

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No. 71174/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

First Applicant

MINING AFFECTED COMMUNITIES UNITED IN ACTION

Second Applicant

**WOMEN FROM MINING AFFECTED COMMUNITIES
UNITED IN ACTION**

Third Applicant

**MINING AND ENVIRONMENTAL JUSTICE COMMUNITY
NETWORK OF SOUTH AFRICA**

Fourth Applicant

BAKGATLA BA SEFIKILE COMMUNITY

Fifth Applicant

LESETHLENG COMMUNITY

Sixth Applicant

BABINA PHUTHI BA GA-MAKOLA COMMUNITY

Seventh Applicant

KGATLU GA MATLALA COMMUNITY

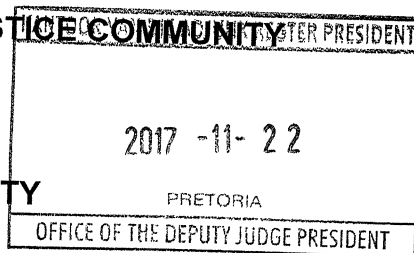
Eighth Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

and



NATIONAL UNION OF MINEWORKERS

First Amicus Curiae

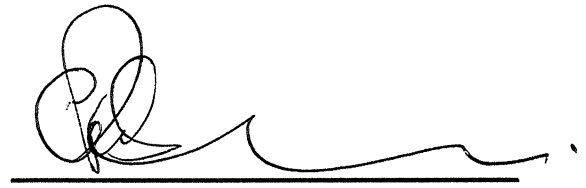
SOLIDARITY TRADE UNION

Second Amicus Curiae

FILING SHEET

Presented for service and filing: Respondent's Answering Affidavit to Fifth to
Eighth Applicant's Application

Dated at **Johannesburg** on this 22nd day of **November 2017**.



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**IN THE HIGH COURT OF SOUTH AFRICA
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CHAMBER OF MINES OF SOUTH AFRICA	First Applicant
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and

MINISTER OF MINERAL RESOURCES	Respondent
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and

NATIONAL UNION OF MINEWORKERS	First <i>Amicus Curiae</i>
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SOLIDARITY TRADE UNION	Second <i>Amicus Curiae</i>
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**RESPONDENT'S ANSWERING AFFIDAVIT
TO FIFTH TO EIGHTH APPLICANTS' APPLICATION**

I, the undersigned,

MOSEBENZI JOSEPH ZWANE

state under oath that:

1. I am the Minister of Mineral Resources of the Republic of South Africa and was appointed to that post on 23 September 2015. The Minister's office is at building 2C, C/o Meintjes and Francis Baard Street (formerly Schoeman Street), Sunnyside, Pretoria.
2. Unless stated otherwise or the contrary appears from the context, the facts contained in this affidavit fall within my personal knowledge and are to the best of my belief both true and correct.
3. Where I state facts that fall outside my personal knowledge, I attach confirmatory affidavits of those persons who are able to confirm the correctness and the veracity of those facts.

4. Where I make submissions of law, I do so on the advice of my legal advisors whose advice I accept to be correct.
5. I have read the founding affidavit of Mr Obakeng Keromeng ("**Mr Keromeng**") and the confirmatory affidavits of Mr Joseph Donny Matshego ("**Mr Matshego**"), Mr Freddy Kgaume Makola ("**Mr Makola**"), and Mr Joseph Manamela ("**Mr Manamela**") together with the attached documents. They have deposed to affidavits on behalf of the Fifth to Eighth Applicants who are represented by Lawyers for Human Rights ("**LHR**").
6. I am advised that LHR (on behalf of the Fifth to Eighth Applicants), unlike every other intervening party and *amici*, has elected to participate in these proceedings at a very late stage. LHR's repeated attempts – in the face of all the other parties endeavouring to have the matter determined according to the timetable set out by the DJP – to have this matter pushed into the next year were unsuccessful. LHR eventually (on behalf of the Fifth to Eighth Applicants) eventually filed their papers in the late afternoon on Friday 17 November 2017, the final day of an additional period which the court hearing the intervention application granted to LHR. This has left the Department and the Minister two court days within which to answer LHR which we have done in the best manner possible give the circumstances. This affidavit accordingly draws on much of what was set out in the answering affidavit to the Fifth to Eighth Applicants' intervention application where the complaints described in the present LHR application were foreshadowed. Any allegation that I do not deal with directly in this affidavit is denied.

7. The essence of the relief sought by the Fifth to Eighth Applicants is essentially:
 - 7.1. an order reviewing and setting aside the 2017 Charter on the basis that there was alleged inadequate consultation, and
 - 7.2. an order directing the Minister to commence the process afresh so as to avoid the alleged default position: namely, the 2010 Charter being left in place.
8. In response, and by way of summary, I am advised and respectfully submit that there is no merit to the the Fifth to Eighth Applicants' claims regarding an alleged lack of consultation. Furthermore, the so-called "consequential relief" sought by the Fifth to Eighth Applicants, in order to avoid the 2010 Charter from being left in place in the event that the 2017 Charter is successfully reviewed and set aside, is not competent.
9. This affidavit is structured as follows:
 - 9.1. the relevant background to the *Reviewed Broad-based Black Economic Empowerment Charter for the South African Mining and Minerals Industry* published in Government Gazette No. 40923 on 15 June 2017 ("**2017 Mining Charter**");
 - 9.2. the public participation process;

- 9.3. meaningful engagement with mining affected communities;
 - 9.4. the additional grounds of review;
 - 9.5. the remedy proposed by LHR; and
 - 9.6. opposition to the relief that LHR seeks in the review application.
10. Under each of these themes, I also deal with the key allegations made in the founding papers. Finally, I respond *seriatim* to the remaining allegations in the founding papers.

RELEVANT BACKGROUND TO THE 2017 MINING CHARTER

11. I provide an extensive overview in my answering affidavit to the review application of the processes which led to the 2004 Mining Charter, the 2010 Mining Charter, the *Assessment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry (Mining Charter) May 2016* (“**2015 Assessment**”), the draft 2017 Charter, and the 2017 Charter. To avoid overburdening the court file, in this answering affidavit I deal only with the information necessary for the purposes of this application.
12. The economic, political and social legacy inherited by the democratic South African government in 1994 was one characterized by the racial exclusion of the

majority of South Africans from the mainstream economy. There was, and unfortunately still is, a massive disparity in access to, control over and ownership of resources in the economy, and in the mining industry in particular.

13. In this context, Parliament enacted the Mineral and Petroleum Resources Development Act 28 of 2002 ("**MPRDA**" or "**the Act**") as a measure *inter alia* to introduce historically disadvantaged South Africans ("**HDSA**") into the mining industry in an incremental, meaningful and sustainable manner.
14. Following my appointment as the Minister of Mineral Resources on 23 September 2015, I was confronted with requests from various stakeholders for certainty in the relation to the drafting of an amendment to the 2010 Charter. The requests were as a result of uncertainty in the mining industry, including the fact that the South African economy was in recession.
15. In response to this overwhelming request for certainty, in February 2016, I attended my first mining indaba and very explicitly undertook to bring certainty and finality to the question of the drafting of an amendment to the 2010 Charter within a year, taking into account all representations made on the issues. I made this commitment to the entire industry.
16. In about March 2016, a Mining Industry Growth, Development and Employment Task Team ("**MIGDETT**") meeting was held between the relevant stakeholders. The Department of Mineral Resources ("**Department**") presented the content of the draft 2017 Charter at this meeting. In that context, the various stakeholder

representatives made their respective submissions. Admittedly, they did not have sight of the content of the draft 2017 Charter before then. However, there was nothing revolutionary in the draft 2017 Charter or draconianly different. It simply proposed an incremental build-on to the 2010 Charter which in turn incrementally built on the 2004 Charter. Each of the successive charters was based on agreed principles and objectives enshrined in the Constitution and the Mineral and Petroleum Resources Development Act 28 of 2002 ("**MPRDA**"), and each charter built incrementally upon its predecessor.

17. The draft 2017 Charter took into account the submissions of relevant stakeholders and the 2015 Assessment. Once the preparation of the draft 2017 Charter was concluded internally I wrote to the key stakeholders in the mining industry in early April 2016 and informed them of my intention to publish the draft 2017 Charter for public comment and input. The draft 2017 Charter was not final in effect and was prepared by the Department through a series of engagements for the purposes of the public participation process which I detail below.

THE PUBLIC PARTICIPATION PROCESS

18. In accordance with the Department's long-standing practice, the draft 2017 Charter was published for public comment on 15 April 2016 in Government Gazette No 39933. In the covering notice page, to which the draft 2017 Charter was attached, I invited interested and affected parties to submit written representations on the draft 2017 Charter within 30 days. I further provided that

submissions would be received by hand-delivery, email or post. A copy of the covering notice page is attached hereto and marked as annexure “AA1”.

19. The 30-day comment period, in addition to being a long-standing practice of the Department, reflects section 10 of the MPRDA which requires notice to interested and affected parties to submit comments within 30 days in relation to applications for prospecting rights, mining rights, and mining permits. As detailed below, the publication of draft 2017 Charter was only the beginning of what would become a public participation process which lasted for over a year.
20. On 15 April 2016, the Department issued a Media Statement titled “*Minister Zwane publishes draft reviewed mining charter for comment*” alongside the gazetting of the draft 2017 Charter for public comment. A copy of the statement can be accessed online on the following website:
<http://www.dmr.gov.za/publications/summary/292-media-statements-2016/8840-media-statement-minister-zwane-publishes-draft-reviewed-mining-charter-for-comment-15-april-2016.html>. In the statement, the Department stated *inter alia* that:

“The draft reviewed Charter seeks to, inter alia, strengthen the efficacy of the Mining Charter developed in terms of section 100 of the Mineral and Petroleum Resources Development Act, 2002 (Act No 28 of 2002) (MPRDA) as one of the tools for effecting meaningful transformation of the South African mining and minerals industry. The draft reviewed Mining Charter further seeks to integrate Government’s transformation policies and

legislation in order to enhance the ease of doing business, create regulatory clarity, predictability and certainty.”

21. The statement concluded stating that *“interested and affected parties are hereby invited to submit written inputs and comments as per the Gazette notice, no later than 31st May 2016.”* The publication of the draft 2017 Charter for comment appeared widely in many news publications and the draft 2017 Charter was available on many websites, including the Department’s. A copy of the media statement is attached hereto and marked as annexure **“AA2”**.
22. The Department received just over 60 written representations from various stakeholders in response to its invitation for comments from interested and affected parties on the draft 2017 Charter. A broad summary of those submissions is contained in the attached table marked as annexure **“AA3”**. It is clear from the table that the representations received, including from representatives of mining affected communities, were considered by the Department and responded to. In certain instances, representations received were incorporated in the 2017 Charter.
23. In addition to inviting written submissions from any interested and affected parties, which included mining affected communities and individuals, the Department set aside a period of 4 weeks after the deadline for written submissions closed, in order to receive face-to-face follow up representations.

24. Thereafter, for part of June 2016, the entire month of July 2016, and for the early part of August 2016, on a daily basis, the Department engaged in face-to-face consultations with individual entities and groups of entities. For illustrative purposes I attach as “**AA4**” a copy of the then itinerary for the limited period of 8 June 2016 until 28 July 2016.
25. For the purposes of this application, the itinerary reflects that the Department consulted with just under 50 stakeholders following the closing date for representations on the draft 2017 Charter, which included government departments and regulatory bodies, the Chamber of Mines, the National Union of Mine Workers and the Association of Construction and Mining Union, mining companies, law firms, civil society organisations, representatives of mining affected communities, and academics.
26. The Department had originally intended to finalise the 2017 Charter and publish it by the end of October 2016. However, there was intense interest in the 2017 Charter. Many persons and entities who had not made written submissions sought to make oral representations, which the Department endeavoured to consider and accommodate. Furthermore, the 2017 Charter deals with a highly contested and emotive subject-matter, of which I am acutely aware. And the content of the 2017 Charter was (and remains) of critical importance for the country, and the mining industry specifically, going forward.

27. For these reasons, *inter alia*, I took a decision in August 2016 (after conferring with the relevant representatives of the Department) to extend the period for public consultations for several months.
28. During that period, the Department consulted, *inter alia*, with around 22 groups of stakeholders, including with Black Person shareholders, various mining affected communities, traditional leaders, emerging black miners, major commercial and private banks and other major financial institutions (including the Industrial Development Corporation and the Public Investment Corporation). I attach hereto a copy of a document marked as “**AA5**” and headed “*Continued Stakeholder Engagements on the Gazetted Draft Reviewed Mining Charter, 2016 - List of Engagements (August 2016 to 21 April 2017)*” which was drawn up at the relevant time. It illustrates the comprehensive, intensive and detailed nature of the public participation process that was embarked upon, at my instruction.
29. The Fifth to Eighth Applicants’s complaint that there was no or inadequate consultation is misplaced and incorrect. In the North-West and Limpopo provinces from where the Fifth to Eighth Applicants hail, there was extensive consultation with communities. For example, the Department consulted with about 52 Kgosis and other individuals and entities claiming to represent formal and informal community organisations and interests in the North-West province. I point out that local villagers elect headmen who sit on a tribal council presided over by a Kgosi. The Kgosi’s represent the interests of the communities that fall under them. The consultative process was by no means confined to traditional

leaders. It was open to and attended by any interested person and organisation. Such consultation occurred on 3 November 2016. It was preceded by local media advertisements and radio announcements in the area inviting interested parties to the consultative process.

30. At least a dozen Department officials were present at the consultation on 3 November 2016, including the following: Ms Bongiwe Mabusela (Director: Empowerment Transactions Assessment), Mr Nhlanhla Jali, Mr Sibusiso Kobese, Ms Sibongile Malie, Ms Rebone Nkambule (Chief Director), Motlatso Kobe (Chief Director), Mr Rendani Muthige (Deputy Director: Mineral Policy Development), Mr Mosa Mabuza, Ms Modilati Malapane (Acting Chief Director), and Ms Jeaniffer Ntome. Their confirmatory affidavits are attached. I was also present. The attendance registers that were filled in on the day, which are by no means complete (since a significant portion of the attendees did not sign), are attached marked as “**AA6**”.
31. Similar consultations with community organisations were held in other parts of the country. I cite another example. On 18 November 2016 the Department held community consultations in the Free State, at the Matjhabeng Local Municipality at the Toronto community hall in Welkom. At least a dozen Department officials were present, including the following: Mr Sibusiso Kobese, Ms Sibongile Malie, Mr Mthokozisi Mtshali (Deputy Director: Mineral Policy Development), Ms Motlatso Kobe (Chief Director), Mr Rendani Muthige (Deputy Director: Mineral Policy Development), Mr Mosa Mabuza, Ms Modilati Malapane (Acting Chief Director), Ms Seipati Dhlamini, Mr Nhlanhla Jali and Ms Jeaniffer Ntome. Their

confirmatory affidavits are attached. There were several community organisations present including the Thabang Concerned Residents Forum, Matjhabeng Municipality representatives and other local municipality representatives, the Mens Forum, the Progressive Black Business Forum and several other different community fora. I attach the attendance registers that were filled in on the day marked as “**AA7**”. These are by no means complete (since a significant portion of the attendees did not sign the register).

32. The Department officials, overseen by Ms Sibongile Malie, recently (in the week leading up to 9 November 2017) drew up a schedule summarizing some of the community consultations that occurred in 2016. I attach hereto the schedule marked as “**AA8**”. It demonstrates significant consultation with mining communities (whether as host communities or affected communities), including communities in the areas from which the Fifth to Eighth Applicants hail.
33. During this extended consultation period, the Department also received further written submissions from, among others, the Chamber of Mines on 19 September 2016, which I detail in my answering affidavit in the review application. As I’ve indicated, this courtesy was extended to all interested and affected parties.
34. In around November 2016, the Department presented its latest thinking on the then evolved draft 2017 Charter to the Parliamentary Portfolio Committee. It had evolved as a result of the Department's public participation process over the

preceding months. The parliamentary portfolio committee meeting is an open public hearing.

35. Following the public participation process which commenced on 15 April 2016 with the publication of the draft 2017 Charter for public comment, and included over 11 months of engagements with stakeholders in the mining industry, including mining affected communities, on 15 June 2017 the 2017 Mining Charter was published in the Government Gazette.

MEANINGFUL ENGAGEMENT WITH THE FIFTH TO EIGHTH APPLICANTS AND MINING AFFECTED COMMUNITIES

36. The Fifth to Eighth Applicants do not (and cannot) challenge the extensive public participation process that the Department engaged in for over a year following the gazetting of the draft 2017 Charter. They argue that the Department failed to invite the participation of the Fifth to Eighth Applicants in the development of the 2017 Charter and/or to adequately consult with them and other similarly placed communities. In this regard, the Fifth to Eighth Applicants seek to review and set aside the 2017 Charter on what am I am advised are incorrect procedural grounds.

37. As is evident from the table, the itinerary, and the list of engagements detailed above and annexed hereto, the draft 2017 Charter published for public comment on 15 April 2016 was not, in any way, final in effect. The draft version of the 2017 Charter published for public comment was subject to the extensive public

participation process which I detail above. The Department, in finalising the 2017 Charter considered and incorporated oral and written representations from multiple stakeholders in the mining industry, including mining affected communities.

38. By way of examples, during the extended consultations period documented in the list of engagements, the Department consulted with, among others, communities in the Matjhabeng Local Municipality in the Free State and Mogalakwena Local Municipality in Limpopo and communities in the North-West Province. At all consultations, it is clear from the responses of the Department detailed in the list of engagements that the submissions made by the communities in the consultations were meaningfully considered by representatives of the Department, enabling the communities to learn more about the draft 2017 Charter and have a say in its development.
39. Further, the Department advised during these community consultations that it recognises mining affected community as stakeholders in the mining industry; it is committed to improving relations with its stakeholders; and that it has an open-door policy, a policy which remains in effect for any mining and mineral related queries or concerns stakeholders may have.
40. In my understanding of meaningful engagement, which I am advised will be argued at the hearing of this matter by my legal representatives, the Department is obliged to provide meaningful opportunities for public participation processes and, in doing so, take measures to ensure that interested and affected persons

are given a meaningful opportunity to be heard and their views must be considered. As detailed above, the Department did this to ensure the participatory nature of the drafting process of the 2017 Charter.

41. While as a matter of practicality, I acknowledge that each and every mining affected community and other stake-holders in the process could not be consulted, the Department, in the circumstances, took reasonable steps to ensure that all stakeholders were afforded the opportunity to engage in this process. The Fifth to Eighth Applicants cannot conceivably suggest that the Minister must individually consult with each and every mining affected community.
42. The legal submissions made by LHR on behalf of the Fifth to Eighth Applicants fail to appreciate the following. The consultative process facilitated by the Minister and the Department catered fully for the gathering of whatever views communities and any other interested persons might have had on any aspect of the draft 2017 Charter. For this reason, whatever preliminary views informed and were contained in the draft 2017 Charter were not cast in stone. The Minister was always entitled thereafter to formulate and publish the 2017 Charter which was different from the draft 2017 Charter and different (or perhaps similar to) the proposals and submissions made by any interested party, depending on how persuasive he found any of the representations to be.
43. I am advised further that the legal submissions made by LHR on behalf of the Fifth to Eighth Applicants are ill-conceived for the further reason that they appear

to assume that they were entitled to negotiate with the Minister in order to reach an agreement. This is incorrect. In drawing the 2017 Charter, the Minister was not required to ensure a negotiated consensus – this would have been unattainable given the varying and different interests being regulated – but was required to consult by obtaining views of industry or sector roleplayers and the public, which is exactly what transpired. The standpoints of interested parties such as the Fifth to Eighth Applicants, who wanted to have their views taken into account, were allowed to reach the Minister and the Department. The Minister and the Department placed no (direct or indirect) impediment in the way of any interested party from expressing their views on the draft 2017 Charter. On the contrary the Minister and the Department took every reasonable step in the circumstances to facilitate interested parties expressing their views.

44. Any argument that the Minister and the Department did not engage in a public participation process and did not meaningfully engage with stakeholders, including mining affected communities, is misplaced and factually incorrect.

ADDITIONAL GROUNDS OF REVIEW

45. Alongside seeking to review the 2017 Charter on the basis of a lack of meaningful engagement, the Fifth to Eighth Applicants' state further grounds of review. These additional grounds, which I deal with below, are based on legal argument, are vague, and appear to be founded on the allegations regarding a lack of consultation (see para 69 of the Fifth to Eighth Applicants' affidavit).

46. First, the Fifth to Eighth Applicants allege that the 2017 Charter does not go far enough to ensure full and actual mine community participation, involvement, and sustainable receipt of benefits (paras 70-82). This is denied. In any event, it is unclear how this leaves the 2017 Charter vulnerable to legal attack. It appears that the high watermark of the Fifth to Eighth Applicants' case is that because the 2017 Charter does not accord with their views expressed in their affidavit, it demonstrates that the consultation process was flawed and that the 2017 Charter is flawed. As described above, the Fifth to Eighth Applicants appear incorrectly to assume that they were entitled to negotiate with the Minister in order to reach an agreement. They also incorrectly assume that the Minister was not able to follow his own approach after his extensive consultative process (and perhaps in certain instances persuaded by the views of some interested parties and not by others, to varying degrees).
47. Second, the Fifth to Eighth Applicants charge that the reporting, monitoring, compliance and enforcement provisions of the 2017 Charter are "vague" (paras 83 to 95 esp at para 94). As set out below, this is incorrect as a matter of fact and law.
48. Third, the Fifth to Eighth Applicants complain that the 2017 Charter should address tenure security and surface rights in a more effective manner (paras 96-117). It is unclear how it is contended that this founds a challenge to the 2017 Charter.

49. Fourth, the Fifth to Eighth Applicants argue that section 2.5 of the 2017 Charter is vague and does not meet the objectives of section 100(2) (paras 130-138). This is denied. It is incorrect.

THE REMEDY PROPOSED BY THE APPLICANTS

50. The Fifth to Eighth Applicants appear to intend to seek specific relief in the review application which deals with the entitlement of mining affected communities to participate in the process of formulating any new Charter, and which also ensures that any process embarked upon to adopt a new Charter is not delayed.
51. As I have indicated above, the Department engaged in an extensive public participation process with stakeholders in the mining industry, including mining affected communities, in order to prepare the 2017 Charter, which had cost and time implications. In these circumstances, I see no reason for the preparation of a “new Charter”, given that the 2017 Charter is yet to be implemented. In any event, I am advised and respectfully submit that if the 2017 Charter is struck down in its entirety with the result that an earlier iteration of the Charter (such as the 2010 Charter) comes into force, it is not competent for a court to order that a new process be commenced in order to replace the 2010 Charter.
52. Further delays in implementation of the 2017 Charter also impede the 2017 Charter’s transformation agenda and the implementation of provisions that benefit mining affected communities.

