Nations' mineral resources as this would facilitate the entry of new players into the sector. Following on from the release of the Mineral and Petroleum Resources Development Act in 2002, SAMDA was officially launched as an organization. Since that date SAMDA has actively engaged with government and other stakeholders on behalf of its membership. SAMDA seeks to be the vehicle for the development of a vibrant	Amended Notice of Motion ('aNOM') page 0.2 paragraphs 1.1 & 1.4 and paragraph 1.9 Representative of BEE entrepreneurs as defined: *"BEE entrepreneur refers to a Historically Disadvantaged Person or enterprise that is at least 51% owned by Historically Disadvantaged Persons (excluding host communities and qualifying employees) with at least 51% of exercisable voting rights and 51% of economic interest;"* The Council seeks the setting aside of the following provisions of the 2018 Charter which will have a direct prejudicial impact on BEE entrepreneurs (who are specifically mentioned as beneficiaries in the impugned provisions sought to be set aside): • **Clause 2.1.3.2 (page 182)** *A minimum of 30% BEE shareholding must be distributed in the following manner:… (iv) (A) minimum of 20% effective ownership in the form of shares to a BEE Entrepreneur, 5% of which must preferably be for women.*

			and sustainable junior mining sector which contributes towards the growth and prosperity of the mining industry. SAMDA participated in the initial drafting process of the 2018 Charter and represents the interests of beneficiaries of the 20% BEE ownership interest. SAMDA has been a key party in discussions and member of a task team on the development of the Original Charter since 2002.	• **Clause 2.2 (page 185)** “2.2 INCLUSIVE PROCUREIVIENT, SUPPLIER AND ENTERPRISIE DEVELOPMENT Procurement of South African manufactured goods and services provide opportunities for expanding economic growth, creating decent jobs and widening market access to the country's goods and servvices. A mining right holder is required to promote economic growth through the development or nurturing of small, medium and micro enterprises and suppliers of mining goods and services. In instances where a mining right holder procures goods and services of a contractor to undertake extraction or processing (crushing and concentration) of minerals on their behalf, such goods and services will be deemed to have. been procured by the rnining right holder. To achieve inclusive procurement, supplier and en enterprise development; a mining right holder rnust identify all goods and services that will be required in its operations and ensure that its procurement policies adhere to the following criteria: 2.2. MINING GOODS 2.2.1 A minimum of 70% of total mining goods procurement spend (excluding on

				discretionary expenditure) must be South African manufactured goods. The 70% shall be allocated as follows: 2.2.1.1.1 21% to be spent on South African manufactured goods produced by a Historically Disadvantaged Persons owned and controlled company, 2 .2.1.2 5% to be spent on South African manufactured goods produced by a women or youth owned and controlled company; and 2.2.1.1.3 44% to be spent on South African manufactured goods produced by a BEE compliant company. 2.2.2 SERVICES …. 2.2.3 VERIFICAT!ON OF LOCAL, CONTENT… 2.2.4 ENTERPRISE AND SUPPLIER DEVELOPMENT…etc