53. As I have indicated herein, the Fifth to Eighth Applicants have in these papers failed to make out a case to review and set aside the 2017 on the grounds that the Department failed to consult with affected or host communities in the development of the 2017 Charter, read with the additional grounds detailed above.

54. Accordingly, any relief which the Fifth to Eighth Applicants intend to seek in the review application based upon these papers should to be dismissed, with no order to costs.

SERIATIM

AD PARAS 1-8

55. The allegations in these paragraphs are noted.

AD PARAS 9-20

56. The allegations in these paragraphs are noted. Where the Fifth to Eighth Applicants deal with questions of law, I am advised that they will be dealt with in argument by my legal representatives, if necessary.

AD PARAS 21-27

57. The allegations in these paragraphs have been dealt with above. I am advised that the Fifth to Eighth Applicants are not entitled to any of the relief sought.

58. Where the Fifth to Eighth Applicants deal with questions of law, I am advised that they will be dealt with in argument by my legal representatives, if necessary.
59. I am advised that the question of remedy will be dealt with in argument by my legal representatives, save to note that the extensive public participation process which the I've detailed above has cost and time implications. Further delays in implementation of the 2017 Charter also impede the 2017 Charter's transformation agenda and the implementation of provisions that benefit mining affected communities.
60. I deny that there needs to a process for formulating a "new Charter" and that the Department did not meaningfully engage will stakeholders in the mining industry, including mining affected communities.
61. Save as aforesaid the allegations in these paragraphs are noted.

AD PARAS 28-44

62. The allegations in these paragraphs have been dealt with above and the in Minister's answering affidavit in the Chamber of Mines' review application.
63. I deny that the provisions of the 2017 Charter fails to meet the transformation goals prescribed by the MPRDA. The 2017 Charter builds on and is incremental to the previous Charter's in seeking to achieve those goals.

64. Save as aforeaid, the allegations in these paragraphs are noted.

AD PARAS 45-69

65. The allegations in these paragraphs have been dealt with above and the in Minister's answering affidavit in the Chamber of Mines' review application.

66. I deny that the Promotion of Administrative Justice Act 3 of 2000 ("**PAJA**") applies to this matter.

67. I deny that the consultative process culminating in the publishing of the 2017 Charter was in any way unfair or inadequate in the circumstances. I deny that the 2017 Charter was enacted without consulting mining affected communities and that it fails to properly safeguard the constitutional and statutory rights of mining affected communities.

68. As I have detailed above, the Department engaged in an extensive public participation process, which included an invitation to interested and affected parties to comment on the draft 2017 Charter. Further, the Department engaged in meaningful and considered community consultations in the preparation of the 2017 Charter.

69. The Department, wherever possible, engages in public participation processes with stakeholders in the mining industry, including mining affected communities

who are stakeholders in the mining industry. The Minister and the Department have in the development of the 2017 Charter adopted and given effect to a fair procedure.

70. The 2017 Charter has built incrementally upon its predecessor and expands on safeguards for mining affected communities. The Fifth to Eighth Applicants in their founding affidavit to their intervention application made numerous reference to the benefits of the 2017 Charter to mining affected communities (see, for example, paras 33, 35, 43, 44 and 69.6 of that affidavit, extracts of which are attached hereto as annexures “**AA9**” to “**AA11**”).

71. Save as aforeaid, or as set out in the Minister’s answering affidavit to the applications of any of the other applicants, the allegations in these paragraphs are denied.

AD PARAS 70-82

72. The allegations in these paragraphs have been dealt with above and the in Minister’s answering affidavit in the Chamber of Mines’ review application. There is nothing unclear about the impugned provisions of the 2017 Charter.

73. I am advised that many of these assertions are legal argument. But it is unclear what legal challenge is being asserted here. Where the Fifth to Eighth Applicants deal with questions of law, I am advised that they will be dealt with in argument by my legal representatives, if necessary.

74. Save as aforeaid, and as set out in the Minister's answering affidavit to the applications of any of the other applicants, the allegations in these paragraphs are denied.

AD PARAS 83-95

75. The allegations in these paragraphs have been dealt with above. Clause 2.9 of the 2017 Charter is not in any way legally defective or vague.

76. I deny that the Department has historically not properly enforceed the SLP (social and labour plan) mining commitments by the mining companies. Similarly, I deny that reporting requirements have not been enforced by the Department.

77. On the contrary the Department has regional officials that meticulously keep on checking and ensuring: i) reporting requirements are met, and ii) all those commitments that the mining houses describe on their SLPs (which are for five-year periods) are met.

78. In relation to SLPs, once the Department officials ascertain that the relevant commitments are present, they focus on ensuring that the mining house concerned meets those commitments by inspecting on an effective periodic and adhoc basis, for example, the projects described in the SLP. Where a failure to meet the SLP commitment has been identified and raised with the mining house, or (more often) where the mining house of its own volition raises it with the

Department (through self-reporting), an attempt is made to understand how and why it cannot be met and, if the mining house's conduct is reasonable and justifiable in the particular circumstances, whether an equivalent alternative or amended SLP commitment is agreed to. In other words, the Department engages with them in order to understand why they cannot meet those milestones and, if warranted and properly justified, to reprioritise or reschedule those milestones. In that way, the SLP commitments are enforced by the Department in a fair and just manner.

79. Where a mining house unjustifiably has failed to meet the promised milestone plans in its SLP (or engage the Department in that regard), the Department issues orders requiring them to do so. The Department does this on the basis that it attempts as far as possible to ensure compliance with SLPs. This is a key component of the Department's enforcement.
80. The ultimate sanction for non-compliance is the cancellation of a mining right. But I have been advised that that is a very difficult remedy to wield. It cannot be invoked and applied overnight, or arbitrarily or capriciously. It is a time-consuming remedy, preceded *inter alia* by a right of representation and a right for the mining house to remedy its defects.
81. Moreover, the Minister cannot summarily or easily withdraw a mining right in circumstances where there has been noncompliance with a minor aspect of the SLP concerned, even after an order is issued, because the consequences of doing so are polycentric and far-reaching. It might in the circumstances result in

an even more adverse and severe consequences for the most vulnerable and marginalised persons affected, such as the host and/or mining communities. Instead the Minister and Department tries as far as possible to adopt a constructive approach, although having in mind that the ultimate sanction is indeed the withdrawal of the mining right.

82. I am advised that many of the assertions in these paragraphs are legal argument. Where the Fifth to Eighth Applicants deal with questions of law, I am advised that they will be dealt with in argument by my legal representatives, if necessary.

83. Save as aforeaid, and as set out in the Minister's answering affidavit to the applications of any of the other applicants, the allegations in these paragraphs are noted.

AD PARAS 96-117

84. I note that the Fifth to Eighth Applicants complain that the 2017 Charter does not go far enough to assist them.

85. Some of the allegations made in these paragraphs (for example, paras 103 and 104) are made in such general and bald terms, without any underlying detail or documentation, that it is impossible to meaningfully respond to them, let alone to respond to them on an urgent basis over the course of two days.

86. Save as set out in this affidavit and in the Minister's answering affidavit in the Chamber of Mines' review application, the allegations in these paragraphs are noted.

AD PARAS 118-139

87. The allegations in these paragraphs have been dealt with above and the in Minister's answering affidavit in the Chamber of Mines' review application.

88. I deny that there has not been compliance with section 2(i) of the MPRDA.

89. I deny that clause 2.5 of the 2017 Charter is reviewable for the reasons alleged, or indeed any reason.

90. I am advised that many of the assertions in these paragraphs are legal argument. Where the Fifth to Eighth Applicants deal with questions of law, I am advised that they will be dealt with in argument by my legal representatives, if necessary.

91. Save as set out in this affidavit and in the Minister's answering affidavit in the Chamber of Mines' review application, the allegations in these paragraphs are noted.

MOSEBENZI JOSEPH ZWANE

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at _____ on _____ November 2017, the regulations contained in Government Notice No. 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:

Business address:

Designation:

Capacity:

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

CASE NO 71147/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA First Applicant

MINING AFFECTED COMMUNITIES UNITED IN ACTION Second Applicant

**WOMEN FROM MINING AFFECTED COMMUNITIES
UNITED IN ACTION** Third Applicant

**MINING AND ENVIRONMENTAL JUSTICE COMMUNITY
NETWORK OF SOUTH AFRICA** Fourth Applicant

BAKGATLA BA SEFIKILE COMMUNITY Fifth Applicant

LESETHLENG COMMUNITY Sixth Applicant

BABINA PHUTHI BA GA-MAKOLA COMMUNITY Seventh Applicant

KGATLU GA MATLALA COMMUNITY Eighth Applicant

and

MINISTER OF MINERAL RESOURCES Respondent

and

NATIONAL UNION OF MINEWORKERS

First Amicus Curiae

SOLIDARITY TRADE UNION

Second Amicus Curiae

CONFIRMATORY AFFIDAVIT

I, the undersigned,

BONGIWE MABUSELA

state under oath that:

1. I am the Director Empowerment Transactions Assessment in the Department of Mineral Resources ("**the Department**").
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Respondent's Answering Affidavit in respect of the Fifth to Eighth Applicant's Application of Mosebenzi Joseph Zwane the Respondent in this judicial review application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Respondent's Answering Affidavit in respect of the Fifth to Eighth Applicant's Application in so far as it deals with:

- 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and
- 4.2 the consultation between the Respondent and the various members from the communities that are represented by the Fifth, Sixth, Seventh and Eighth Applicants.

BONGIWE MABUSELA

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at _____ on _____ 2017, the regulations contained in Government Notice No. 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

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

CASE NO 71147/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA First Applicant

MINING AFFECTED COMMUNITIES UNITED IN ACTION Second Applicant

**WOMEN FROM MINING AFFECTED COMMUNITIES
UNITED IN ACTION** Third Applicant

**MINING AND ENVIRONMENTAL JUSTICE COMMUNITY
NETWORK OF SOUTH AFRICA** Fourth Applicant

BAKGATLA BA SEFIKILE COMMUNITY Fifth Applicant

LESETHLENG COMMUNITY Sixth Applicant

BABINA PHUTHI BA GA-MAKOLA COMMUNITY Seventh Applicant

KGATLU GA MATLALA COMMUNITY Eighth Applicant

and

MINISTER OF MINERAL RESOURCES Respondent

and

NATIONAL UNION OF MINEWORKERS

First Amicus Curiae

SOLIDARITY TRADE UNION

Second Amicus Curiae

CONFIRMATORY AFFIDAVIT

I, the undersigned,

NHLANHLA JALI

state under oath that:

1. I am the Deputy Director in the Office of the Deputy Director General in the Department of Mineral Resources ("**the Department**").
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Respondent's Answering Affidavit in respect of the Fifth to Eighth Applicant's Application of Mosebenzi Joseph Zwane the Respondent in this judicial review application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Respondent's Answering Affidavit in respect of the Fifth to Eighth Applicant's Application in so far as it deals with:

- 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and
- 4.2 the consultation between the Respondent and the various members from the communities that are represented by the Fifth, Sixth, Seventh and Eighth Applicants.

NHLANHLA JALI

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at _____ on _____ 2017, the regulations contained in Government Notice No. 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

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

CASE NO 71147/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA First Applicant

MINING AFFECTED COMMUNITIES UNITED IN ACTION Second Applicant

**WOMEN FROM MINING AFFECTED COMMUNITIES
UNITED IN ACTION** Third Applicant

**MINING AND ENVIRONMENTAL JUSTICE COMMUNITY
NETWORK OF SOUTH AFRICA** Fourth Applicant

BAKGATLA BA SEFIKILE COMMUNITY Fifth Applicant

LESETHLENG COMMUNITY Sixth Applicant

BABINA PHUTHI BA GA-MAKOLA COMMUNITY Seventh Applicant

KGATLU GA MATLALA COMMUNITY Eighth Applicant

and

MINISTER OF MINERAL RESOURCES Respondent

and

NATIONAL UNION OF MINEWORKERS

First Amicus Curiae

SOLIDARITY TRADE UNION

Second Amicus Curiae

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SIBUSISO KOBESÉ

state under oath that:

1. I am the Deputy Director Mineral Policy Development in the Department of Mineral Resources (**"the Department"**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Respondent's Answering Affidavit in respect of the Fifth to Eighth Applicant's Application of Mosebenzi Joseph Zwane the Respondent in this judicial review application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Respondent's Answering Affidavit in respect of the Fifth to Eighth Applicant's Application in so far as it deals with:

- 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and
- 4.2 the consultation between the Respondent and the various members from the communities that are represented by the Fifth, Sixth, Seventh and Eighth Applicants.

SIBUSISO KOBESSE

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at _____ on _____ 2017, the regulations contained in Government Notice No. 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

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(GAUTENG DIVISION, PRETORIA)**

CASE NO 71147/17

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CHAMBER OF MINES OF SOUTH AFRICA First Applicant

MINING AFFECTED COMMUNITIES UNITED IN ACTION Second Applicant

**WOMEN FROM MINING AFFECTED COMMUNITIES
UNITED IN ACTION** Third Applicant

**MINING AND ENVIRONMENTAL JUSTICE COMMUNITY
NETWORK OF SOUTH AFRICA** Fourth Applicant

BAKGATLA BA SEFIKILE COMMUNITY Fifth Applicant

LESETHLENG COMMUNITY Sixth Applicant

BABINA PHUTHI BA GA-MAKOLA COMMUNITY Seventh Applicant

KGATLU GA MATLALA COMMUNITY Eighth Applicant

and

MINISTER OF MINERAL RESOURCES Respondent

and

NATIONAL UNION OF MINEWORKERS

First Amicus Curiae

SOLIDARITY TRADE UNION

Second Amicus Curiae

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SIBONGILE JANE MALIE

state under oath that:

1. I am the Director Mineral Policy Development in the Department of Mineral Resources ("**the Department**").
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Respondent's Answering Affidavit in respect of the Fifth to Eighth Applicant's Application of Mosebenzi Joseph Zwane the Respondent in this judicial review application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Respondent's Answering Affidavit in respect of the Fifth to Eighth Applicant's Application in so far as it deals with:

- 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and
- 4.2 the consultation between the Respondent and the various members from the communities that are represented by the Fifth, Sixth, Seventh and Eighth Applicants.

SIBONGILE JANE MALIE

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at _____ on _____ 2017, the regulations contained in Government Notice No. 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:

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

CASE NO 71147/17

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CHAMBER OF MINES OF SOUTH AFRICA First Applicant

MINING AFFECTED COMMUNITIES UNITED IN ACTION Second Applicant

**WOMEN FROM MINING AFFECTED COMMUNITIES
UNITED IN ACTION** Third Applicant

**MINING AND ENVIRONMENTAL JUSTICE COMMUNITY
NETWORK OF SOUTH AFRICA** Fourth Applicant

BAKGATLA BA SEFIKILE COMMUNITY Fifth Applicant

LESETHLENG COMMUNITY Sixth Applicant

BABINA PHUTHI BA GA-MAKOLA COMMUNITY Seventh Applicant

KGATLU GA MATLALA COMMUNITY Eighth Applicant

and

MINISTER OF MINERAL RESOURCES Respondent

and

NATIONAL UNION OF MINEWORKERS

First *Amicus Curiae*

SOLIDARITY TRADE UNION

Second *Amicus Curiae*

CONFIRMATORY AFFIDAVIT

I, the undersigned,

REBONE NKAMBULE

state under oath that:

1. I am the Chief Director in the Department of Mineral Resources (**“the Department”**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Respondent’s Answering Affidavit in respect of the Fifth to Eighth Applicant’s Application of Mosebenzi Joseph Zwane the Respondent in this judicial review application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Respondent’s Answering Affidavit in respect of the Fifth to Eighth Applicant’s Application in so far as it deals with:

- 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and
- 4.2 the consultation between the Respondent and the various members from the communities that are represented by the Fifth, Sixth, Seventh and Eighth Applicants.

REBONE NKAMBULE

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at _____ on _____ 2017, the regulations contained in Government Notice No. 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:

Business address:

Designation:

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

CASE NO 71147/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA First Applicant

MINING AFFECTED COMMUNITIES UNITED IN ACTION Second Applicant

**WOMEN FROM MINING AFFECTED COMMUNITIES
UNITED IN ACTION** Third Applicant

**MINING AND ENVIRONMENTAL JUSTICE COMMUNITY
NETWORK OF SOUTH AFRICA** Fourth Applicant

BAKGATLA BA SEFIKILE COMMUNITY Fifth Applicant

LESETHLENG COMMUNITY Sixth Applicant

BABINA PHUTHI BA GA-MAKOLA COMMUNITY Seventh Applicant

KGATLU GA MATLALA COMMUNITY Eighth Applicant

and

MINISTER OF MINERAL RESOURCES Respondent

and

NATIONAL UNION OF MINEWORKERS

First *Amicus Curiae*

SOLIDARITY TRADE UNION

Second *Amicus Curiae*

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MOTLATSO KOBE

state under oath that:

1. I am the Chief Director in the Department of Mineral Resources (**“the Department”**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Respondent’s Answering Affidavit in respect of the Fifth to Eighth Applicant’s Application of Mosebenzi Joseph Zwane the Respondent in this judicial review application, and confirm its correctness insofar as it relates to the Department and me.
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- 4.2 the consultation between the Respondent and the various members from the communities that are represented by the Fifth, Sixth, Seventh and Eighth Applicants.

MOTLATSO KOBE

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at _____ on _____ 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

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(GAUTENG DIVISION, PRETORIA)**

CASE NO 71147/17

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CHAMBER OF MINES OF SOUTH AFRICA First Applicant

MINING AFFECTED COMMUNITIES UNITED IN ACTION Second Applicant

**WOMEN FROM MINING AFFECTED COMMUNITIES
UNITED IN ACTION** Third Applicant

**MINING AND ENVIRONMENTAL JUSTICE COMMUNITY
NETWORK OF SOUTH AFRICA** Fourth Applicant

BAKGATLA BA SEFIKILE COMMUNITY Fifth Applicant

LESETHLENG COMMUNITY Sixth Applicant

BABINA PHUTHI BA GA-MAKOLA COMMUNITY Seventh Applicant

KGATLU GA MATLALA COMMUNITY Eighth Applicant

and

MINISTER OF MINERAL RESOURCES Respondent

and

NATIONAL UNION OF MINEWORKERS

First *Amicus Curiae*

SOLIDARITY TRADE UNION

Second *Amicus Curiae*

CONFIRMATORY AFFIDAVIT

I, the undersigned,

RENDANI MUTHENGE

state under oath that:

1. I am the Deputy Director Mineral Policy Development in the Department of Mineral Resources (**"the Department"**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Respondent's Answering Affidavit in respect of the Fifth to Eighth Applicant's Application of Mosebenzi Joseph Zwane the Respondent in this judicial review application, and confirm its correctness insofar as it relates to the Department and me.
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- 4.2 the consultation between the Respondent and the various members from the communities that are represented by the Fifth, Sixth, Seventh and Eighth Applicants.

RENDANI MUTHENGE

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at _____ on _____ 2017, the regulations contained in Government Notice No. 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:

Business address:

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

CASE NO 71147/17

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CHAMBER OF MINES OF SOUTH AFRICA First Applicant

MINING AFFECTED COMMUNITIES UNITED IN ACTION Second Applicant

**WOMEN FROM MINING AFFECTED COMMUNITIES
UNITED IN ACTION** Third Applicant

**MINING AND ENVIRONMENTAL JUSTICE COMMUNITY
NETWORK OF SOUTH AFRICA** Fourth Applicant

BAKGATLA BA SEFIKILE COMMUNITY Fifth Applicant

LESETHLENG COMMUNITY Sixth Applicant

BABINA PHUTHI BA GA-MAKOLA COMMUNITY Seventh Applicant

KGATLU GA MATLALA COMMUNITY Eighth Applicant

and

MINISTER OF MINERAL RESOURCES Respondent

and

NATIONAL UNION OF MINEWORKERS

First *Amicus Curiae*

SOLIDARITY TRADE UNION

Second *Amicus Curiae*

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MOSA MABUZA

state under oath that:

1. I am the Chief Executive Officer of the Council for Geoscience, I was the Deputy Director General in the Department of Mineral Resources (**“the Department”**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Respondent’s Answering Affidavit in respect of the Fifth to Eighth Applicant’s Application of Mosebenzi Joseph Zwane the Respondent in this judicial review application, and confirm its correctness insofar as it relates to the Department and me.

4. In particular, I confirm the contents of the Respondent's Answering Affidavit in respect of the Fifth to Eighth Applicant's Application in so far as it deals with:

4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and

4.2 the consultation between the Respondent and the various members from the communities that are represented by the Fifth, Sixth, Seventh and Eighth Applicants.

MOSA MABUZA

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at _____ on _____ 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

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CHAMBER OF MINES OF SOUTH AFRICA First Applicant

MINING AFFECTED COMMUNITIES UNITED IN ACTION Second Applicant

**WOMEN FROM MINING AFFECTED COMMUNITIES
UNITED IN ACTION** Third Applicant

**MINING AND ENVIRONMENTAL JUSTICE COMMUNITY
NETWORK OF SOUTH AFRICA** Fourth Applicant

BAKGATLA BA SEFIKILE COMMUNITY Fifth Applicant

LESETHLENG COMMUNITY Sixth Applicant

BABINA PHUTHI BA GA-MAKOLA COMMUNITY Seventh Applicant

KGATLU GA MATLALA COMMUNITY Eighth Applicant

and

MINISTER OF MINERAL RESOURCES Respondent

and

NATIONAL UNION OF MINEWORKERS

First Amicus Curiae

SOLIDARITY TRADE UNION

Second Amicus Curiae

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MODILATI MALAPANE

state under oath that:

1. I am the Acting Chief Director in the Department of Mineral Resources (**“the Department”**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Respondent’s Answering Affidavit in respect of the Fifth to Eighth Applicant’s Application of Mosebenzi Joseph Zwane the Respondent in this judicial review application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Respondent’s Answering Affidavit in respect of the Fifth to Eighth Applicant’s Application in so far as it deals with:

- 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and
- 4.2 the consultation between the Respondent and the various members from the communities that are represented by the Fifth, Sixth, Seventh and Eighth Applicants.

MODILATI MALAPANE

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at _____ on _____ 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

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**WOMEN FROM MINING AFFECTED COMMUNITIES
UNITED IN ACTION** Third Applicant

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NETWORK OF SOUTH AFRICA** Fourth Applicant

BAKGATLA BA SEFIKILE COMMUNITY Fifth Applicant

LESETHLENG COMMUNITY Sixth Applicant

BABINA PHUTHI BA GA-MAKOLA COMMUNITY Seventh Applicant

KGATLU GA MATLALA COMMUNITY Eighth Applicant

and

MINISTER OF MINERAL RESOURCES Respondent

and

NATIONAL UNION OF MINEWORKERS

First *Amicus Curiae*

SOLIDARITY TRADE UNION

Second *Amicus Curiae*

CONFIRMATORY AFFIDAVIT

I, the undersigned,

JEANIFFER NTOME

state under oath that:

1. I am the Assistant Director Mineral Policy Development in the Department of Mineral Resources (**"the Department"**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Respondent's Answering Affidavit in respect of the Fifth to Eighth Applicant's Application of Mosebenzi Joseph Zwane the Respondent in this judicial review application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Respondent's Answering Affidavit in respect of the Fifth to Eighth Applicant's Application in so far as it deals with:

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- 4.2 the consultation between the Respondent and the various members from the communities that are represented by the Fifth, Sixth, Seventh and Eighth Applicants.

JEANIFFER NTOME

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at _____ on _____ 2017, the regulations contained in Government Notice No. 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:

Business address:

Designation:

Capacity:

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF MINERAL RESOURCES

NO. 450

15 APRIL 2016

REVIEWED BROAD BASED BLACK-ECONOMIC EMPOWERMENT
CHARTER FOR THE SOUTH AFRICAN MINING AND MINERALS
INDUSTRY, 2016.PUBLICATION OF AND INVITATION TO COMMENT ON THE DRAFT
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 publish the draft Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry, 2016 (draft Reviewed Mining Charter) for public comments.

Interested and affected parties are hereby invited to submit written representations on the draft Reviewed Mining Charter. The aforesaid representations must be marked for the attention of **Ms Sibongile Malie** and hand delivered, emailed or sent by post, within 30 days of publication of this notice to the following addresses;

70 Mentjies street
Trevenna Campus
Sunnyside
0007.

or

Private Bag x59
Arcadia
0001.

Email address: Sibongile.Malie@dmr.gov.za

A copy of the draft Reviewed Mining Charter, 2016 is attached hereto.



Mr Mosebenzi Joseph Zwane, MP.
Minister of Mineral Resources.

**REVIEW OF THE BROAD-BASED BLACK-ECONOMIC
EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING AND
MINERALS INDUSTRY**



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

AA2

Media Statement

To all media

15 April 2016

Minister Zwane publishes draft reviewed mining charter for comment

The Minister of Mineral Resources, Mr Mosebenzi Zwane (MP) published the draft reviewed Broad Based Black Economic Empowerment Charter for the South African Mining and Minerals Industry, 2016 (the draft reviewed Charter) in the Government Gazette for public comments on Friday 15th April 2016.

The draft reviewed Charter seeks to, inter alia, strengthen the efficacy of the Mining Charter developed in terms of section 100 of the Mineral and Petroleum Resources Development Act, 2002 (Act No 28 of 2002) (MPRDA) as one of the tools for effecting meaningful transformation of the South African mining and minerals industry. The draft reviewed Mining Charter further seeks to integrate Government's transformation policies and legislation in order to enhance the ease of doing business, create regulatory clarity, predictability and certainty. In this regard the reviewed Mining Charter is aligned to the provisions of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) and the Codes of Good Practice (DTI Codes).

The draft reviewed Charter is accordingly published for a period of 30 days, as defined in the MPRDA, from the date of publication. During this period, the Minister will - as is the norm - engage with organised business and organised labour in the mining industry, to get their inputs on the draft.

Other interested and affected parties are hereby invited to submit written inputs and comments as per the Gazette notice, no later than 31st May 2016.

Ends –

Issued by the Department of Mineral Resources

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

JUNE 2016

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

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		that the above problem needs to be resolved by amendments to the MPRDA itself and not the Charter. III. The Reviewed Charter imports definitions from the BBBEE Act which are out of alignment with the definitions in the MPRDA this may create interpretation challenges. IV. The Chamber is concerned that the DMR does not provide clarity on when the Mining Charter can be used for purposes of granting mining rights as well as when it can be used for commercial purposes in the economy. The Reviewed Mining Charter creates confusion by introducing BEE Codes assessment ratings for compliance purposes when the Mining Charter score card itself is not properly aligned to that of the Codes. For purposes of the Mining Charter it would be ideal to clearly state how the regulator will apply the provisions of the MPRDA when some or all of the elements of the ring-fenced elements are not met.	review the Charter as contemplated in section 100. The powers review and amend the Charter are implicit the powers conferred to the Minister to Develop the Charter in terms of the Act. iii. Refer to point I above. iv. The department notes the concerns on misalignment of the Charter Score Card and the Dti. Codes, the principles of alignment of the Charter and Dti Codes do not apply to content/measures but confined to definition of terms and concepts... The Department will secure the requisite deviation approval from Dti as contemplated in section 10 of the BBBEE Act where necessary. Noncompliance with any ring-fenced element/s amounts to noncompliance and
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		the provisions of sections 93, 47, 98 and 99 of the MPRDA will be invoked. - The Department will further improve on the draft Score Card to provide clarity.	v. Refer to point IV above. vi. The Department does not support inclusion of citation of specific section from referenced legislation. vii. The net value principle in issue must be read consistent with the definition of meaningful economic participation in the Charter. The Department is also aligned to the Dti Codes which make provision for this principle. viii. Refer to point II above. ix. Refer to point II above. x. Although the Charter is not a sector Code as per the definition of
		V. The Chamber is concerned that the Reviewed Charter does not adopt the flexibility of the scorecard contained in the DTI Codes. The DMR scorecard is less flexible. VI. The Chamber recommends that reference to other Acts such as the Companies Act, the Small Business Act etc. especially with regards to definitions, be referenced to specific sections in those Acts to allow for consistency in understanding. VII. The last paragraph on page eight of the Reviewed Charter seems to be defining the net value principle. If this is the case, the Chamber does not agree to the principle of net value being included. VIII. There is no provision in the MPRDA for amendments to, or review of, the Mining Charter or for the development of a new Charter in substitution of the Original Charter and hence both the 2010 Charter and the reviewed Charter are ultra vires the MPRDA itself. IX. The Chamber is of the view that the above problem should be resolved by amendments to the MPRDA itself and not the Charter. X. Reference is made in the last two paragraphs of the Preamble to the Reviewed Charter, of alignment between the MPRDA and Mining Charter on the one hand, and the BBEE Act and Codes on the other. The Chamber submits that those paragraphs disclose fundamental	

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		misconceptions in regard to these issues. The Mining Charter was developed by the DMR Minister in terms of s100 (2) (a) of the MPRDA. The Mining Charter is not a code of good practice issued or gazetted by the Minister of Trade and Industry in terms of s9 of the BBBEE Act. It was in fact developed by the DMR Minister in terms of s100 (2) (a) of the MPRDA and gazetted as such furthermore the Mining Charter is also not a transformation Charter for the mining and minerals sector of the economy which was developed by major stakeholders in that sector and gazetted by the Minister of Trade and Industry in terms of s12 of the BBBEE Act. Again, it was in fact developed by the DMR Minister in terms of s100 (2)(a) of the MPRDA and gazetted as such. The need to align the Mining Charter with the BBBEE Act comes from the perceived conflict between the two. There is no such conflict in law. XI. The Chamber proposes that the term "ring fenced should be substituted with the term "priority element" as per the BEE Codes. • There is very limited evidence of alignment of the ownership element in the Mining Charter with the BBBEE Act and Codes. The scorecard does not mention any weighting points related to Ownership and uses "YES/NO" which will not assist in calculating the final weighting points that will lead to calculating the different levels of compliance. • Inconsistent definitions .e.g. BEE Compliant company, effective ownership. • The Charter has adopted the BEE Black definition, however, the ownership scorecard still refers to HDSA ownership. • The issue of Continuing Consequences is yet to be settled in the courts. In the amended Codes, the loss of shareholding mirrors the same number of years that the BEE	a sector code in terms of the BBBEE Act, there is an obligation on all organs of State to implement transformation objectives in term of the BBBEE Act. xi. Noted the Department will look into the wording (priority vs. ring-fenced). - The concern regarding the definition of terms (BEE Compliant Company, HDSA ownership, effective ownership) is noted. - Consequences of previous deal matter is before the Courts.
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		shareholder was in existence. The Chamber and its members would prefer that the consequences of previous transactions should be retained in perpetuity. XII. The inclusion of a Special Purpose Vehicle to drive ESOPs is a concern as, especially the requirement to incorporate a registered Memorandum of Incorporation (MOI). They introduce a concept of a significant minority block that tends to stifle decision making at Board level. This is also against Company law and JSE Regulations and the Companies Act, 2008. XIII. The Mining Charter will result in the unbundling of some existing transactions (some new, others recently re-financed) in terms of S2.11 (transitional arrangements), i.e. existing mining right holders have a maximum of three (3) years to align with the provisions of the charter. The Chamber is concerned as to whether implications of the requirement to restructure past and existing transactions have been considered by the DMR. The implications of the unbundling process and reorganizing BEE deals will result in increased transactions costs, with financial institutions being the main beneficiaries and no impact on the intended black beneficiaries. Furthermore, the beneficiaries will not have access to more diversified portfolios of mine ownership, and may be limited to only one. A company can apply to the Minister for permission to construct a consolidated transaction however the permission is not a fait accompli. XIV. The term "Effective Ownership" needs to be adequately defined and clarified to limit room for speculation and confusion within the mining industry. XV. There is a need to set clear definitions for the following terms on the Ownership Element, BEE Compliant Company, BEE Supplier, Codes, Meaningful economic participation. XVI. The beneficiation offset only benefits those who have not achieved the 26% target and this is unfair to those companies that have invested in beneficiation in various forms and if they already	Xii The Department notes the concerns, however this requirement was intended to protect the interests of BEE partners (Esops and communities) and ensure that they actively and meaningfully participate in the empowerment transaction. Xiii The highlighted implications are noted as part of the transition. Sufficient mechanisms will be developed to mitigate these implications taking into account the 3 years transitional arrangements provided. A consent to grant consolidation is subject to the terms and conditions of the right, the Act and all relevant considerations, it cannot be a fait accompli as suggested. Xiv Noted. Xv definitions of BEE Compliant Company, Meaningful economic participation are provided, however it is noted that BEE Supplier, Codes are not defined.
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		have achieved the 26% black ownership target. A workable formula to allow for beneficiation offsets should be developed. XVII. Ownership Target: The Chamber of Mines supports the target of 26% Black Ownership and further wishes to propose the application of the Modified Flow Through principle for all prospective applications for calculating voting rights and economic interest. The principle of including ESOPs, Communities and Black Entrepreneurs in the BEE structure is accepted. However, Mining Right holders should be allowed to choose vehicles that will work best in their particular structures. XVIII. The Chamber would like to see the introduction of debt (treatment thereof) for shareholders that do not have the funds. The Mining Charter does not cover this and its modalities. The concept of profit share as part of a model for ownership should be considered. XIX. The Mining Charter needs to clarify what is meant by a "BEE compliant enterprise" or a "BEE compliant company" or "small business development". The Codes of Good Practice do not refer to a "BEE compliant enterprise or company" but rather rates companies according to their levels of compliance to the codes or whether it is a Large Enterprise or an Empowering Supplier or a Qualifying Small Enterprise or an Exempt Micro Enterprise. XX. The Mining Charter has increased the target under Capital Goods by 20 percentage points, 20 percentage points for consumables and 10 percentage points for services. In addition, the targets also introduced local manufacturing for capital goods and consumables. In alignment with the BBEE codes, the differentiation between capital goods, consumables and services should be removed. If it is retained, clear definitions of these categories need to be provided.	XVI Mr Mabuza and Menoe to respond. XVII The Comment on the modified flow through principle is noted and will be considered. The Department notes the concern on type of vehicles to be used, however this requirement was intended to protect the interests of BEE partners (Esops and communities) and ensure that they actively and meaningfully participate in the empowerment transaction. XVIII Debt and funding models are commercial considerations (further consult with Mr Mabuza). XIX BEE compliant company is defined, the concept BEE compliant enterprise and small business development will be clarified. XX Mr Mabuza and Menoe to respond on this issue.
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		XXI. Procurement is a priority element in terms of the B-BBEE Codes and the Chamber proposes that this should be retained as a priority element within the Mining Charter. XXII. The BBBEE Codes measure the denominator against which procurement targets are weighted in terms of the Total Measured Procurement Spend (TMPS). The Charter only makes reference to actual spend. This could affect companies negatively as specific non-procurement items and items procured from foreign domiciles may be included in the value of actual spend which may disadvantage mining right holders if they were to be measured against B-BBEE Codes. XXIII. Localisation of competitive supply is fully supported. Targets for local content should, however, be informed by comprehensive studies that indicate local capabilities and will probably differ by types of mining e.g. surface mining, underground coal, underground hard-rock, etc. Targets for small business development should be removed since they interfere with supplier development. XXIV. The onus should be on suppliers and not with mining right holders to verify local content with the SA Bureau of Standards (SABS). XXV. The existing multi-national supplier levy has been a failure. Mining companies do not have the legal right to collect such funds. All that the levy does is increase the cost of doing business for the mining companies. XXVI. Members do not support the Multinational supplier contribution since this contradicts efforts to localise competitive supply. To give effect to this goal a completely different approach than what is included in the Mining Charter will be required. It will probably take about one year to develop a 5-10 year strategy with the requisite targets, incentives, etc. XXVII. The Beneficiation element is misplaced as a stand-alone and it is our considered view that this in effect should form part of the criteria under the Ownership element. The scorecard is very silent	XXL Noted the Department will consider the submission. XXII Mr Mabuza and Meno to assist with a response. XXIII Comprehensive study on local capabilities is noted. Small business development is government's policy prerogative. XXIV The Department interfaces with the right holder and not the suppliers. XXV The Department will create mechanisms to ensure that trust funds are implementable and managed within the prescripts of the law. XXVI See point XXV above. XXVII Noted (Noted Mr Mabuza and Meno to advise).
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	on how the beneficiation initiatives by mining companies will be recognised as this is the means of strengthening the linkages between mining and manufacturing. XXVIII. On Employment Equity, It would assist the industry to utilise provincial EAP targets as per the Employment Equity Act with progressive targets over 5 years. These targets should be more realistic in line with industry workplace profiles and aligned to EAP statistics as reported by the Commission on Employment Equity annually. It would be useful to propose an EAP formula to be used by the mining industry. XXIX. It is suggested that Mining Charter targets must align with the Employment Equity Act five year planning cycle and it is proposed that progressive targets be set. XXX. It is suggested that targets for people with disabilities should be inclusive of all races and the mining industry is committed to ensuring that it plays its part in the absorption of those classified as disabled- The target should therefore be 2% of all employees working on surface. XXXI. Clarification is required on the consequences of not meeting the targets and weighting points within the element. XXXII. On the Human Resource Development element we do not support the establishment of a Ministerial Skills Fund as it is a duplication of the 1% levy currently being paid towards the National Skills Fund. XXXIII. The Chamber proposes that this element be titled Skills Development to reflect the investment on employees as well as community members and to better align with the B-BBEE Codes. XXXIV. On the Mine Community Development element, The DMR needs to clarify the term "labour sending areas".	XXVIII. Department of Labour to advise. XXIX. Department of Labour to advise. XXX. Non-compliance with the targets of the charter and the terms and conditions of the right is already provided for in the MPRDA. XXXII. The development of the Ministerial Skills fund is intended to enhance development of skills in the mining industry. XXXIII. This element is not only limited to skills development, it also includes support towards South African based academic institutions, research and development.
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		XXXV. It is suggested that MCD be measured in the same manner as Socio-Economic Development (SED) in the B-BBEE Codes as follows: If a project is implemented, the mine should prove that at least 75% of the beneficiaries are Black as defined. This is possible because a company is supposed to conduct ethnographic assessment through community consultative and collaborative processes to delineate community needs. On that basis 100% of the costs will be taken into account in scoring the mine, taking into account the SED Benefit Factor Matrix. However, in instances where the black beneficiaries are less than 75%, then expenditure will be recognised on a pro-rata basis. Reference can be made to Annexure 500 (A) of the BEE Codes to assist with the calculation. XXXVI. Of significant concern under this element is the target setting of 1% Annual Turnover towards a Ministerial Social Development Trust Fund, which is not endorsed by the Chamber. This type of advalorem tax is extremely regressive, undermines marginal or loss-making mines and is not supported. Is this similar to the Multi-national Suppliers Contribution towards a Social Fund whose contribution was set a target of 1% Net Profit after Tax (NPAT) and previously included under the Procurement element? The Chamber does not support the target of 1% Annual Turnover and instead proposes 2% of NPAT towards SED. XXXVII. It is important to note that non-monetary contributions are not considered under this element. The Chamber further proposes enhanced recognition of technical and capacity building programmes as part of this element as they facilitate municipalities' ability to deliver more effective services. Furthermore, we propose that collaborative endeavours (with other companies, government departments, development finance institutions etc.) also be given enhanced recognition as recognised in the Codes.	XXXIV The term is already defined in the Mining Charter. (Need to determine department's position on how far does "labour sending areas" extend?) XXXV Noted the department will consider. XXXVI The 1% percent mentioned on the Mine Community Development element is not to be contributed to the MSD trust fund but to be contributed towards local economic community development and labour sending areas. The department rejects the Chamber's proposal to use 2% of NPAT. XXXVII The department acknowledges and accepts the recognition of non-monetary contributions, however this forms part of the mining company's social license to operate and it cannot be used to offset any of the mining charter targets.
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		XLII. The Chamber submits that paragraph 2.12 should be deleted because the matter of non-compliance falls to be addressed by the MPRDA itself and not by the Mining Charter. XLIII. The Chamber submits that paragraph 2.13 should be deleted since the review of the Mining Charter needs to be governed by the MPRDA itself and not by the Mining Charter. However, insofar as paragraph 2.13 is nevertheless to be retained, and in the spirit of the Stakeholder Declaration (2010), the Chamber would recommend the following addition: • <i>Review of the Mining Charter be subject of a consultative multi stakeholder process through the auspices of MIGDETT, the frequency of which to be determined by unanimous decision</i> • The Chamber proposes a scorecard (see Chamber letter)	three years transitional period. The suggested 5 years transitional period is not supported. XLII The Charter derives from section 100 of the MPRDA. It is a material condition for granting of a mining right in terms of section 23 of the Act, noncompliance therewith is an offense. The Charter reinforces the provisions of the MPRDA relating to non-compliance and does not deviate therefrom. XLIII See point ii above. The Department Disagree with the suggested unanimous decision on formulation of review proposals. The Department proceeds to exercise its regulatory function as mandated by the MPRDA.
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2. National Union of Mineworkers (NUM) <i>MK</i>		I. The NUM is calling for the inclusion of "Meaningful consultation" in the definitions section, as we are currently finding it difficult to be meaningfully consulted in the implementation of charter targets and compilation of the mining charter report before submission to the regulator. The definition should read as follows: <i>The extensive consultation conducted by the mining right holders and its stakeholders. These will include the primary stakeholders (which includes employees/workers, organized labour unions and all forums or structures) and Secondary Stakeholders (including relevant local & district municipalities (including their representatives), traditional leaders or authorities).</i> II. We are propose the following additions in the Objectives section: <i>The Broad Based Black Economic Empowerment Charter for the South African Industry, herein referred as the "Mining Charter", is a government instrument designed to effect sustainable growth and meaningfully transformation of the mining industry (through a meaningful consultation process, especially with primary stakeholders).</i> III. We call on the Department to have an incremental target for the ownership element, which will be 30% by 2018, 32% by 2020 and 35% by 2022 as a minimum targets. IV. On ESOPS our submission is in line with the above target on ownership, with employee's owning 10% by 2018, 12% by 2020 and 15% by 2022. V. We unreservedly reject the notion of a Special Purpose Vehicle, as its founding objectives that were aligned to the companies act are no longer in place. Thus it will only be used as a tool to frustrate communities and workers. We have seen many transactions in the industry that have become an albatross around our necks, thus we are submitting to own shares directly in the mining right holders and our employing company.	i. The Department supports meaningful consultations between stakeholders in giving effect to the relevant elements of the Mining Charter. Compilation of the report is the prerogative of the right holder and it remains Government's responsibility to evaluate, enforce and monitor compliance with the Charter requirements. ii. The Department notes the suggested proposals to the objects of the Charter and supports same to the extent outlined in point number I above. iii. The Department supports progressive realisation of the Charter targets within the 3 years transitional period. Any suggestion to go beyond the transitional arrangement is not supported. The
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		VI. We are calling for all employees and community ownership transactions to be ring-fenced and funded by the mining right holder for free or with no obligation on the trust of future repayments or dividends withholding. The Mining Charter should also introduce a new concept of ESOP/Community Trust mandatory rules, namely: a. A loan free scheme or employer funded scheme b. Economic interest in the hands of an entity (managed and controlled by participants) or individual employee c. Flow through principle as per 3.3 of the Generic Codes d. Returns, profit sharing or dividends needs to be paid out each time the company declares (85% as per the Generic codes). e. The vesting period needs to be maximum 5 years f. Beneficiary education should be mandatory g. Trustee continuous education is critical h. Significant Employee participation in the scheme i. Equal distribution of shares to all employees, especially Black People j. ESOP Trust representation in Annual General Meetings k. Limited risk to employees l. Trusts need to be independently managed outside the control of Management. VII. We are not sure of the industry's ability to achieve the 60% capital goods target, hence we would in line with other targets propose an incremental approach. That will see the industry starting on 40% locally manufactured goods by 2018, 50% by 2020 and 60% by 2022. The aim to ensure we have achievable targets and we give industry sufficient time to grow the market	Department will consider the proposed increase in targets. iv. See response in iii above. v. The Department notes the concerns, however this requirement was intended to protect the interests of BEE partners (Esops and communities) and ensure that they actively and meaningfully participate in the development of mining project/s. vi. Debt and funding models are commercial considerations (further consult with Mr Mabuza). The Department to study the Dti's report on Management of Trust Instruments and further improve the proposals in the Charter relating to Trusts. VII The Department notes the concern and will reconsider the proposals.
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		for the relevant absorption. The same principle should apply for the consumables, but their incremental targets should be 50% by 2018, 60% by 2020 and 70% by 2022 for consumables.	
	VIII. On Beneficiation The NUM is calling for the fast tracking of the current Amendment Bill in Parliament, in order for the DMR and DTI to fast track the implementation of the Beneficiation Strategy in line with the National Development and Industrial Policy Action Plan. IX. On Employment Equity the reporting scorecard should reflecting the income disparities among those in the same levels, to avoid people being appointed to key positions but are never remunerated equally or lacking relevant decisions making powers. X. On human resource development, the allocation of a percentage of mineral right holder's payroll to skill development, training and research is supported, but we think it's important for it to be aligned to the current 6% in the generic codes of good practice. The money spent should be restricted to actual fees paid for a course or programme and not miscellaneous logistical costs. XI. We would like to call on the Department to revise the Housing and Living Conditions Standards that were gazetted in 2009. XII. We call on the Department of Mineral Resources to strengthen and capacitate the Mineral Regulations branch, as we believe the below compliance with Section 28 (2) (C) of the MPRDA is non-negotiable and compliance should be met with relevant corrective measures. XIII. We would like to again express our concern with the removal of the Sustainable Development element in the draft mining charter.	VIII. The Department notes the concern. The process to finalise the MPRDA Bill is managed by Parliament. IX The Department of Labour to advise. X The Charter 5% proposal excludes the mandatory 1% skills levy as per the Skills Levy legislation. (Verify with Dti). XI The Department notes this concern and will address it accordingly upon finalisation of the Mining Charter. Xii The Department notes this concern and will address it accordingly. Xiii The Department notes this concern and will address it accordingly.	

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3. Wits Centre for Sustainability and Mining (CIMS)	I. Socio-economic and skills development initiatives associated with the implementation of the Mining Charter should be streamlined. Specifically the Mining Charter makes no mention of the Social and Labour Plans (SLPs). This is a serious oversight and means that contributions to communities will become more fragmented despite increased revenue. The obligation placed on mining companies to contribute a minimum of 1% of turnover to local community development (2.6a) is very similar to the obligation imposed by the SLP. Is this obligation reflecting the same thing? We suggest linking to the SLP in this paragraph to clarify the similarity or difference. Going further, the measures in the draft Reviewed Charter are poorly expressed, specifically for Mine Community Development, but also for other elements of the Charter. We suggest that the measures be reviewed, and that the Scorecard be amended to include measures, as it does in the current (2010) Charter. II. Of additional concern here is the contribution of multinationals to socio-economic development of local communities. Thus the draft Charter states that multinationals must contribute toward "socio-economic development of local communities", but the mechanism proposed is through a single Social Development Trust Fund (SDTF). How is the SDTF going to direct spending to local communities? At best we suggest establishing SDTFs in each of the regions where multi-nationals supply goods. We also note that the trustees of the proposed SDTF do not have to include stakeholders from communities, and suggest that there must be community trustees. Alternatively, multinationals could make their contributions to the SLPs of the mines that they supply, through a transparent, ring-fenced allocation of funds. That would ensure that the funds are closely tied to the communities most affected by the goods that are supplied.	i. The Department will reconsider the relationship between the SLP and the Charter as different legislative requirements to ensure alignment and removal of ambiguities. ii. The Department will develop appropriate mechanisms for management of the Multinational Supplier Trust fund for the benefit of not only communities but all the People of South Africa.
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		III. Of equal concern are the proposals for human resource development (Section 2.5). This section establishes a Ministerial Skills Development Trust Fund (SDT). How does the SDT relate to the Mining Qualifications Authority (MQA)? The aim in 2.5(a) is to invest in essential skills development activities and those listed are exactly the remit of the MQA. We strongly suggest that these funds go to the MQA rather than to establish a new entity. If there are reasons why the MQA is not suitable, those reasons should be addressed, rather than creating a duplicate structure. We note that the governance of the SDT is also identical to that of the MQA: organized business, organized labour and government. If the SDT is retained, its relationship to the MQA needs to be clarified. IV. We recommend that guidance and/or a guideline of preferred practice would be a very useful addition to the draft Charter, to promote a beyond compliance approach. This will avoid the pitfalls of ticking boxes only whilst important issues are overlooked or conveniently forgotten. Guidance is suggested in the following areas: • For setting up the Memoranda of Incorporation to ensure that all the participants are fairly considered and that the Special Purpose Vehicle (SPV) does not become just a mechanism for one of the parties to take control over the others. • For the establishment of a "conducive environment to ensure diversity". Given the discriminatory past of mining in particular the establishment of a diverse non-racist and non-sexist workplace cannot rely solely on compliance with quotas. We suggest that the draft Charter should provide a guideline on best practice for the advancement of Black individuals and for women of all race groups. The guideline can make clear options for demonstrable initiatives to support the career development of these groups.	iii. The development of the Ministerial Skills fund is intended to enhance development of skills in the mining industry. iv. The Department will develop a guideline on reporting in respect of all the elements of the Charter. This should facilitate implementation of the Charter requirements.
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		For regional collaboration between private, public and civil society stakeholders in mining regions concerning socio-economic and infrastructure development (including housing), regional mine closure, the mitigation of environmental impacts and environmental rehabilitation.	
		V. Many of the issues that besiege mining today can only be resolved through collaboration between stakeholders including different mining operations in mining regions. This is expressed in the draft Charter (Section 2.6) but there is no follow through with respect to compliance with this. This is a serious oversight. VI. We suggest re-introducing the objective: "promote sustainable development and growth of the mining industry". The reintroduction would serve to show a) that the Charter has not forgotten the need for environmental management and improved health and safety performance, and b) that the Charter is of larger value to the nation than just righting past wrongs, important as that is: it is also aiming to grow the wealth of the country. VII. A focus on linkages rather than just beneficiation may be the answer and revising both the objective and the subsequent section of the Charter to this end is appropriate. VIII. The Draft Charter will be strengthened by including a focus on the development and promotion of small scale mining. IX. OWNERSHIP (2.1): Section 2.1b specifies that the community, workers and Black entrepreneurs should share 5% of the 26% allocated to Black persons. There is an issue of clarity, on whether this is 5% each or 5% in total. Beyond this it is unclear why Black entrepreneurs are specifically listed? Entrepreneurs are the natural investors in mining ventures, and would be expected to	V. The Department supports collaboration and will elaborate on these aspects on the review proposals. VI The Department will reconsider this matter. VII. Mr Menoe to respond. VIII. The Mining Charter does not apply to small scale mining in terms of section 27 of the MPRDA. IX The Charter intended to refer to a minimum of 5% to each category to ensure Broad Based and meaningful transformation.

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		make up the full 26% if they could. We suggest that only workers and the community be listed explicitly as have minimum allocations within the 26%. X. The requirement that trusts must include representation from traditional authorities is a problem for three reasons: 1) There are regions in the country without traditional authorities, such as parts of the Free State, 2) The legitimacy of traditional leaders is contested in some communities, and 3) Conflict between communities and traditional leaders can easily cripple the effectiveness of the trusts to act, as they become mired in the disputes of their trustees. XI. The mechanism laid down in the draft Charter that every mining right must have an SPV may have an unintended consequence: it ring-fences investment by entrepreneurs or other "real" investors (as opposed to communities and workers who are gifted their stake in the company as recognition of the costs that they bear). That ring-fencing will create a form of second-class shareholder. While this will ensure that Black shareholding has some permanence, it is not a freely tradable share in the company, which is therefore a poor investment. XII. PROCUREMENT (2.2): The text is unclear in the sections on capital goods and consumables on whether 60% of capital goods must be manufactured locally, or whether 60% of locally manufactured goods must be from BEE compliant suppliers. If it is the second, then there is no regulation in the draft Charter of procurement of goods that are manufactured outside South Africa. We recommend that these regulations be made clear, and explicitly take into account local and foreign manufacture. XIII. BENEFICIATION (2.3): As discussed above, we strongly urge that the Charter give more weight to side-stream linkages and also consider up-stream linkages, and rename this section LINKAGES.	Entrepreneurs refers to Black entrepreneurs and these are essential to ensure Broad Based and meaningful transformation. X The Department notes the concern and will consider expanding on trust representation. XI The Department notes the concerns regarding SPV's and will reconsider the proposals and provide alternative mechanisms to structure the 26% BEE shareholding. XII They must both be from BEE compliant and locally manufactured. The definitions of these terms are provided. XIII Mr Menoe to respond.
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		XIV. EMPLOYMENT EQUITY (2.4): A “conducive environment to ensure diversity” is not created by quota alone. We suggest that the draft Charter should provide a guideline on best practice for advancement of Black individuals and women of all race groups. XV. The draft Charter does not deal adequately with gender equity, but regards it as a subcategory of race equity, which it is not. Targets for gender equity should be set in the first instance for all women. Specific targets for Black female representation can then also be set. The present targets at executive management level do not do justice to the significant contribution that all women can make in South Africa at a senior level. XVI. HOUSING AND LIVING CONDITIONS (2.7): This objective, as drafted, presents no further change to the previous version of the Charter. In fact, the housing objectives as stated here were reached, and the discussion in the sector has now moved on into further issues related to housing. We have two suggestions: There are many situations in which home ownership is not the desire of mine workers. Therefore, we suggest strengthening the recommendations on what mechanisms are needed to provide robust rental options for mineworkers. Home ownership options are closely tied to local development, so we suggest a need for meaningful consultation and cooperation within the region of mining companies and local government to plan housing and community development. XVII. REPORTING (MONITORING AND COMPLIANCE) (2.9): We urge that the DMR increase its capacity to oversee, rather than simply monitor and evaluate, the levels of compliance with the Charter. XVIII. A number of definitions are missing from the Charter, or are problematic:	XIV Empowerment of Black persons is National government policy and the Charter seeks to give effect to same. XV Empowerment of Black persons is National government policy and the Charter seeks to give effect to same. XVI. The reviewed Charter already provides for integrated Housing Development in line with the DHS policies on integrated human settlements including home ownership options. XVII Submission is noted. XVIII The Department notes the suggestions on definition of terms and concepts and will consider same in the review process.
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		• The current definition of stakeholders only includes affected parties. We suggest it also include interested parties, as that it is part of the usual definition of a stakeholder. • The word "Black" is defined in the document, and is sometimes used as defined, with a capital letter, but it is also used with a small letter, "black", leading to a suggestion that it refers to a different concept. To avoid confusion, we suggest using "Black", the defined term, throughout. • The term "Black Entrepreneur" is used without definition in 2.1b. This is concerning as the definition of "Entrepreneur" is very wide and open to mis-interpretation. • There needs to be explicit recognition that many mineworkers are foreign national migrants. • It is not clear in the document whether "Labour sending areas" includes or excludes areas outside of South Africa. We suggest that this be made explicit. In particular, parts of the draft Charter suggest spending in labour sending areas. Can this spending be in neighboring countries? This needs to be made clear. • The phrase "enterprise development" is used in the draft Charter, without definition. • The section on Procurement, (2.2), uses the phrases "small business development which are BEE compliant" and "BEE compliant enterprise development". These two phrases need to be defined and the difference between them explained. • The definition of "Community" excludes foreign migrant workers, who are a major part of many near-mine communities. How does the Charter recognise these workers? • Core skills are defined with a list of examples that are all engineering and technical related. In the context of the draft Charter, mines require core skills in many areas,
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		particularly in community development and wellbeing. We suggest that the definition of core skills be extended to include all professional skills required in mining, including but not limited to geology, ventilation, finance, community development and wellbeing, occupational hygiene and health. We also suggest a further need for development of skills related to community development such as business mentorship. XIX. The paragraphs on Employment Equity all use the phrase "Employment Active Population". The way that EAP is used is incorrect, so it would make more sense to remove it. For example, the Employment Active Population is about 88% black, 44% black female. To justify specifying that, for example, executive directors should be 25% black female is not in line with the EAP. We suggest the phrase be removed throughout. XX. In the section on procurement, 2.2, neither "multinational" nor "local mining companies" are defined. As written, it may allow London-based companies operating in South Africa to avoid making the specified contribution. XXI. At many places in the document, but particularly in 2.2 and 2.5, there are words like "60% Black, of which 30% is black females". This implies that 18% (60% x 30%) of the total should be black females, which is presumably not the intent. To add to the confusion, in 2.5c, it is the intent (15% x 5%). We suggest defining these percentages of percentages or being explicit through words such as "60% Black, 50% of whom are black females making up 30% of the total". XXII. In 2.1, 2.1b only mentions "workers", while clause 2.1j mentions "black workers" as being the same group. For consistency, one of the two must be changed, or an explanation added. XXIII. The last sentence of 2.1 on page 3 is unclear because it suggests that at any time a rights holder whose BEE participation drops below 26% may have three years to restore the situation. We	XIX The Department of labour to advise. XX Noted the submission will be considered in the review process (page 19 second last paragraph). XXI Submission is noted and further clarity to be provided. In consultation with the Department of Labour. XXII Noted reference to Black in 2.1 (j) will be deleted.
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		suggest. "For a mining right holder that, at the time of publication of the Charter review, has experienced a loss of BEE participation to below 26%, for whatever reason, that mining right holder must review its empowerment credentials within the three year transitional period from the date of publication of the amended 2016 Charter. XXIV. In 2.5, it needs to be clear that while 15% of the 5% goes to the Ministerial Skills Development Trust Fund, the mining industry has to manage the remaining 85%. XXV. At the end 2.5, there is reference to a mechanism for companies to offset ownership requirements by undertaking beneficiation. The mechanism for this is not clear, and beneficiation is not present on the scorecard. We suggest that this be clarified or removed. XXVI. In 2.6, as well as local municipalities, the Charter also needs to mention Integrated and Local Development Plans (IDPs) aln 2.10, we suggest that the compliance process should occur more often than annually. We suggest that reporting may be annual, but that monitoring should be at least twice annually. (LDPs). XXVII. Please give further reference information on other Acts and documents. The Charter refers to other Acts and documents. In some cases it gives a complete reference, for example in paragraph 2.9, there is a reference to S28(2)c of the MPRDA. However, in many other places, the reference is vague or absent.	XIII Clarity regarding the correct interpretation of the three years transitional period will be clarified. XXIV This is implied in the Charter provision. XXV Mr Menoe to respond. XXVI The annual reporting requirement is sufficient. Inspectors are empowered to conduct inspections as and when the need arises. XXVII The Department notes the submission and will consider it in the review process.
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4. Webber Wentzel MK	General,	I. The development of the draft Mining Charter, like the 2010 Mining Charter, is beyond the scope of section 100 (2) (a), the empowering provision, and thus is <i>ultra vires</i>. In our view, the intention of the parliament in not endowing the Minister with the power to amend the draft Mining Charter was deliberate and designed to promote regulatory certainty within the mining industry. II. We are of the view that section 100(2)(a) of the MPRDA must be amended to give the Minister the requisite authority to amend the draft Mining Charter, before clause 2.13 of the draft Mining Charter can be enforced furthermore clause 2.13 of the draft Mining Charter must be amended so as to avoid vagueness and the consequent bestowal of such a wide discretion upon the Minister. III. When considering whether the draft Mining Charter could be applied by the Minister to mining rights granted under the Original Mining Charter or the 2010 Mining Charter, the first important consideration is that neither of the Charters are legislative provisions. Neither of the two Charters was subject to the usual parliamentary processes, and thus cannot be simply accepted as having the force of legislation. It would be a most anomalous position for the draft Mining Charter to apply, either retrospectively or retroactively, to rights which were granted with reference to the Original Mining Charter or the 2010 Mining Charter. The effect of this would be that a guideline, in the form of a charter, has the effect amending national legislation (the MPRDA). Such an interpretation would certainly be unconstitutional, for the simple reason that laws cannot be amended by way of guidelines published through a consultative process with the mining industry. The only manner of changing legislation is by promulgation of new legislation through the prescribed parliamentary process.	I. The powers to amend the Charter is implied from the powers conferred on the Minister in terms of section 100 (2) (a) to develop the Charter. (II) See comment (I) above, the MPRDA Bill proposes amendments to section 100(2) (a) to clarify any ambiguities. (III) The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the <i>Agrisa Case</i>). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. The Charter derives from section 100 and cannot be said to be <i>ultra vires</i> the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act.
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IV.	The second consideration is that the draft Mining Charter does not state that it applies retrospectively. There is therefore no basis for the Minister to impose the requirements of the draft Mining Charter in relation to a right granted under the Original Mining Charter. The final and most fundamental issue is that once mining rights are granted, there is no basis for the Minister to re-consider the decision to grant the right. The Minister is <i>functus officio</i> and can only cancel the right in the limited circumstances prescribed in section 47 of the MPRDA. The definition of "BEE Compliant Entity" does not specify what is meant by "compliant" in the context of the Codes of Good Practice on Black Economic Empowerment, 2013 (the "Codes"). The definition of the term "black people" in the draft Mining Charter matches the definition of this term in the Codes. While this is a positive development, we submit there must some form of grand fathering of the analogous definition previously used such "Historically Disadvantaged South African" ("HDSA") and the term "Historically Disadvantaged Person", which continues to be used in the MPRDA itself.	(IV) Refer to point (III) above.
V.		(V) Refer to point (III) above.
VI.		(VI) The Department notes the suggestions on definition of terms and concepts and will consider same in the review process. The Charters principal object is to align with the BBEE Act and the Dti Codes. <i>BEE compliant means 100% Black owned or 50+1</i> (Dti to advise of BEE complaint Entity).
VII.		(VII) Dti to advise on the relationship between concept of net value and meaningful economic participation.
VIII.		VII The Department notes the concern on reference to "beneficiaries". It is the intention of the Charter that there must be share capital.

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		however, that this word should not be 'beneficiaries' as this would lead to an untenable situation in which all BEE beneficiaries would be eligible for shareholders' rights, despite the fact that they may not be members of a company with share capital. IX. The draft Mining Charter needs to be amended to include definitions of the following terms in order to promote regulatory certainty, and prevent these clauses being taken on judicial review as a result of the wide and unguided discretion given to the administrator as a result of such vague clauses: • "services" and "consumables" • "core and critical skills" • "material constraints" X. It is concerning that the holder of a mining right must establish a Special Purpose Vehicle ("SPV") for each mining right held by it. This will not only be a costly exercise, but will also increase the administrative burden on empowerment partners. It is unclear whether the aforementioned requirements are applicable to the holders of prospecting rights. XI. Clause 2.1 requires mining companies to "consolidate the empowerment transactions". No further explanation is given in clause 2.1 as to the reason or the meaning of this requirement. XII. Clause 2.1 also requires mining companies to "align BEE transaction(s) concluded prior to the coming into operation of the amended mining charter 2010 with the reviewed mining Charter 2016". This requirement will severely impact the current BEE shareholders and their funding arrangements. We submit that the abovementioned aspects of this clause be rephrased in clearer language so as to promote regulatory certainty.	IX. The Charter defines core and critical skills, The Department will consider the definitions of services and consumables. Material constraints are determinable on a case by case basis and thus difficult to define. (X) The Department notes the concern regarding a SPV per Mining Rights and will reconsider the proposal. The Charter applies to certain prospecting rights as per section 17 (4) of the MPRDA. XI Consolidation in terms of section 102 process. XII The Charter is clear that the existing right holders are to revise their empowerment credentials to align with the new requirements within the 3 years transitional period provided.
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		XIII. We note that the draft Mining Charter disregard the concept of "once empowered always empowered" by requiring mining companies to maintain a 26 per cent BEE shareholding at all times. This very question is the subject of court proceedings and it is inappropriate for the DMR to unilaterally dictate this matter. XIV. We also note that the "continuing consequence" principle has been done away with. The "continuing consequence" principle (as it is articulated in the Original Mining Charter and the 2010 Mining Charter) deals with the question of whether empowerment transactions which were previously implemented can be relied upon for the purposes of demonstrating that a further mining right should be granted to the applicant. XV. Clause 2.1 requires that the SPV must issue shares to an ESOP and the union must have representation on the Trust and SPV board. This is a key concern as not all mining operations have proper trade union representation. It is therefore unclear how smaller mining companies will comply with this ring fenced element. XVI. We note that ownership is intended to extend to "workers". There is a clear negative production impact in instances of mine or workplace stoppages either as a result of instructions in terms of section 54 of the Mine Health and Safety Act, 1996 ("MHSA"), employees exercising their rights in terms of section 23 of the MHSA or in the aftermath of workplace incidents and fatalities. These have historically been supported by, or at the very least had little push back from, employees and employee representatives. This dynamic will change in the event that employees will personally feel the effects of workplace stoppages and the regulator must be in a position to address these issues.	XIII The Court process is note, however the Minister is not precluded from exercising regulatory functions in terms of the Act. XIV The Charter proposes that right holders should be BEE compliant at all times irrespective of whether the BEE partner has existed, sold shares to non-BEE entity. XV The Department notes the concern and will relook at the SPV proposals including Trust representation. XVI. DMR disagrees health and safety of employees at mines remains paramount.
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		effect of this is that strict compliance with the draft Mining Charter in the absence of this assistance (which we propose should be provided by the applicable regulator or Government Agency) is that a scenario is created in terms of which the supplier is placed at risk of criminal sanction for failing to meet the obligations of section 21 of the MHSA and/or the supplier will not receive the necessary business from the surrounding operations on the basis that the health and safety criteria are not met, and thus small businesses will fail. XXI. The definition of a "mine community" is not sufficiently clear to enable mining companies to accurately determine who they are dealing when seeking that elusive "social licence to operate". It is also not clear who would become the voice of the relevant community given that there is a hardly consensus regarding leadership in certain communities. Assuming the community (and its representatives) are sufficiently identifiable and there is meaningful consultation and engagement with the relevant community, should that result in some form of written agreement between the mining company and the community? This aspect should be clarified. XXII. There are currently four policy documents that regulate housing and living conditions in the mining sector, being (i) the current Mining Charter, (ii) the Housing and Living Standards, 2009 ("H&LS") (iii) SLP Guidelines and (iv) Mining Codes. Whilst, in some respects, there are inconsistencies between these policy documents, there are also inconsistencies. The draft Mining Charter does not cure this inconsistency. XXIII. The draft Mining Charter also sets out eight elements with which a mining company is required to comply, including an element entitled "Housing and Living Conditions". A weighted scorecard accompanies the revised Mining Charter, but there is no weighting in regard to Housing and Living	XX Noted (MR Mokhonoana to assist, does the MHSA apply to suppliers?). XXI The definition of mine community is clear. The DMR, COGTA and the National house of traditional leaders to collaborate to iron out issues with mine communities. XXII The Department will revise all the mentioned policy documents to ensure that there is alignment. XXIII The Housing and living conditions element is a priority element which requires 100% compliance at all times hence the yes
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		Standard requirements, merely a "yes" or "no" requirement. Thus, the DMR may require strict compliance. Where measurable deliverables are not clearly set out determination on whether there has been compliance becomes purely a subjective exercise on the part of the Minister and goal posts may shift from time to time. That is not ideal in an industry severely plagued, in part, due to regulatory uncertainty. XXIV. It is questionable whether Employment Equity targets are realistic and achievable considering the current economic and market circumstances facing the industry as well as the lack of properly trained and experienced candidates from a HDSA background. XXV. The targets are also much higher than in any other industry. The targets in relation to black female representation are equally unrealistic particularly at the level of Engineers and technical personnel at senior level required in the Mining industry. It would need to be accompanied by appropriately timed program. XXVI. In respect of Human Resources Development ("HRD") mining companies are now required to pay 5 per cent of their annual payroll towards essential skills development. Such contribution is in addition to the existing mandatory skills levy (2 per cent of annual payroll paid in terms of the Skills Development Act, 2008). Although mining companies are obtaining rebates in relation to the mandatory skills levy it is not clear whether there will be any additional Government assistance to mining companies in respect of skills development. A more coordinated approach in the mining sector SETA regarding skills development training is required. XXVII. Under the 2010 Mining Charter, white women are included within the definition of "Historically Disadvantaged South Africans" and are therefore recognized as beneficiaries for the purposes of	and no requirement in terms of the score card. XXIV The Department of Labour to advise. The Charter has removed reference to HDSA and substituted same with Black people. XXV The Department of Labour to advise. XXVI The determination of rebates is a function of the Department of Finance (treasury). XXVII The Department of labour to advise.
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		broad based black economic empowerment initiatives. This is in alignment with the provisions of the Employment Equity Act, 55 of 1998 ("the EEA"). However, the draft Mining Charter excludes white women from the minimum participation thresholds. Application of the thresholds may, therefore, be in conflict with the EEA and also result in a constitutional challenge to the draft Mining Charter as it currently stands. XXVIII. Employers will be required to employ 2 per cent of black employees with disabilities as a percentage of all employees. This does not however appear to consider the various regulatory obligations set out in the MHSA and the Chief Inspector of Mines' mandatory code of practice for minimum standards of fitness to perform work at a mine. XXIX. In order to legally achieve these targets while not increasing any risks to health or safety of employees at mines, this will require an assessment and update to the guideline as to what positions may be held by persons with disabilities at mines, the various levels of disabilities that may be regarded as "fit to perform work" and the restrictions that should be placed on various employees who have disabilities but who may be regarded as fit for certain tasks. XXX. The most concerning proposal, however, from a health and safety compliance perspective is the apparent explicit requirements that persons with core and critical skills be "fast tracked". This is directly contradictory to the requirements of the MHSA relating to competency in general and the criteria of experience in particular. XXXI. Section 47 of the MPRDA grants the Minister the authority to cancel or suspend any reconnaissance permission, prospecting right, mining right, mining permit or retention permit. There is no mention of the draft Mining Charter in section 47. Thus, the ability of the Minister to enforce will need to be assessed.	XXVIII Mr Mokhoanana to assist. XXIX Mr Mokhoanana to advise. XXX Mr Mokhoanana to assist. XXXI Compliance with the requirements of the Charter is a material terms and conditions of a mining right. The term "this Act" is defined to include any regulation and terms and
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		conditions of a right granted in terms of the Act.
5. Black Business Council (BBC)	I. The Beneficiation in the current Mining Charter is very thin on details how this will unfold. It is the view of the Black Business Council that under Beneficiation the overarching goal should be clear on the ways in which the mining sector can promote sustainable development; through the following: Backward linkages: the local and/or regional purchases of different required inputs. The prospects for the production of capital goods, supplies and services needed for investments and operations (e.g., transportation services) will be enhanced through the mineral venture's demand for these inputs. Forward linkages: downstream activities, such as processing, refining and fabricating the crude ores and concentrates. Since the extracted ores often have to pass a number of transformation stages before final use, the forward linkages can be significant. Final-demand linkages: the income that employees at the mine and their households spend on goods and services in the local community or the adjacent region. For instance, an employment multiplier of 3 would imply that for every job created in the mining industry, there will be an additional two jobs created in other sectors in the region. Fiscal linkages: the tax and royalty revenues used by regional governments to develop infrastructure and/or to purchase goods and services. The benefits of infrastructure investments (e.g., roads, electricity grids etc.) will typically not only be appropriated by the mining company but will also spill over to other companies as well as to households. II. The revised new targets for black people, black women and black disabled employees should be set to be in line with EAP (Economically Active Population) targets, to avoid over representation; The talent pool, has to be identified and fast tracked to ensure high level operational exposure in	(I) Mr Menoe to assist. (II) DMR agrees.

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

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

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		IV. SACCI notes the provision that mining rights holders must verify local content for capital and consumer goods with the South African Bureau of Standards (SABS). SACCI questions why it should be the responsibility of the mining company to verify the content of capital and consumer goods with the SABS. It would be to the advantage of the supplier to obtain the certificate which can be provided to the mining company. Assuming more than one mine uses the same supplier, the SABS verification would have to be obtained by each mine, whereas if the supplier gets it, it would only need to be done once. This will save time, costs and red tape. V. SACCI queries what would happen if the facilities for the testing of mineral samples are not available in South Africa or verification from a second facility is deemed necessary, but there is not one in the country. SACCI seeks clarification on whether the Minister's written consent will be required each time this occurs, if consent would be given for a number of operations, or if it would be given once - to expire when facilities are established in South Africa. VI. SACCI believes that by making mining companies responsible for beneficiation it is encouraging vertical integration of the sector. SACCI recalls extensive debate that took place in the liquid fuels industry where participation of the oil companies in service stations was frowned on. SACCI proposes that the benefits and disadvantages of this provision be carefully studied before mining companies are r... It is noted that up to 11% of the 26% ownership requirement can be allocated to beneficiation. SACCI believes that instruments such as the Manufacturing Competitiveness Enhancement Fund, the Black Supplier Development Programme, Incubation Support Programme, Small Enterprise Finance Agency and National Empowerment Fund should also be tapped for support required to undertake beneficiation.	IV. The Department interfaces with the mining right holder. The proposal is to place an obligation to furnish proof of verification on the Mining right holder. (DMR to consider revising wording to capture the correct intention). V. Ministerial consent will be granted on a case by case basis if no local facilities exist. VI Mr Menoe to advise.
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		VII. SACCI recognizes the need for women to be empowered. However, the targets must be considered in the light of the number of women who voluntarily become interested and follow careers in the mining industry. Between 650-700 women, of which 230 -300, are black are currently studying mining engineering at universities in South Africa. Careers in the sector have only relatively recently been taken up by women. SACCI believes that given the relatively small number of woman with expertise required for the achievement of the targets, be it for senior or middle management, mining companies will face challenges in meeting them. VIII. Regarding the employment of persons with disabilities it must recognized that there are many occupations in the industry that place severe constraints on the employment of persons with disabilities due to a number of factors, not least the dangerous nature of the operations. This will place a restriction on the available positions that can be filled by persons with disabilities. IX. On HRD, While the need to improve the skills levels of not only employees in the mining sector, but in the country as a whole, is an imperative, the cost of skills development must be seen in the light of the current operating environment. Added to the 1% of total payroll paid in respect of the Skills Development Levy, the additional 5% called for in the draft Charter in respect of the Ministerial Skills Development Fund makes the total contribution to skills development 6% of total payroll. The 5% can be construed as an additional tax payable, albeit for a predetermined cause. SACCI believes that cognisance must be taken of the current global situation, the decline in the commodity markets and the fall in local production. This increase in "operating costs" as commendable as it may be, could have a serious negative impact on the continued sustainability of the operations of some mines.	VII Department of Labour to Advise. VIII Mr Mokhoanana to advise. IX The DMR notes the concern.

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		X. On Mine Community Development, It is an imperative to improve the environment and living conditions of South Africans, be it in mining communities or elsewhere in the country. An anomalous outcome of improved conditions, however, is that the area becomes a magnet for migration of people seeking improved standards and jobs. This often results in the growth of informal settlements where living conditions are unsatisfactory. This scenario becomes a vicious circle of improvements in the environment and living conditions, migration into the area, development of informal settlements, improvements in the environment and living conditions. Such a situation is unsustainable. There is therefore a great need for local government to be involved in seeking and implementing solutions to the dilemma. XI. Oh Housing and living Conditions, obviously housing subsidies are or will be part of the employment packages offered to employees. SACCI trusts that the beneficiaries will be treated by SARS in the same way as those in other organisations where similar benefits are considered taxable fringe benefits. XII. SACCI believes it will be onerous qualifying small enterprises that have a metal usage value of 1,5kg – 5kg per annum at a value of R1million to R3,8 million to comply with the procurement, employment equity and human resource development requirements if the company is not owned by black people. XIII. While the charter requires 100% compliance at all times and ring fences these elements, and while the mining company can provide the housing and good living environment, it cannot, and should not be required to, interfere with the private lives of employees in order to ensure that the facilities are kept in good condition.	X The department agrees with the suggestion and supports integrated and sustainable mine community development. XI the Department agrees. XII. The Regulator to advise on exemption of these qualifying small enterprises. XIII There Charter does not have a requirement to interfere with private lives of employees.
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			XIV it means progressively.
XIV.	SACCI notes that mining rights holders must align existing target cumulatively from the mining charter 2014 within three years to meet the revised target. SACCI queries what is meant by "cumulatively".		
XV.	SACCI calls for all extenuating circumstances to be taken into account when compliance is considered. The sanctions provisions in the MPRDA are substantial and if applied have the potential to bring a mining company to its knees. They could also have a damaging impact on South African mining sector, and therefore on South Africa, as a desirable investment destination. South Africa desperately needs investment, and everything possible should be done to encourage it.		XIV. Clause 2.9 states that the Department shall monitor and evaluate implementation of the Charter taking into account the impact of material constraints which may result in not achieving the targets.
XVI.	SACCI believes that the reviewing of the charter by the Minister of Mineral Resources as and when the need arises could lead to uncertainty in policy. One of the main deterrents to investment is policy uncertainty. Business needs to know what will take place and when. SACCI proposes that in order to improve predictability, a time frame should be defined such as every five years.		XVI The Department will consider prescribing the review timelines to create regulatory certainty.
XVII.	While the Charter shows a firm stance on an obligation of mining companies and their suppliers to cut down on debt incurred by employees and the issuing of garnishee orders, SACCI points out that neither mining companies nor their suppliers should be held responsible for debt incurred by employees.		XVII. The Charter does not create any obligations for mining right holder and suppliers to take up employee's debt.
XVIII.	SACCI is concerned that the draft charter was published without prior consultation with stakeholders. SACCI fears that there could be a backlash from mining communities given the strong stance and vociferous demands that they be included in decisions relating to mining operations that they made in the Berea Declaration – the Declaration by the Coalition on the		XVIII The Charter was gazetted to solicit public views and the Department is open to further meaningful and progressive engagements on the Charter.

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8. Anglo American Mining		MPRDA – 26 March 2015 Berea Johannesburg. The industry can ill-afford any repercussions from communities. I. in respect of mining rights contained in section 2(g) of the MPRDA, it is essential that the of the Reviewed Mining Charter apply retrospectively to Existing Mining Rights with the view to withdrawing the relevant provisions from the Reviewed Mining Charter; and unequivocally and explicitly confirming in the Reviewed Mining Charter that the ownership requirements set out in paragraph 2.1 of the Reviewed Mining Charter are not applicable to Existing Mining Rights. II. The principle of "transformation in a sustainable manner" is also eroded by the proposals in sub-paragraphs (a) - (i) of paragraph 2.1 of the Reviewed Mining Charter which prescribe a "one-size-fits-all" empowerment structure in respect of each mining right in order to achieve the ownership target. No regard is given for the circumstances relevant of a particular mining company or its empowerment partners, or the fact that this prescribed model may in some instances constrain the extent to which the transformation objectives of the mining industry can be achieved by that mining company. III. The requirement of a minimum target of 26% ownership by Black People per mining right in paragraph 2.1(a) has the effect of unfairly and irrationally excluding BEE mining companies that have any level of direct or indirect participation by persons other than Black People from participating in empowerment transactions ignoring indirect participation by Black People in mining companies; and ignoring the indirect participation of Black People via pension funds and collective investment schemes. IV. The requirement for a guaranteed dividend flow to the empowerment partners throughout the term of the investment in order for there to be "meaningful economic participation" of		i. The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. The Charter derives from section 100 and cannot be said to be ultra vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section. ii. The Department notes the submission and will reconsider the type(s) of vehicles to be used to effect transformation. However the minimum 5 % allocation each to communities, ESOPs and
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		Black People in a mining company is commercially unsound and ignores the provisions of the Companies Act, which prescribe the basis upon which a company may legally and validly make distributions to its shareholders. V. The requirement for a minimum 5% holding by certain categories of shareholders in sub paragraph (b) of paragraph 2.1 of the Reviewed Mining Charter is unlikely to be appropriate under all circumstances and once again ignores the commercial realities and differing circumstances of both mining companies and BEE parties. VI. The presumption that it is always optimal and correct that empowerment partners participate in a single structure; and empowerment partners with differing interests can nevertheless always speak with a single voice will in many instances unreasonably and unfairly restrict the meaningful participation of Black People in empowerment structures. VII. We note that the Reviewed Mining Charter no longer provides for the continued recognition of empowerment transactions concluded prior to the promulgation of the MPRDA in calculating offsets against the ownership target, which was permitted under the Original Mining Charter and is presently permitted in the Current Mining Charter. Albeit for a prescribed period, the recognition for the conclusion of previous transactions is provided for under the DTI Codes and we can see no justifiable basis for the deletion of this provision from the Reviewed Mining Charter. VIII. Furthermore, we note that the Reviewed Mining Charter does not provide for the recognition of disposals by mining companies which have resulted in the transfer of a mine or an interest in a mine to HDSAs or Black People. We can see no justifiable basis for such transactions not to be recognised for purposes of an offset against the ownership target. We respectfully request that	Entrepreneurs will be maintained to ensure broad based and meaningful transformation of the mining industry. III The objective of the Charter is to achieve direct, meaningful and effective participation by Black People in the mining industry. IV The Charter does not require a guaranteed dividend flow to the empowerment partners but requires that whenever a dividend is due part must service the debt and the other part should serve as cash flow to BEE partners. V The 5% minimum is to give effect to the notion of broad based and meaningful transformation of the Industry. VI. The differing positions of parties will be resolved through an agreed MOI between the SPV parties which includes a dispute resolution mechanism.
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		this be considered by the Minister with a view to including the appropriate provisions in the Reviewed Mining Charter together with a calculation methodology to facilitate the measurement of the offset. IX. As far as we are aware, the proposals made in paragraph 2.1 of the Reviewed Mining Charter are not supported by a Regulatory Impact Assessment which justifies and balances the need for additional and substantial cost to be incurred by mining companies in order to meet the ownership requirements, and the impact that such cost will have on the furtherance of the transformation objectives. Furthermore the proposals are not underpinned by an assessment of the long-term impact on the sustainability of mining companies or of the viability of such measures to ensure that the mining industry remains globally competitive. We believe that the category-based procurement targets in paragraph 2.2 of the Reviewed Mining Charter do not successfully drive transformation, local economic upliftment or job creation as they have been proposed in an unclear manner and seemingly without regard for their impact on the mining industry and the stakeholders who are intended to benefit from the setting thereof. X. The targets do not recognise the development by mining companies of small businesses into sustainable high-revenue businesses, but rather promote the unsustainable rotation of suppliers. This is contrary to the national economic development aims of local industrialisation and job creation, as well as the national transformation objectives. To illustrate this point, if a mining company has developed a small business in the past, once such a business reaches a certain threshold a mining company is inadvertently prevented from continuing to support such a business because it will need to redirect its spend to as smaller business with a lower threshold. This is counter-productive and is contrary to the objective of growing black industrialists.	VII. Transformation is not an event but a process. The continued consequences in respect of empowerment concluded prior to the promulgation of the MPRDA cannot be made to apply perpetually but must be appropriately timed taking into account the nature of the transactions concluded. VIII. See point VII above. IX. The Department has done a detailed SEIAS (a cost benefit analysis) with the support of DPME. X. Dti to advise on supplier development (Measurement and scorecard).
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		XI. We believe that the proposed targets for all categories, including the associated targets for small business and enterprise development, would be unachievable for the mining industry given, amongst other things, the limited scale of local suppliers, and are therefore irrational. If category-based targets are to be stipulated in the Reviewed Mining Charter, the targets must be reconsidered following a Regulatory Impact Assessment that takes into account the financial and economic impact thereof. XII. The targets for the development of "BEE compliant" enterprises and small business participation are ambiguous. For locally manufactured goods, it is not clear if 30% the above 60%" equates to 30% of all procurement or 30% of procurement from 30% of BEE compliant companies" (i.e. 18% of total procurement). XIII. The proposed definition of a "BEE compliant company" is also not clear. Under the DTI Codes generic scorecard, a company with a score of more than 10% (or more than 40 points equating to Level 8 or above) is deemed to be compliant with the DTI Codes. It is therefore not clear if a "BEE compliant company" is simply a company that has been verified as anywhere from a Level 1 to Level 8 Contributor in terms of the DTI Codes. If this is the intended definition, the result is a material departure from the requirements under the procurement and enterprise development element of the Current Mining Charter that are set in relation to "BEE entities", which have been defined as entities having a minimum of 25%+1 vote of share capital directly owned by HDSAs as measured using the flow through principle. We do not believe that this will have the desired effect of contributing towards the socio-economic development of the areas in which mining companies operate.	XI Noted, the Department will relook into the submission. XII Mr Menoe to advise. XIII. Noted, the Department will reconsider the submission.
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XIV.	It is not clear if the definition of "locally manufactured" in respect of capital goods is meant to apply to all areas of capital expenditure. For example, would capital project expenditure to build infrastructure be recognised?	XIV No.	
XV.	The targets and metrics in paragraph 2.2 of the Reviewed Mining Charter have not been fully translated under the scorecard for the Reviewed Mining Charter for measurement purposes. For example, the scorecard does not provide for reporting of spend towards small businesses or spend reserved for enterprise development. We are concerned that the proposed imposition of targets in respect of local content for capital and consumable goods and, to some extent, services may place South Africa at risk of being in violation of its international trade law obligations.	XV The Department will consider measuring all targets (small business, enterprise development etc). Transformation is Government's policy imperative and fall under the WTO exceptions. (Dti to further advise).	
XVI.	The proposed requirement that mining right holders utilise South African facilities for the analysis of 100% of each mineral sample (unless consent is secured from the Minister) is impractical. In many instances, global standards require samples to be tested independently in specific laboratories outside of South Africa, and it is standard practice for grading analyses to be conducted in respect of exported minerals prior to them being offloaded in a different country.	XVI The Charter provides for Ministerial Consent for exemption on a case by case basis.	
XVII.	In relation to the proposed target regarding multinational suppliers contributing 1% of annual turnover generated from local mining companies into a Social Development Trust Fund, we are concerned that the target will unreasonably penalise locally-based multinationals, and will deter them from investing in developing manufacturing capabilities in South Africa. Additionally, the target will inevitably be factored into supplier pricing, translating to an additional cost for mining companies and, therefore, further impacting profitability and sustainability of mining companies.	XVII The Department will create mechanisms to ensure that trust funds are implementable and managed within the prescripts of the law.	
XVIII.	The levies proposed for Social Development Trust Fund need to be considered, and the implementation thereof developed, in consultation with National Treasury to the extent that such	XVIII The Department will create mechanisms to ensure that trust funds are implementable and managed within the prescripts of the law.	

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		a consultation has not already taken place. Until such time as the requisite processes have been concluded and the necessary legislation passed, multinational suppliers cannot be obliged to make contributions to the proposed Social Development Trust Fund. XIX. As with the Original Mining Charter and the Current Mining Charter, the Reviewed Mining Charter does not provide guidance on how Beneficiation should be quantified, and as such how this might be translated into a percentage offset. XX. Similar to health and safety (which is regulated by the Mine Health and Safety Act) and environmental management (which is regulated by, amongst others, NEMA) employment equity is regulated by the Employment Equity Act. Furthermore, similar to the Mine Health and Safety Act and NEMA, non-compliance under the Employment Equity Act is subject to the levying of a severe penalty by the Department of Labour. We therefore have difficulty in understanding the need to duplicate this compliance function in the Reviewed Mining Charter and believe this to be unnecessary and irrational. XXI. The proposed 1% of annual turnover target to be contributed towards local community development and labour sending areas would be unachievable for the mining industry and would further weaken the sustainability of mining operations, placing current employment levels and transformation initiatives at risk. XXII. As the performance of mining companies against the commitments made in relation to community development is already monitored in SLPs, we believe that the DMR is creating an unnecessary duplication of functions in seeking to impose obligations in relation to mine community development that must also be complied with in the Reviewed Mining Charter. It would be more appropriate for the Reviewed Mining Charter to provide a framework for how	XIX Mr Menoe to advise. XIX. Employment Equity is not a preserve of the Department of Labour, the DMR as part of government collective has a contributory role to play in addressing the historical imbalances in the mining industry. XXI The 1 % will be maintained as it is a uniform percentage applying to all operations irrespective of the size and nature of the operation. XXII The Department will reconsider the relationship between the SLP and the Charter as different legislative requirements to ensure alignment and removal of ambiguities.
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		mine community development can be achieved in accordance with the provisions of the SLP attached to the mining right. XXIII. It is unclear whether "local community" is intended to refer to "mine community" as defined in the Reviewed Mining Charter. However, assuming that it does, this definition is not sufficiently clear to enable a mining company to determine what its obligations are under this proposal. For example, would a "local community" be the community that falls within the local municipality in which a mining company operates, or is it only that portion of a community that falls within a certain radius of the mining company's operations? We propose that this not be defined for all mining rights in the Reviewed Mining Charter, but that it be determined per mining right and included in the associated SLP. XXIV. The term "labour sending areas" read together with the requirements under paragraph 2.6 of the Reviewed Mining Charter, require mining companies to contribute to developing areas within the entire Southern Africa, and not just within the borders of South Africa. This requirement would exceed what is envisaged under sections 100(2)(a) and (b) of the MPRDA and we assume that this is not the intention of Government. XXV. It is unclear whether the provisions of paragraph 2.7 of the Reviewed Mining Charter are intended to replace those under the Housing Standards. It is further unclear which of these documents is to take precedence in the event of a conflict between the provisions if the provisions of the Housing Standards are intended to continue to apply. XXVI. For the avoidance of doubt, our representations in respect of the proposed retrospective application of the ownership requirements under the Ownership element apply equally to any proposal to retrospectively impose the ownership requirements on existing licences or permits	XXIII Noted, the Department will reconsider aligning the definitions. XXIV Noted, the Department to provide a response later. XXV The Department will reconcile the documents to ensure alignment. XXVI The submission on thresholds is noted and The Department acknowledges the presumption against retrospective application
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mk		issued in terms of the Precious Metals Act or Diamonds Act (whichever is applicable). The thresholds applicable to the diamond industry need to be clarified as this is not immediately clear from the table on page 10 of the Reviewed Mining Charter XXVII. We would like to highlight certain commercial considerations relating to industries regulated by the Precious Metals Act below which make the imposition of targets of the Reviewed Mining Charter impractical and, in many instances, commercially unachievable: - the majority of the processing undertaken for third parties within the refineries in Anglo Platinum are undertaken for BEE producers without their own facilities thereby eliminating a commercial barrier; - the configuration of a refinery is primarily specific to the producer who commissioned it and is not all ways suitable for third parties given the specialised nature of processing operations. It is therefore not always a commercially viable investment for a BEE partner - in many instances, as is the case for Anglo American Platinum, there is no external market for the processed product produced in the volumes produced by Anglo American Platinum. The vast majority is processed for the Anglo American Group and its joint venture partners; - refineries and processing plants are capital intensive and have a low level of return, therefore empowerment ownership is not always optimal because of high capital required and low returns made on such investments; and - increasing energy costs make BEE investments into processing assets on a stand-alone basis unattractive.	of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. XXVI Noted, the submission to be discussed with the SADPMR.
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		XXVIII. Section 100 of the MPRDA does not authorise the Minister to extend the scope of sections 47, 93, 98 or 99 of the MPRDA as the Reviewed Mining Charter seeks to do. Furthermore, the provisions of the MPRDA do not empower the Minister to revisit his decision to grant a mining right with a view to suspending, revoking, cancelling or terminating it on the basis of non-compliance with the provisions of the Reviewed Mining Charter. XXIX. We note that the Reviewed Mining Charter contains very little guidance in paragraph 2.9 as to the methodologies to be applied by mining companies when determining their performance against the targets in the Reviewed Mining Charter for the purpose of reporting on this to the DMR. We would welcome a discussion with the DMR to develop such methodologies once the concerns we have raised in our Submission have been considered.	XXVII Compliance with the requirements of the Charter is a material terms and conditions of a mining right. The term "this Act "is defined to include any regulation and terms and conditions of a right granted in terms of the Act. The powers to amend the Charter is implied from the powers conferred on the Minister in terms of section 100 (2) (a) to develop the Charter. XXIX The submission is noted, the Department will consider development of a guideline.
9. Bulelani Mkonto	I. I just want to state it clear that the black community would like far more than 26%. Black people are approximately 89% of the population, Coloureds, Indians and Whites sharing the remaining 11%. That means that should be the percentage you should make amendments in proportion to. 26% is an insult to our democracy- because democracy means the majority shall rule, however your Department of Mineral Resources, is counter-revolutionary. II. Your department should learn alot from the SABC.....we want 90% across the board. That mean in terms of ownership, skills development, enterprise development, black representation at executive level and black representation on all boards (directorship), organisations, charters and councils. III. I wish our concerns will be considered by you! We demand 90% and not 26%. Thank you for being conscious driven.	I. The suggested 26% is a minimum, there is nothing that precludes a mining company from going beyond this minimum target. The Department is open to alternative proposals to help drive meaningful, broad based Black Economic transformation. II. See point I above. III. See point I above.	

10. AFRISAM	I. AfriSam recommends that the Ownership element be reserved until judgment has been reached on the Declaratory Order (on the "once empowered, always empowered" issue). It seems likely that companies will lock-in BEE partners for the life of mine to safeguard the 26% and (which in AfriSam's view goes against equity and empowerment). In AfriSam's view, new acquisitions should retain the 26% ownership requirement. AfriSam requires clarity on what the implications will be if the BEE partner in question exits prior to the end of a particular assessment period, and cannot be replaced prior to the end of that assessment period. II. The creation of trusts provisions, in AfriSam's view, create an additional administrative burden on the mining right holder in respect of the registration and administration of the trusts to be created and may also lead to additional costs. Who will be responsible for the administration of the Trusts (that is, the SPV or the mining right holder)? III. In AfriSam's view, the empowerment transaction should only be at Group level. In AfriSam's view, Ownership ought to be consolidated at Group level, as opposed to "per mining right". This will avoid the unbundling and the resultant different ownership structures. IV. AfriSam requires clarity on "consolidation." Does this mean the consolidation of all transactions at Group level? V. AfriSam requires clarity on the status of the Public Investment Corporation SOC Limited (representing the interest of the Government Employees Fund) as a major shareholder having regard to its status as a BEE Facilitator in terms of the B-BBEE Act. VI. BEE transactions are in our view rather complex (especially where third party financing is required) and finalising such transactions within 3 (three) years seems in our view not be practical.	I. The Department acknowledges the court case but the Minister is not precluded from exercising regulatory powers as conferred by the legislature. The BEE transactions should be structured in such a manner that exit and entry of BEE partners occurs simultaneously. II. The trusts will be created and registered by the Trustees of the respective empowered BEE partners. The concern regarding the costs and administrative burden will be carried by the trust. III. The concern is noted and the Department must formulate a position (Mr Mabuza). IV Yes. V The Dti to advise. VI the Department disagrees, the 3 years transitional period is sufficient.
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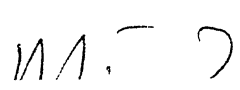
		VII. On capital goods, the requirement for 30% reservation for SME's and a further 10% for ED is onerous on AfriSam, due to the type of capital goods purchased by AfriSam. Most are engineering equipment manufactured to specifications or imported. VIII. On consumables, The requirement for 30% reservation for SME's and a further 10% for ED will be very onerous upon AfriSam. IX. What form of local content verification would be acceptable and how is this proof to be submitted, and will a supplier's statement of SABS compliance of its products be adequate? X. AfriSam does not support the Multinational supplier contribution of 1% turnover and instead propose 1% Net Profit after Tax (NPAT) as per the previous Charter. XI. AfriSam will require clarity on the tracking Social development Trust Fund. That is, will the DMR track this requirement, or will the onus be on AfriSam to advise the DMR? AfriSam notes further that the Trust Fund has not been set up by the DMR to date. Further, if no trust fund is set up, can companies create a fund and utilise the money for SED? XII. It would be preferable for DMR to develop guidelines on how the off-setting of 11% of the shares towards beneficiation will be calculated and measured. For example, will the DMR requirements/calculation for beneficiation be the same or different than the royalty tax calculation? It would also, in our view, be preferable for beneficiation to be calculated at a Group level (and not at the level of each mining right holder XIII. On Employment Equity, in relation to AfriSam's current Board position, 50% are black people and 33% are black females. However, an increase of 25% in target does not, in AfriSam's view, seem realistic from an industry perspective, and it may be challenging for AfriSam to sustain this target percentage.	VII The Department to consider introducing a provision for exemptions with the Ministers consent to import the requisite equipment. VIII Refer to point VII above. IX The statement will not be sufficient, the Department requires a certificate of the extent of local content from the right holder as provided by the supplier. X Treasury has advised that turnover is the suitable option. XI The Department maintains the 1 % turn over and will develop the necessary tools (create the trust) to implement same. XII Mr Menoe to advise. XIII The said compliance levels are commendable, the increase of 25 percent can be progressively realised within the 3 years transitional period.
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		XIV. In relation to AfriSam's current Exco and SML position, 38% are black employees and 20% are black females. An increase of 50% in target does not, in AfriSam's view, seem realistic. In AfriSam's circumstances, the targets will be a challenge to meet, especially in this employment category due to low staff turn-over at both Exco and SML Levels. The slightest turnover of black employees in this level will have a huge negative impact (for example, YTD AfriSam has had a 3% turnover in black employees in the SML and this has resulted in a major drop with regards to representation). The targets are especially challenging due to the industry in which AfriSam operates being in decline (which makes it especially difficult to attract and retain black female employees). The inclusion of provincial EAP targets will be another challenge to AfriSam, as we operate in different provinces, and the use of national EAP targets may make it even more difficult for AfriSam to achieve these targets. In particular, attracting engineers to the industry in which AfriSam operates is challenging due to the competition for these scarce resources. XV. In relation to AfriSam's current Middle Management position, 45% are black employees and 36% are black females. An increase of 88% in target does not, in AfriSam's view, seem realistic. XVI. In relation to AfriSam's current Junior Management position, 58% are black employees and 16% are black females. A 120% increase in target, in AfriSam's view, does not seem realistic. XVII. On Human Resources Development, the minimum target for Skills Development as contained in the revised BBBEE Codes is 6%. In our view, 6% therefore should be the target. In addition, the stated 5% in the Mining Charter, 2016 is in line with the previous Mining Charter targets. In AfriSam's view, alignment between the BBBEE Codes and the Mining Charter is important in order to ensure that companies can record their full investment into Skills Development. AfriSam is of the view that 5% of annual payroll on core and critical skills, bursaries and learnerships. AfriSam	XIV refer to point XIII above. XV refer to point XIV above. XVI refer to point XIV above. XVII To confirm with Dti whether their 6% includes or excludes the mandatory 1% Skills levy. The concern about the 15% percent of the 5 percent is noted.
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11. Association of Black Securities and Investment Professionals (ABSIP)	General, Ownership, Reporting	does not, however, support the 15% stipulated as it is an addition to the 1% skills levy that is already paid to the National Skills Fund. In effect, only 0.25% annual payroll will go towards upskilling of employees. XVIII. On Mine Community development, AfriSam will require clarity on whether this requirement is per mining operation. AfriSam is of the view that this requirement ought to be assessed on a corporate level and be allocated (perhaps based on revenue), to each mining operation. XIX. On Housing and Living Conditions, the affordability aspect in relation to AfriSam subsidising its employees' purchase of houses is a concern. In addition, AfriSam is not in support of the suggestion in relation to guarantors.	XVIII The suggestion is noted, the Department to formulate a position. XIX The Department disagrees.
		i. To place more emphasis on BBBEE (rather than BEE alone) we believe that additional incentives or credits should be given to broad based employee, broad based community schemes and the percentage of Black peoples' proportionate share held via retirement funds. Mining companies should be encouraged to look through retirement funds ultimate beneficiaries for BBBEE ownership. Black People and Black Women are slowly holding a greater proportion of retirement funds assets. This will in the longer term contribute to a significant reduction in the inequality gap in South Africa. ii. ESOP's and Community Trusts must be represented by fiercely independent fiduciaries that will look after the interests of a broad base Black People who are the intended beneficiaries. iii. The mining charter should also place explicit obligations on mining companies and its suppliers on reducing the amount of emolument attachment orders ("garnishee orders") of its employees and contract workers that may have been obtained by less than acceptable ethical practices.	i. The Department does not regard Black people's participation in the retirement funds as meaningful transformation within the Charter context. (ii) The Department agrees. (iii) The Department would support interventions by mining companies and their supplier to assist their debt trapped



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

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		are just minimums and a mining operation is not precluded from going beyond the stated minimum percentages. III. Communities are welcome to approach the Department for assistance with the challenges regarding mining operations. IV. The Department will consider reconciling the Charter and SLP to remove any ambiguities. The 1% is intended to create certainty and the Department supports actual expenditure. V. The Department will consider reconciling the Charter and SLP to remove any ambiguities. VI. Refer to point V above. VII Compensation is regulated in terms of section 54 of the MPRDA read with NEMA and MHSA. The Department will consider
	III. There are community calls for effective and independent grievance mechanisms for rights violations and failure to meet social obligations by mining companies and an independent capacity development fund to assist communities in accessing the economic planning, ecological and legal (etc) knowledge enabling communities to make informed decisions and participate in decision-making on an equal footing with companies. IV. The draft Reviewed Mining Charter, under the 'mine community development' section provides that mining companies contribute 'a minimum of 1% of their annual turnover to towards local community development and labour sending areas. Reading the draft Charter does not yield certainty as to whether this 1% is to constitute SLP expenditure or is required over and above SLP expenditure. If the former interpretation is correct, the use of actual (as opposed to projected) turnover is problematic as lower than projected turnover could result in SLP expenditure being revised downwards. V. There is no reference at all to SLPs in the draft reviewed mining charter. We therefore call for the clarification, in legislation and policy, of the respective roles of the Charter and SLP systems and for their alignment. VI. In CALS' preliminary research on the implementation of the SLP system, a persistent theme echoed across a variety of role players in community organisations, local government and in the mining sector is of a lack of effective communication and co-ordination. The draft Reviewed Mining Charter does not indicate the mechanisms for co-ordination or provide guidance on how this should be achieved. In this regard, the development of a new Charter represents a missed opportunity. VII. The Charter does not recognise the need to compensate for environmental losses as a result of mining. The lack of attention to environmental justice is also reinforced by the removal of sustainable development from the objectives of the Charter.	

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		VIII. We welcome what appears to be a new requirement that the procurement targets for capital goods and consumables must be manufactured in South Africa. This is critical as if the ultimately goes offshore to purchase goods, for example from developed countries, the desired impact of stimulating domestic industrial development and job creation is largely negated. However, the effect of this is blunted by the ambiguity of the wording used which, in both cases of capital goods and consumables refers to 'a minimum of...of locally manufactured consumables from BEE compliant manufacturing companies,' if read literally, this would mean, rather than requiring a specific percentage of goods that are both procured from BEE compliant companies and are locally manufactured, that instead only those goods that are manufactured locally need to be from BEE compliant companies. To achieve what seems to be the purpose of the provision, this ambiguity should be removed IX. There should be a requirement that companies, where possible, procure a proportion of goods and services from local BEE compliant companies based within the area surrounding the mine or the municipality and for companies to report on this. X. Our concerns regarding the Social Development Trust Fund (SDTF) are that provisions do not indicate how spending will be directed to communities. Furthermore communities are excluded from list of stakeholders who must be trustees. We suggest that multinationals should be required to contribute to the SLPs of the mines they supply, 'through a transparent, ring-fenced allocation of funds.' XI. It is important that the charter regulates the composition of the board of trustees for the community trusts. However, by only requiring traditional leadership to serve as community representatives on the board, the effect is to entrench the power of traditional leaders and undermine the self-determination of members of traditional communities. There is a pattern of community members alleging that traditional authorities are usurping the community share for their own benefit. It is	reinstating the sustainable development element. VIII. The concern is noted, the Department will reconsider the wording used. IX The Department disagrees. X The Department will consider broadening the scope of representation in the Trusts to include communities. Management of trust moneys will be governed by the trust instrument. XI Refer to point X above.
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		therefore critical that democratically elected community organisations should also be accorded a right to be represented on the board. It is critical that communities are able to choose their representatives. XII. The draft Reviewed Mining Charter represents an improvement in that there are gender specific targets (for black women) representation at various levels of the company. It is not clear whether the targets refer to the percentages of the share of the positions to be held by black people or a percentage of all positions. If the former is the case, these targets are very low. For example, the draft Reviewed Mining Charter provides for a minimum of 50% Black executive directors, '25% of which must be black female.' The literal meaning of this would be that 25% of 50% of executive directors are to be black women, i.e. 12.5%. This would be a very low target. The other interpretation would be 25% of directors would be black women. XIII. The Amended Charter still fails to respond to the manner in which the externalised costs of mining fall predominantly on women. These costs include the loss of economic autonomy, where many women in rural areas lose access to arable land. Where agriculture is replaced by mining, relatively few women, in practice, are employed on the new mines with the result that the economic marginalisation of women is exacerbated. XIV. Further the Charter does not address barriers to the advancement of women in the workplace. It does not provide for measures to address harassment and gender-based violence on mines. It does not set a deadline for all mines to have equipment for women, separate bathrooms and sanitation needs for women. It does not require a timeframe for on-site childcare facilities for parents working on the mine.	XII The submission is noted, the Department will rework the wording and percentages used. XIII. The MPRDA provides for compensation in terms of section 54. XIV This is addressed in the Mine Health and Safety Act, 1996.
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13. GOLD ONE GROUP LIMITED	General	The Draft Mining Charter 2016:- I. is a nullity in law, II. Retrospective in its application, therefore a violation of the rule of law and the principle of legality, thus violating section of the Constitution. III. An arbitrary deprivation of property, thus violating section 25(1) of the Constitution. IV. Prescriptive regulatory instruments unjustifiably interfering with commercial agreements. V. Impacts negatively on foreign direct investments thereby negating some of the objects of the MPRDA.	(i) The Department does not agree, the Charter derives from section 100(2) of the MPRDA and gives effect to its objects in section 1 and the requirements of section 23. (ii) The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. The Charter derives from section 100 and cannot be said to be ultra vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act. (iii) See point ii above. (iv) See point ii above. (v) See point ii above.
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14. South Africa China Economy and Trade Association (SACETA).	General, Transitional period, Procurement, Ownership,	i. The Charter gives the Minister to broad a discretion to amend it as and when the need arises, it would be preferable if the requirements of the charter were to be incorporated in the principal Act and thus only amendable through the normal legislative process. ii. The three year transitional period is inadequate. iii. We are happy to comply with the procurement provisions provided that there are sufficient local companies to procure from, in the absence of such companies we recommend that exemption be granted to companies to source good offshore. iv. Instead of the requirement of 1% on Multinational Companies we suggest that mining companies be offered tax incentives to procure locally. v. The 1% levy on turnover is unaffordable in the current investment climate. vi. The charter must impose an obligation on BEE entities to only exit empowerment transactions by selling to other BEE entities. vii. The requirement of an empowerment transaction per mining right is impractical, in that a company with 10 mining rights would have to enter into 10 empowerment transactions. viii. It gives rise to difficulties to force BEE parties (communities, workers and entrepreneurs) into one SPV. ix. The Draft Charter is retrospective and thus unconstitutional for violating the rule of law.	i. The Department does not agree, the Charter derives from section 100(2) of the MPRDA and gives effect to its objects in section 1 and the requirements of section 23. The Department will consider prescribing the review timelines to create regulatory certainty. ii. The Department disagrees, the 3 year period is sufficient to allow for progressive/cumulative transition into the new dispensation. iii. The Department will consider providing room for exemptions with prior written consent of the Minister. iv. The determination of tax incentives is competency of National Treasury. The Department will keep the 1% from Multinationals and create the
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			requisite mechanisms for implementation. V. The Department notes the submission. Clause 2.9 of the Charter addresses this challenge. VI. The Department notes the submission and will address it in the review exercise. VII. The Department notes the submission and will address it in the review proposals. VIII. See note VII above. IX. The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. The Charter derives from section 100 and cannot be said to be ultra
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15. Institute of Race Relations (IRR)	General, Ownership, Procurement, Employment Equity, Human Resource Development, Mine Community Development, Housing and Living Standards, Scorecard	I. The use of the concept "Black People" also contrary to Section 9 of the Bill of Rights, which bars any form of racial discrimination by either the state or private persons. II. When BEE investors 'exit' an ownership deal, a mining company must do whatever additional deals might be needed to keep BEE ownership at 26% overall (and at 5% for each of the three categories of BEE beneficiaries identified in the draft charter). These obligations will require mining companies to keep diverting scarce capital into ever more ownership deals, which in turn will inhibit the sustainability and development of many mines. III. Requirements to set up and establish trusts for employee and community stakes in particular ways will add to compliance costs, both direct and indirect. Having to establish an SPV for each BEE transaction will also be complex and costly, and will have major tax implications which seem not to have been considered. Already, the financing of a BEE deal costs some 30% of the total amount, and the additional complexity required under the draft charter is likely to add significantly to these costs. IV. Particularly damaging is the demand that all mining rights holders should re-do all the BEE ownership deals they have already concluded so as to bring them into line with the new requirements. Retrospective rule-making of this kind is contrary to the rule of law. Yet the Constitution stresses the 'supremacy' of the rule of law and makes it clear that it cannot simply be ignored.	vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act. I. Section 9 (2) allows for positive discrimination meant to redress the past imbalanced. The objects of the Charter are to give effect to this provisions. II. The Department disagreees, the intention is for mining companies to have 26% BEE transaction in place for the life of the mine. If a BEE partner exists it must be replaced with another BEE partner or if it sells it must sell to another BEE partner or to the Empowering Company. III. The Department will reconsider the proposed SPV model taking into account alternative models. Trusts will also be reconsidered in
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		By contrast, executive, senior, and middle managers must have appropriate experience and skills. In 2015, only 40% of blacks fell within the 35-64 age cohort that might be considered eligible for such management posts. In addition, though degrees or diplomas are often necessary or advisable for such jobs, only 5% of the black population then held any kind of tertiary qualification. This means that the pool of black people from which such managers can realistically be drawn is far smaller than the draft charter assumes. IX. On Core and Critical Skills, the draft charter adds that mining rights holders 'must ensure that a minimum of 40% black people are represented in the mining company's core and critical skills by diversifying their existing pools. To this end, it says, the rights holder must 'identify and fast track their existing pools', while 'the abovementioned fast tracking of pools must be a proportional representation of the workforce'. These requirements, particularly the last one, are so badly phrased as to be virtually unintelligible. X. On Human resource development, the draft charter requires the mining industry to 'invest 5% of annual payroll' in essential skills development activities, 'such as artisanal, bursaries, literacy and numeracy' (sic). It indicates that this allocation must be 'reflective of the proportional representation' (sic). Again, this provision is poorly drafted and difficult to understand. Mining companies should have the choice of spending the full amount of the levy on in-house training, or support for academic institutions, both of which are likely to be more effective in meeting their training needs. XI. The target of 1% on turnover for mine community development should be based on net profit after tax, rather than on annual turnover.	development by the mining right holder. VII. The Department disagrees the 1% requirement from Multinational suppliers to be retained and implementation tools provided. VIII. The Department of Labour to assist with verification of the figures. IX. The wording of the Draft Charter will be refined to provide clarity. X The Department disagrees the requirements of tis element are clear and will be maintained. XI Treasury has advised that turnover is the appropriate text to use in this instance.
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		XII. The draft charter fails to recognise the difficulties that mining companies may have, in practice, in helping to provide employee housing where the necessary land or infrastructure has not been made available by municipalities or other organs of state. XIII. It is unreasonable to expect companies to maintain 100% compliance with costly housing and skills development obligations during periods of limited or no profitability. XIV. Given the magnitude of the increases in many of the targets, a three-year transitional period is far too short. XV. The scorecard provided in the draft charter is also intrinsically vague. Though each target is supposedly now to be weighted, and each mining right holder will earn a score between 0 and 100, the scorecard does not set out the points attainable on each element. Thus, though it identifies 26% as the 'minimum target for HDSA (sic) ownership', it does not say how many points mining companies will score for meeting this target. Likewise, it sets out the targets for procurement on capital goods, consumables and services, but it does not say how many points will be available for full (or partial?) compliance with this element. This makes it impossible to determine how points will be allocated, which in turn makes it impossible for scores to be computed.	XII The Department supports integrated development (co-operation with local government and municipalities) and its doors remain open at all times to address challenges experienced by mining operations in delivering on their transformation commitments. XIII Clause 2.9 states that the Department shall monitor and evaluate implementation of the Charter taking into account the impact of material constraints which may result in not achieving the targets. XIV The Department disagrees the proposed 3 years transitional period is sufficient for progressive realisation of the charter targets. XV The Draft scorecard will be revised to address the identified loopholes. (Mr Menoe to assist).
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16. Thabacheu Mining	General, Ownership, Employment Equity, Beneficiation, Human Resource Development, Mine Community Development, Housing and Living Conditions.	I. Companies which have sold shares to BEE partners, mostly at a discount, which have been traded afterwards cannot be held non-compliant if they do not sell further shares to other BEE partners. II. It seems that the charter does not cater for small mining operations. III. Some small scale mining operations have no workers but rather contractors. IV. The elements should be linked to the company owning the mining rights/s rather than linking them to an operation. V. The revised employment equity targets will be difficult to meet as the skills pool is limited. VI. Unions should not necessarily represent workers in the SPV, as there could be better qualified workers to undertake this task. VII. The methodology of the offsets of beneficiation are not clear. VIII. The requirement of an empowerment transaction per mining right is burdensome. In our company there are 4 mining rights, therefore we must set up 8 trusts (4 for the workers and another 4 for the community), did the Minister check that the CIPC can handle the administration. IX. The rules on procurement are complicated, cumbersome and impractical. It is impossible to keep track of where what was purchased, it places a huge administrative burden on companies. X. SABS is not geared to certify local content.	I. The Department notes the submission and will consider it in the review process. ii. The Charter does not have a differentiated approach to operations by virtue of their size. It applies to all mining right holders without exception. iii. The Charter does not apply to small scale miners (Holders of mining permits in terms of section 27 of the MPRDA). Section 1 of the MPRDA defines employee to include contractors. Section 101 of the Act obliges the right holder to be responsible for contractors. iv. The Department disagrees, a decision to be made on whether the Charter must apply at right level or at company/holding level. v. The Department of labour to advise.
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		vi. Union representation is a more structured and formal forum for worker representation. vii. Mr Menoe to advise. viii. The Department disagrees, a decision to be made on whether the Charter must apply at right level or at company/holding level. IX The Department notes the submission and will take it into account in the review process. X The Department disagrees. XI The Ministerial approval is not required for mineral sampling locally. XII The Department disagrees. XIII The Charter makes provision for Employment Active Population (EAP) and not demographics. XIV The Department notes the submission. This is not a new target. XV 1 % represents the Companies social license to operate and should be delinked from the ownership element.	
		XI. If mineral sampling are to be done by South African companies the ministerial approval process must be simplified. XII. The requirement of 50% black representation at board level is unacceptable. XIII. The demographics of where the mine is situated must be used. XIV. The 5% on turnover to be used for human resources development is simply unaffordable. XV. The 1% on turnover for community development is also unaffordable and a duplication since the community will have shares in the operation. XVI. The prescriptions on housing and living conditions are vague and unclear. XVII. The three year transitional period is too short. XVIII. The concept of ring fenced elements is disturbing since 100% compliance at all times is impossible.	

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

		III. The mining charter is clearly for mines and mining, all the wording ("Mining rights holders") is set around these core operations, however mineral beneficiation is roped into it. We trying to understand why this is, is it maybe because we are working with minerals that are mined? But with that reasoning, the metal industry, motor cars etc should also fall under the mining charter as the metal used to make cars and engines come from mining, also the building industry should fall under the mining charter as the bricks and cement are a result of mining. IV. In our opinion, the diamond and jewellery industry should not be part of the mining charter, sure transformation must be a factor, but why can't the SADPMR not rather request a BBBEE score as a minimum requirement, example level 4 or 5 compliant? With the BBBEE score card, there is room to score points on different categories to assist the companies that score low on other categories? Also, when we are dealing with other companies and government departments, they request anyway our BBBEE certificate and don't recognise the mining charter score card. Just the other day the DTI requested our BBBEE certificate and we told them that we fall under the mining charter and we have a mining charter scorecard, they didn't accept it, we had to swear an affidavit of our BBBEE status. V. The mining charter talks to mining community development, housing and living conditions and it even gives mines points for beneficiating their products locally, how can this be for us (diamond and jewellery shops and factories)? Furthermore our concern is that? It's clearly meant for mines only as how do we get those points on the scorecard, we can't beneficiate our product, it has already been beneficiated from a mine in South Africa? Most diamond and jewellery factories and shops are small businesses, but their turnover exceed the R3.8M as its costly to buy the raw product, and once sold	III The Charter does not apply to beneficiators but to mines who chose to beneficiate. The Department to further consult with the SADPMR regarding PART B of the draft Charter. IV The Department to further consult with the SADPMR regarding PART B of the draft Charter. V The Department to further consult with the SADPMR regarding PART B of the draft Charter.
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19. SAMBCO	Ownership	the profit margins are low but they all add up when it comes to turnover, for example my turnover can be R4M but only approximately 20% of that was actual profit. VI. Our concern is that the SADPMR will enforce as the DMR requires as they are an agency of the DMR. Diamond and jewellery companies must apply and renew diamond licences and Jewellery permits with the SADPMR and that is where the mining charter requirements are being checked for compliance, if we not compliant, no licence or permit and hence no more business. This is very important to our existence, the industry has already shrunk to record lows because of the availability of economically viable rough diamonds to purchase and cut in South Africa. The remaining companies really cannot survive another blow.	VI The Department to further consult with the SADPMR regarding PART B of the draft Charter.
		I. According to the Definition of the BBBEE Act's first two Objectives: ➤ The number of Historical disadvantaged people must be increased in Management, Ownership, Control of Enterprises or Co-Operatives and Productive assets. ➤ B. Facilitating Ownerships and Management of enterprises and Productive Assets by Communities, Workers, Co-Operatives and other collective enterprises. At SAMBCO we believe that the Two Primary objectives of the BBBEE Act can be easily achieved in the Mining Charter through Mining and Beneficiation Co-Operatives. Co-Operatives have proven to be inclusive in Nature and can benefit a larger portion of the Nation/population taking into account the poorest of the poor. At SAMBCO we believe that "Meaningful Economic Participation" can only be achieved through BEE Transactions with Co-Operatives in the form of Community Co-Operative, ESOP's Co-Operatives and Workers Co-Operative, such Co-Operatives will be able to diversify into Services Co-Operatives, Consumables Co-Operatives and Capital Goods Co-Operatives, Housing Co-Operatives and Health Co-Operatives.	I. The Department will consider alternative models to give effect to broad based and meaningful transformation of the mining industry.

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		According to the Mining Charter's first two Objectives: ➤ Promote equitable access to the Nation's Minerals resources to all the people of South Africa. ➤ Substantially and meaningfully expand opportunities for black people to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources. At SAMBCO we have seen Mining Co-Operatives benefiting their communities in BRICS member countries like Brazil, China and India. Black people opportunities are more increased in the form of Co-Operatives through Tax Incentive, Grants and Soft Loans. SAMBCO is also partnered to a number of International and Local Educators in Mining and Beneficiation, to insure on the success of our Co-Operatives At SAMBCO we see ourselves as partners in the BBBEE Act as the poorest of the poor and the BBBEE Act recognizes Co-Operatives as an alternative for the poorest of the poor.	
		II. We Request the Mining Charter to give a minimum of 10% ownership per Mining Right unto Co-Operatives to enable the growth of Co-Operatives or Artisanal Small-Scale Miners and a Minimum of 26% were there is no BEE partner or the Miner is struggling to find suitable BEE partners. III. It is requested the DMR to empower Co-Operatives with the 6 152 Abandoned Mines, We also request that the mining Dumps be given to Co-Operatives, The dumps are terrorizing communities with illegal miners or Zama-Zamas and Co-Operatives in the form of Communities, un-employed women and youths will eradicate the Zama-Zamas from the face of our economic landscape.	II. Refer to point I above. III. The suggestion is noted.

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20. SADC YOUTH IN MINING	Definitions	I. "Broad-Based Black Economic Empowerment", we submit that sub section (b) should also specifically include the youth. II. "Meaningful economic participation", we submit that BEE transactions shall only be acceptable and compliant if concluded with clearly identifiable partners in the form of BEE entrepreneurs, youth, workers and communities. III. "Ministerial Skills Development Trust Fund", we submit that the Ministerial Skills Development Trust Fund shall dedicate a minimum of 40% of its expenditure to skills development for youth beneficiaries. IV. "Social Development Trust", we submit that the Social Development Trust shall dedicate a minimum of 40% of its expenditure to enterprise and supplier development for youth beneficiaries. V. "Youth", for the purposes of the Mining Charter shall mean South Africans between the ages of 22 and 35 years and whose racial composition shall reflect the national racial demographics of South Africa.	(i) The submission is noted. (ii) The submission is noted. (iii) The submission is noted. IV The submission is noted. V The age of majority is legislated. (18 to 35).
	Objectives	I. We submit that there should be an additional objectives of the charter as follows: (f) Facilitate mainstream participation of the youth in the mining industry to achieve sustainable development, seamless succession and value creation throughout the entire spectrum of the mining industry.	The submission is noted.
	Ownership	We submit that the 26% BEE ownership stake will only be acceptable and compliant if a minimum of 5% thereof is owned by a youth. Where a BEE partner or partners exit or BEE contract has lapsed, the BEE shares may only be acquired by another qualifying BEE partner to avoid non-compliance with the 26% BEE ownership target, 5% of which shall be held by youth.	The submission is noted.
	Procurement	We submit that:	The submission is noted.

		➤ Capital Goods: A mining right holder must procure a minimum of 60% of locally manufactured capital goods from BEE compliant manufacturing companies. These supply contracts must have a minimum of 30% youth ownership and management participation. ➤ Consumables: A mining right holder must procure a minimum of 70% of locally manufactured consumables from BEE compliant manufacturing companies. These supply contracts must have a minimum of 30% youth ownership and management participation. ➤ Services: A mining right holder must procure a minimum of 80% of services from BEE compliant manufacturing companies. These supply contracts must have a minimum of 30% youth ownership and management participation.	
	Beneficiation	Beneficiation should be used to create additional opportunities for the youth in downstream linkages. the department of mineral resources should adopt a policy that progressive increases local beneficiation of south african mined commodities.	The submission is noted.
	Employment equity	We submit that: ➤ Executive Management (Board): A minimum of 5% must be youth. ➤ Senior Management (EXCO): A minimum of 5% must be youth. ➤ Middle Management level: A minimum of 10% must be youth. ➤ Junior Management level: A minimum of 20% must be youth. ➤ Core and Critical Skills: Mining right holders must ensure that a minimum of 10% youth is represented in the mining company's core and critical skills by diversifying their existing pools.	The submission is noted.
	Human Resources Development	We submit that 40% of all Human Resources Development target expenditure shall be dedicated to youth beneficiaries.	The submission is noted.

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

	part of DTI and that there is no accredited B-BBEE verification agencies to issue certificates creates a big problem for entities who fall under this sector code.	
Ownership Scorecard	It is suggested that the trust as part of Ownership structure must comply with the requirements as set out in the Codes of Good Practice. To ensure that the trust is managed correctly and to ensure that the trust is not circumventing any of the requirements of the B-BBEE Act.	All the trust proposals will be revisited in line with the detailed Trust Report commissioned by the Dti.
Procurement, Supplier and Enterprise Development	There is no mention of Empowering Supplier status in this scorecard. If a B-BBEE certificate is issued in terms of the Mining sector the entity will not be able to use this certificate in the sense that their clients will not be able to use it for procurement purposes. The first problem is that this is not an accredited B-BBEE certificate and secondly the Mining Entity will not be measured as an empowering supplier.	The Department interacts with mining operations not suppliers. Suppliers account to Dti. Further consultation with Dti will be done to clarify this matter.
Employment Equity	Clarification needs to be provided whether the EAP targets are going to be applicable to this element and also the calculation method needs to be provided.	The Department of labour to assist.
Housing and Living Conditions	It is suggested that there should be an alternative scorecard for Mining Entities who does not have any accommodation for workers. Like for instance in smaller mining entities whose employers have their own living arrangements and accommodation and who lives in town?	This element is a priority element and operations must endeavour to comply with all its requirements including provision of subsidies, guarantees etc.
Part B – Application of the mining charter	It is suggested that the brackets for determining whether an entity is an EME or a QSE must be amended to be in-line with the Codes of Good Practice. Below is the list of how the codes of good practice measures its entities : ➤ EME – Turnover below R10 million; ➤ QSE – Turnover between R10 – R50 million; ➤ Large – Turnover more than R50 million;	The Department to further consult with the SADPMR.

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

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

	targets be changed, or the transitional period be extended until the education system is capable of catching up and fulfilling the demand. The target percentages of women to be employed in mining companies. Whereas the Charter previously required 10% women in mining (including in core critical mining activities), the philosophy now appears to be that black women should roughly comprise half of the total black staff complement at all levels. In our experience, there simply are not enough black female candidates to fill positions, and the shortage is more acute in respect of core critical mining. This aspect should be considered and negotiated with the industry and labour. We would suggest that the employment equity targets postulated in the Reviewed Mining Charter cannot be met within a three year transitional period and are not aligned with those of the B-BBEE Act, the Codes, and/or the National Development Plan, 2030. While it is a laudable goal that employment should broadly reflect the demographics of the country, this should, to some extent, be allowed to happen over time, and not be forced upon an industry regardless of the cost of such compliance, otherwise the net result may be fewer jobs for all in the South African mining industry.	
Ministerial consent provisions	In a number of instances, the draft Reviewed Mining Charter contains provisions which require ministerial consent or ministerial determinations for certain actions. These include: ➤ ministerial consent for consolidation of empowerment transactions (clause 2.1(i)); ➤ ministerial consent for conducting sample analyses using foreign-based facilities (clause 2.2 point (c) under the heading "Services"); ➤ Possible ministerial exemption from the requirement to invest 15% of the 5% payroll levy in the Ministerial Skills Development Fund "...in the event of having partnered and supported State owned entity (e.g. Mintek) in respect of research and development".	The Department will consider development of a consent guideline to outline the process, timeframe and requirements for Ministerial consent.

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	We respectfully submit that ministerial consent and determination provisions should be deleted altogether, or at least, should be amended to set out clearly the parameters for those decisions, so that everyone is clear about the rules.	
Specific comments on provisions	Definition of "effective ownership": ➤ We believe that the term "meaningful participation" in the definition is vague, in that there is no objective measure for what "meaningful" participation entails. This should be clarified in order to remove vagueness and uncertainty, and to provide an objective measure for determining whether there is effective ownership. This may be achieved by linking this definition to the definition of "meaningful economic participation". Which we discuss below. Definition of "meaningful economic participation": In using the words "...includes, inter alia, the following key attributes..." , this definition leaves open room for introducing additional "attributes" of what meaningful economic participation entails. These additional attributes should be specifically listed and included in the definition, or the term "meaningful economic participation" should be limited to the attributes already mentioned in the definition. We are of the view that a failure to do so leads to unacceptable uncertainty about the "compliance" of empowerment transactions, and/or gives the Regulator an unacceptable level of discretion in adjudicating these transactions. This increases the scope for arbitrary decision-making and reduces transparency and investor confidence. Definition of "Ministerial Skills Development Trust Fund" read with clause 2.5: ➤ We do not support the establishment of such a fund. Mining companies already contribute to the relevant sector education and training authorities ("SETAs"). Many SETAs are currently unable to spend their budgets and end up returning large sums of money to the national treasury. Government	The Department will reconsider the definition of meaningful participation by removing the word "include" and prescribing the relevant BEE partners alternatively delete the definition and prescribe the BEE partners in the substantive provisions of the Charter. The Department disagrees with the submission.

		should look at increasing the effectiveness of the SETAs instead of imposing what is essentially a new "tax" on mining companies. Moreover, the Reviewed Mining Charter is not clear about the nature and structure of the trust, how the trustees will be elected and/or appointed, how the beneficiaries will be selected, and the manner in which the trustees are to exercise their fiduciary duties. In its current form, this provision is too vague to be enforceable and there is a risk that dishonest trustees may abuse the funds in the trust. Definition of "Social Development Trust" read with clause 2.2: ➤ To the extent that this fund has not yet been established, we do not support its establishment, for substantially the same reasons as set out in relation to the "Ministerial Skills Development Trust Fund". Empowerment Trusts (clause 2.1(d)): ➤ It is unclear what is meant by the requirement that these trusts must "report" to the South African Revenue Services and the Department of Mineral Resources. What level of detail and/or content would this reporting entail? The effect of traditional authority representation as referred to in clause 2.1(e): ➤ The requirement for traditional authority representation on a community trust has the potential to be highly problematic in certain situations. Over the years, the mining industry has noticed that the involvement of traditional leadership in empowerment transactions can lead to a proliferation of internal political strife within communities. We submit that traditional representation should not be	The Department disagrees with the submission. The Department will reconsider proposals on trusts in line with the Trust Report commissioned by the Dti. These differences will be provided for in the MOI's which includes dispute resolution mechanisms.
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		a strict requirement for effective and substantial ownership change – instead, mining companies should be allowed the latitude to reach agreement with communities on terms that are acceptable to both the mining company and to the majority of members of that community. The meaning of the term “enterprise development” (clause 2.2): ➤ The term “enterprise development” is used a few times in this clause, and it apparently has a very specific meaning, which differs from “small business development”. We respectfully submit that the Reviewed Mining Charter will benefit from a clear definition for this term. Verification of local content for capital and consumer goods (clause 2.2): ➤ The draft Reviewed Mining Charter stipulates that “Mining right holders shall before submitting the annual mining charter report to the Department verify local content for capital and consumer goods as provided for above with the South African Bureau of Standards (SABS).” This provision seems highly impractical and/or speculative, at least for the foreseeable future, as we are not aware of any process for verifying local content of goods with the SABS. Multinational supplier contributions to Social Development Trust Fund (clause 2.2): ➤ This provision appears rather odd, in that it places an obligation on suppliers to the mining industry, as opposed to mining companies themselves. To the extent that mining companies themselves might be expected to “enforce” compliance with this provision, it places an unfair obligation on mining companies, who are not in control of such multinational companies’ expenditure. Moreover, the provision in its current form is vague: it is not clear which entities would qualify as “multinational	The Department will reconsider the use of this term and definition thereof. The Department to consult with SABS/Dti on this submission. The Department will consider defining Multinationals, the Department interfaces with right holders and they have a duty to account for their suppliers.
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		suppliers", what the level of supply should be before this provision becomes applicable, and how exactly the "1% of annual turnover" would be calculated. Beneficiation: ➤ There should be clear provisions stipulating how beneficiation credits can be achieved and how many credits will be awarded for varying levels of beneficiation. Non-Compliance (Clause 2.12): ➤ From a legal perspective, the Reviewed Mining Charter is not legally enforceable in the same way as legislation, and hence non-compliance does not automatically equate to contravention of the MPRDA. This provision should be deleted and compliance with the provisions of the MPRDA should be measured against the provisions of the MPRDA itself. Review of the Charter (Clause 2.13): ➤ The Minister is not empowered by the MPRDA to review the Mining Charter. Furthermore, any review should be based on concurrence by all relevant stakeholders.	Mr Menoe to advise. The Charter derives from section 100 and cannot be said to be ultra vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act. Refer to the reply above.
25. Empowerdex (Pty) Ltd.	overarching provisions that have not been addressed in this Charter:	I. The clarification notice 408 of 2015 (gazette 38766) issued by the Ministry of Trade and Industry on 6th May 2015 which detailed specific procedures to develop and gazette transformation charters. In this regard, it is a requirement for the relevant industry body and its Line Ministry (the DMR in this instance) to apply to the Dti in writing for such charter, in addition to that, they must provide evidence of compliance with S12 iv of the B-BBEE Act. The Constitution and MPRDA alone do not satisfactorily address the objectives set forth in	

CONTINUED STAKEHOLDER ENGAGEMENTS ON THE GAZETTED DRAFT REVIEWED MINING CHARTER, 2016.

LIST OF ENGAGEMENTS (AUGUST 2016 TO 21 APRIL 2017).

DATE OF ENGAGEMENT	NAME OF STAKEHOLDERS
19/08/2016.	ARM AND MEMSA.
19/08/2016.	National Treasury.
5/09/2016	Government wide stakeholders (Dti, DPME, DHS) under the auspices of the Special Presidential Package, Presidency.
19/10/2016.	National Union of Mineworkers.
28/10/2016.	Department of Trade and Industry.
03/11/2016.	Traditional leaders in North West. Province, Bojanala District.
18/11/2016.	Community consultation in Free State Province, Matjhabeng Local Municipality.
13/12/2016.	Community consultation in Limpopo Province, Mogalakwena Local Municipality.
28/02/2017.	UASA and Solidarity, St George's Hotel, Irene.
28/02/2017.	AMCU, St George's Hotel, Irene.
28/02/2017.	BEE mining companies, St George's Hotel, Irene.
02/03/2017.	National Union of Mine Workers, Tshwane.
02/03/2017.	RMB and Afro-pulse (Tshwane).

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15/03/2017.	IDC, RMB and BEE mining companies, Fredman drive Sandton.
21/04/2017	Department of Trade and Industry, DMR offices.

DETAILS OF ENGAGEMENTS

DATE.	STAKEHOLDER.	COMMENTS.	DMR RESPONSE.
19/08/2016.	ARM AND MEMSA.	• The Reviewed Charter must consider not only transformation and local value add in the mining industry but also backward, forward and side stream linkages. • The definition of locally manufactured good is welcome but fails to set a minimum South African content, it is suggested that this be aligned with the international norms at 65% value add.	• Supported. • The Draft Charter proposes that there must be 60% local content.

	• The Reviewed Charter must remove the multinational supplier loophole as it is already dealt with in terms of the BBEE Act and Dti Codes.	• The Dti Multinational supplier requirements are linked to equity equivalence, the Department does not support the notion of equity equivalence. The proposal for multinationals in respect of the Charter relate to the 30% balance spend by mining right holders from multinationals. The Department will create mechanisms to ensure that this requirement is implementable.
	• It is not clear at what level BEE compliant is set at. It is recommended that the eligible procurement metric be the product	• Noted.

	of the BBEE procurement recognition level and local value add. • The Charter is discriminatory against new mining investors in that these will need time to develop BBEE/local suppliers while it will be much easier for long established investors to comply with these proposed targets. Procurement targets should thus be staggered over the life of the mining right. • It is not clear what "BEE enterprise development" means. This must be rephrased and expanded for clarity. • In respect of HRD the obligation should be finance core and critical skills, in particular as the mining industry is more knowledge based.	• Noted staggering of targets will be considered.
		• Noted clarity will be provided to talk to enterprise development. • Supported.

		• R&D is necessary for survival of the mining industry, this aspect should not be conflated with HRD but should be a separate obligation for all mining right holders to spend at least 2% of turnover on R&D in South Africa. • The misalignment with the dti codes creates loopholes & is confusing. All industry charters and codes apply the EME, QSE and generic definitions. Also, in terms of the Small Business Act a business can have up to 200 employees, which will not promote small business development start-ups. We recommend that DMR to utilise the dti definitions and rules for EME, QSE and generic companies as suppliers. EME's & QSE's who are	• Noted and this will be taken into account in the review process. • The Charter and the MPRDA does not provide for categorisation of companies in terms of size. All mining right holders must comply without exception. The Draft Charter does refer to the Small Business Act and this will be reconsidered.
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		more than 51% black owned are automatically level 2, if they are more than 75% black owned, they are automatically level 1. Both must be conform to the ES definition. • SABS will not have the capacity or know how to categorise the items, and the raw material analysed in the components and consumables for tier 1, 2, 3 suppliers. We recommend that DMR to use approved verification agencies to determine ES status of suppliers. Suppliers with no ES status do not count for the mines scorecard. • Mine community refer to communities where mining takes place and labour sending areas. We recommend that DMR to apply 1% of NPAT for community	• The Department will engage with SABS to look into issues of capacity and related matters. • Noted.
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19/08/2016.	National Treasury.	development and specify a minimum 75% of beneficiaries must be African, coloured & Indian South Africans as per dti codes. • We recommend that the DMR must use rules that are already known in the industry and to apply dti definitions for trustees and governance, involve the Provincial Department of Economic Affairs to be part of trust.	• Noted, The Department continues to engage the Dti to ensure that there is alignment.
		• National Treasury cautioned against the creation of Trust funds which will reside within the Department. • The levying of additional 1.5% towards a Ministerial Skills Development Trust may have tax	• The Department is looking at possibilities of creating social development vehicles instead of Trusts (Agency). • Having met the companies that created the Multinational suppliers trust fund for their

		implications. The creation of these trusts may need a special Money Bill which would have to be considered by Parliament. The Department needs to tread carefully around the creation of these trusts and consider all possibilities including the creation of a separate public entity to administer the funds.	own benefit, these companies shared the following information regarding the creation of the Trust to the Department and its implications on supplier pricing: (a) The Trust is an independent vehicle, with its own audited financial statements; (b) It has a trust account and trustees report to Premier; (c) Parties submit projects to the trust and projects are implemented based on service level agreements; (d) In respect of impact of supplier prices, suppliers are part of a Trust
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			structure with a gearing effect; (e) For them it is not an additional cost, costs are handled in such a manner that it does not go into the product. (f) Can claim it under enterprise and social development. Don't have to add it into the price. (g) Has an element of sustainability if it is limited to supplier development. • The Department noted Treasury advise on ESOPS and undertook to consider
		• National Treasury was supportive of creation of ESOPS as they are easily administered. It advised that in some jurisdictions workers are represented at board level and are	

		active participants in the running of businesses. In this regard the Department was advised to look at German empowerment model to further strengthen the Revised Charter proposal on Esops. • National Treasury acknowledged the Bill and its potential to disadvantage employees. The Bill is currently being processes for tabling in Parliament. It was agreed that National Treasury will relay the Departments concerns to the drafters of the Bill and a meeting to mitigate the tax implications for Esops should be held within the next two weeks.	the issue of worker representation at board level. • The implications of the draft Taxation Laws Amendment Bill were also discussed. This Bill was gazetted by National Treasury on 8th July 2016 for public comments. The Bill proposes a new section 8CA which is to the effect that dividends consisting of proceeds from the disposal or redemption of any underlying equity shares to the restricted
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			equity instruments will be included in the income of the employees. Restricted equity instruments are defined to include ESOPS. • This proposed section could be problematic if the ESOP's term is lengthy or if the scheme is structured to be restricted indefinitely to ensure prolonged fulfilment of the objectives of the Mining Charter and BBBEE legislation. This proposal potentially has negative implications for employees as it seeks to cast the net wider with regard to amounts being included in the income of employees, as opposed to
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			enhancing the taxation laws to bring them in line with, and to promote, the country's BBBEE objectives. • The Department shared the challenges relating to the linking of Social and Labour Plan projects with the IDP's, due to the prevalent challenges of implementation capacity at municipal level. It was emphasised that the Mining Charter and SLP's are mutually reinforcing and that Municipalities, as constitutionally mandated institutions for community
		• National Treasury advised the Department to be explicit as to the percentage contributions towards labour sending areas. National Treasury further committed to avail its Local Governance Team to assist the Department in refining the Charter proposals on the interface between Social and Labour Plans and Mine Community Development.	

5/09/2016	Government wide stakeholders (Dti, DPME, DHS) under the auspices of the Special Presidential Package, Presidency.	• The removal of the Housing and living conditions as an element of the Charter was not supported. • There was an indication that some IDP's are not necessarily budgeted for. • Macroeconomics, empowerment/BEE could mean major contingent liabilities on compensation problems,	• The Department indicated that such removal is needed. to put specific focus and emphasis on this aspect. The Housing and living conditions standards to be reviewed and elevated into an enforceable instrument. • This must be further verified with COGTA/Treasury in the planned engagements. • The Department was of the view that the law provides sufficiently for BEE transactions, there law can only go so far. BEE partner:	development are responsible for development.
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		environment etc class action currently in courts.	must be circumspect in concluding these transactions and not buy into deals that are under the water. • Environmental aspects including contamination of water and rehabilitation are regulated in terms of dedicated legislation and should not be part of the Charter. Matters of compensation and the class action case are dealt with in terms of COIDA and related legislation. • Migrant labour remains a sensitive issue which needs specific focus.
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	• Empowerment/development/procurement etc should consider wider region (SADC) rather than just SA due to migrant labour system and need to also develop regional economy especially in labour sending areas in SA and neighbouring countries. • Human Resources / Skills – also cover areas directly or indirectly related e.g. occupational health and safety, laboratories for hygiene testing samples etc. • Health and safety needs to be brought back in given the problems with Mine Health & Safety Act –	• Not advisable to provide a list of training areas as every stakeholder will want to be listed as well. It is advisable to keep this requirement general. • The sustainable development element will be reinstated with specific focus on health and safety. Environmental
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		note our benchmark tour to Australia last year! Especially issues related to mining, peri-mining communities – polluted water / air etc. • Need to consider fund for post - mining future of towns in mining areas – your work on distressed mining communities.	aspects including contamination of water and rehabilitation are regulated in terms of dedicated legislation and should not be part of the Charter.
19/10/2016.	National Union of Mineworkers.	• The NUM is calling for the inclusion of “Meaningful consultation” in the definitions section, as we are currently finding it difficult to be meaningfully consulted in the implementation of charter targets and compilation of the mining charter report before submission to the regulator. The definition should	• The Department supports meaningful consultations between stakeholders in giving effect to the relevant elements of the Mining Charter. Compilation of the report is the prerogative of the right holder and it remains Government's

		read as follows: <i>The extensive consultation conducted by the mining right holders and its stakeholders. These will include the primary stakeholders (which includes employees/workers, organized labour unions and all forums or structures) and Secondary Stakeholders (including relevant local & district municipalities (including their representatives), traditional leaders or authorities).</i> • We are propose the following additions in the Objectives section: <i>The Broad Based Black Economic Empowerment Charter for the South African Industry, herein referred as the "Mining Charter ", is a government instrument designed to effect sustainable growth and</i>	responsibility to evaluate, enforce and monitor compliance with the Charter requirements. • The Department notes the suggested proposals to the objects of the Charter and supports same to the extent outlined above.
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		<i>meaningfully transformation of the mining industry (through a meaningful consultation process, especially with primary stakeholders).</i> • We call on the Department to have an incremental target for the ownership element, which will be 30% by 2018, 32% by 2020 and 35% by 2022 as a minimum target. • We unreservedly reject the notion of a Special Purpose Vehicle, as its founding objectives that were aligned to the companies act are no longer in place.	• The Department supports progressive realisation of the Charter targets within the 3 years transitional period. Any suggestion to go beyond the transitional arrangement is not supported. • The Department notes the concern, consideration will be given to expand on the structuring of transactions, however this requirement was intended to protect the interests of BEE partners (Esops and communities)
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		• On Beneficiation The NUM is calling for the fast tracking of the current Amendment Bill in Parliament, in order for the DMR and DTI to fast track the implementation of the Beneficiation Strategy in line with the National Development and Industrial Policy Action Plan. • On human resource development, the allocation of a percentage of mineral right holder's payroll to skill development, training and research is supported, but we think it's important for it to be aligned to the	and ensure that they actively and meaningfully participate in the development of mining project/s. • The Department notes the concern. The process to finalise the MPRDA Bill is managed by Parliament. • The Department notes the concern and will reconsider the proposals. The Charter 5% proposal excludes the mandatory 1% skills levy as per the Skills Levy legislation
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		current 6% in the generic codes of good practice. The money spent should be restricted to actual fees paid for a course or programme and not miscellaneous logistical costs. • We would like to call on the Department to revise the Housing and Living Conditions Standards that were gazetted in 2009. • We call on the Department of Mineral Resources to strengthen and capacitate the Mineral Regulations branch, as we believe the below compliance with Section 28 (2) (C) of the MPRDA is non-negotiable and compliance should	• The Department notes this concern and will address it accordingly. • The Department notes this concern and will address it accordingly.
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		be met with relevant corrective measures. • We would like to again express our concern with the removal of the Sustainable Development element in the draft mining charter.	• The removal of this element will be reconsidered taking into account submissions received from stakeholders.
28/10/2016.	Department of Trade and Industry.	• Definition proposed for Capital goods – an intermediary sector that manufactures and supplies components for materials handling, environmental control, manufacturing process, drilling, digging, earthmoving and complete plants for inter alia the mining sector and supplying equipment such as pressure vessels; cyclones, crushers, screens, conveyors, mills, pumps and valves including capital	• The submission is noted and will be considered in the review exercise.

		goods used by contractors and leased fleet. • Consumables: We also propose that the following consumables be excluded: water, electricity, land rates, oil and gas products and lubricants. • Services (this should be split into two definitions): Mining service providers – companies that provide services or products to the mining industry which are essential, classified as discretionary services to the mine and mining production process excluding, energy, fuel, utilities and hydrocarbons. General Service providers – services that are applicable to the entire company classified as non-discretionary	• The submission is noted and will be considered in the review exercise. • The submission is noted and will be considered in the review exercise.
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		services such as security, payroll, finance, medical, cleaning, insurance also services which are supplementary or optional to the mine or the mining production service. We further propose that the following services should not form part of the Charter: landscape, catering, road and housing/civils maintenance, basic housing construction in order to promote industrialisation imperatives. • Locally manufactured – capital goods and consumables manufactured in South Africa achieving a minimum 60 percent threshold of local value add. Due to our experiences with the state	• The submission is noted and will be considered in the review exercise.
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		procurement programme the dti has the capacity to assist with monitoring and evaluation of “locally manufactured goods” concept • BEE compliant company – is a company with a minimum BEE level 4 of the new codes and minimum 26 percent black ownership. • We recommend that this service be not limited to SABs but other modalities and possible bodies that can verify local content should be considered. Local content verification can be done in conjunction with BEE verification agencies or by establishing new verification agents solely focusing on verifying and certifying companies	• The submission is noted and will be considered in the review exercise. • The Department will engage with SABs to look into issues of capacity and related matters.
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		on local content as opposed to SABS. • The dti reiterates that the proposed scorecard for the Draft Reviewed Mining Charter should enable companies to be issued with a B-BBEE certificate that they can use when they trade with companies in other sectors of the economy. In this regard the scorecard should make provision for allocation of points as well as the incorporation of the B-BBEE recognition level of the Generic B-BBEE Codes of Good Practice. It is the responsibility of our departments to ensure that the B-BBEE Act as amended	
03/11/2016.	Traditional leaders in North West Province, Bojanala District.	• The Department of Mineral Resources conducted an	

		engagement with the traditional leaders on the Gazetted Draft Mining Charter, 2016. The meeting was attended traditional leaders and was addressed by the minister of Mineral Resources and Premier of the North-West Province. • The Department of Mineral Resources presented the draft Charter to the traditional leaders who expressed their support of the draft Mining Charter and enquired on how the draft document will assist them in applying Mining Rights for communities. They also highlighted their support for the beneficiation which can have spin-offs in addressing poverty and unemployment within their respective communities.	• Submission noted. • Mineral beneficiation will further be elaborated on in the MPRDA Bill.
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		• They also indicated their hope for the establishment of factories which can provide them with fertilizers to be used for agricultural purposes. The traditional leaders raised their concern on the non-implementation of the mining related policy framework. In its respond the Department of mineral resources indicated that the communities have preference in terms of Section 104 of the MPRDA. • The Premier also outlined the province's strategy to improve communities lives through the Small towns and Dorpies strategy which can be complemented by the	• Submission noted.
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18/11/2016.	Community consultation in Free State Province, Matjhabeng Local Municipality.	benefits to be derived from the provisions of the Mining Charter.	• The Executive Major (Mr Speelman) of Matjhabeng Local Municipality opened the proceedings and welcomed everyone present. The Major thanked the DMR for keeping their promise of coming back to Welkom. However, the Major indicated ex-miners were promised to receive their money by the Deputy Minister during his state visit, and till today they have not received anything. The Major made a plea to the Department to give people of Matjhabeng licence to operate Mines. • IDP's will assist or drives the economy. The municipality had	• The Deputy Minister is on a work trip overseas and will most definitely working hard to ensure the issues of ex-mine workers are resolved. • Department is committed to improving relations with its stakeholders and has an open door policy.
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	identified one of the poorest IDP's in the municipality. There is no channel of communication between the municipality and the Department of Mineral Resources and needs to be improved drastically. • Indicated that a forum has been created by the municipality and DMR is one of the members. The municipality is concentrating on the environmental impact of mining in the community. • MTDA is a duplication of MQA. • MHSA been used at the mine as a tool for retrenchment. • Black managers do not have powers at the mines • DMR does not have effective monitoring and enforcement body.	• The Charter responds to the issue of alignment of SLP contributions to IDP's.
		• The Department is working on improving its capacity to monitor and evaluate implementation and enforcement of the law. • Issues of discrimination at work place are noted and must be elevated to relevant structure for attention.

		- Local Black people do not have procurement opportunities in Welkom, instead they take people from Johannesburg and there are lot of red tapes. - Mining dumps are been rehabilitated by outside companies, and local people are not given opportunities because DMR states that they do not have jurisdiction over them. - Transformation in the mining industry is taking too long to happen. - The rate of poverty, unemployment and disease is very high in the Free State. - It is very expensive to venture into mining. - What type of legacy is the mining companies creating.	- The MPRDA and Charter provide for benefits for all South Africans from exploitation of mineral resources. The issues of mine communities who are negatively impacted by mining by virtue of their proximity are receiving the necessary attention. - Transformation is an ongoing process and government will do all that is necessary to ensure that Broad based and meaningful economic empowerment becomes a reality.
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		• Harmony Gold is the biggest zama zama in Welkom. • The procurement does not work for Black people, and the tendering process must be amended. • Public participation must be regarded as critical process. • The department must hold meeting every Thursday to educate people about mining. • Most of the mining sites of Harmony are not rehabilitated. • Does the department conduct research before a mine can be closed? • What informs the department to close the mine.	• Government is stepping up efforts to deal with issues of illegal mining and Zama-Zama's. A multi-stakeholder task team is dealing with these issues in a co-ordinated and multidisciplinary manner. • This will be taken up with the Ministry to ensure that the provisions of NEMA are complied with. Environmental inspectorate has been capacitated to deal with these kinds of transgressions.
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			• Mine closure is informed by a variety of factors including completion of activities by the mining operation and lodgement of an application for a closure certificate. Some mines are put on care and maintenance and not necessarily closed.
13/12/2016.	Community consultation in Limpopo Province, Mogalakwena Local Municipality.	Communities raised the following questions: • How is the mining industry redressing the imbalances of the past in the industry? • What is the DMR doing to ensure transformation becomes a reality in the mining industry?	• The department responded that in the past women, Black people were not allowed to own minerals in South Africa. The charter is redressing the imbalances of the past by allowing women and Black people to own minerals and hold management positions in the mining companies.

		• More clarity on how the agency referred to on the presentation going to unfold. • What is the department doing to ensure that the mines comply with the procurement? • How will the department assist the locals to ensure that they adhere to the SABS standards? • Is the department doing something on skill outreach and is the charter linked with the job saving strategy of the country? • Development in the mining towns is very poor, what is the department doing to ensure that the SLP is aligned to the needs of the communities where mining is taking place?	• Foreign suppliers are required to contribute 1% of the revenue generated from the South African mining industry towards the Mining Transformation and Development Agency. • The MTDA will be responsible for supplier and enterprise development (including community based companies). • Labour sending area is where most of the employees are sourced from within Southern African borders.
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		• Is the SLP not supposed to be discussed with the communities through consultation and engagement? • What are the consequences of non compliance with the SLP commitments? • The communities needed for explanation on the term labour sending areas. • What is the department doing with non-compliant companies?	• Every mining company is being monitored with the terms and conditions of the contract. If the mining company does not comply, then the department can cancel or suspend the licence. Mining companies are given the opportunity to correct their mistakes before the department can issue suspension or cancellation of contract. • The social and Labour plans must be in line with the Municipalities IDP's. If the supplier buys goods in China and brings them in the country that would not be
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			regarded as been procured locally. There are goods which can be procured locally and does not exclude people from other provinces to render the services. The SABS would conduct verification on goods. Mining companies must consult with the general public before they can be issued with a mining right and anyone in South Africa can object to the granting of such right. Section 26 of the MPRDA promotes beneficiation. Mining companies would be restricted to beneficiate on certain strategic minerals.
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28/02/2017.	UASA and Solidarity, St George's Hotel, Irene.	• Appreciated the brief on the latest developments with the Reviewed Mining Charter. • Expressed concern over lack of access to the actual document. • Concerned that the Employment equity targets are unachievable and will lead to poaching of workers between mining companies. • Questioned whether a regulatory impact assessment was done. • Welcomed the re-instatement of the Sustainable development element. • The proposal for 1% annual turnover and related contributions will impact on wage negotiations,	• The concerns expressed were noted. • A Socio-Economic Impact Assessment has been done in consultation with the Department of Planning Monitoring and Evaluation and will be availed upon finalisation of the Charter for implementation. • Transitional arrangements are provided for to afford the industry time to progressively comply with the proposed targets. • Follow up meeting to iron out issues was agreed.
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		inhibit growth and lead to job losses. • Overall not comfortable with the Charter but expressed appreciation for the engagement. • A follow up meeting must be arranged with the Deputy Minister to iron out issues of contention.	
28/02/2017.	AMCU, St George's Hotel, Irene.	• Is this still and open consultation process? • What is the latest on the Declarator with Chamber of Mines? • Mining Companies comply with the bare minimum. The proposed increase in targets is supported. • There is a need to strengthen community consultation and SLP provision through the Charter.	• The Department welcomed Amcu's input and committed to engage further on the draft. • The Chamber matter is sub-judice and pronouncements will be made in due course.

		• The 10% increase for workers in the form of ESOPS is welcomed.	
28/02/2017.	BEE mining companies, St George's Hotel, Irene.	• Charter should be clear regarding unencumbered net value in the hands of BEE partners. • The industry committed to facilitate 100 Billion towards transformation in 2004, has this been assessed and verified by the Department? • What about Black male empowerment as it relates to procurement? There may be unintended consequences for singling out women and youth. • Need to watch out for consolidation of rights; consequences of previous deals do not apply to new rights. • Why can't a BEE partner sell to another BEE partner?	• The Department acknowledged the input received. It committed to improve on its stakeholder relations as suggested. It is working into issues of capacity to ensure better monitoring and evaluation of implementation and enforcement of the law. • The Charter will provide more clarity on a number of issues including active participation and control across the mine value chain.

		• The 3 years transitional period proposed in the Charter is too long, it must be reduced. • The minimum 29% for ownership must take into account the nature of the operations, whether open cast or underground, the duration of the right and related factors. The percentage must be increased for open cast mining. • The draft Charter must also consider the costs for BEE's before deciding on Black person shareholding. • There must be a databased or newsletter where people can be kept abreast of developments and register their interests.	
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		• How will the procurement element apply to evergreen projects its more suited for long terms projects? • The Charter must provide for marketing of mining production to ensure that BEE partners participate meaningfully and control their proportionate share across the mine value chain including logistics (transportation). There is a mischief by mining operations of diverting benefits away from BEE partners. • The Charter is silent on monitoring structures. • It is futile to have good laws without proper monitoring and evaluation of	
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		implementation and enforcement of the law. • The Department is lacking in this regard. • There must be measures to ensure that dividends are declared to BEE partners. • What are the benefits of pursuing mineral beneficiation, the Charter is not clear. • The Department needs to work on stakeholder relations. • It must provide support to communities to derive benefit from the proposals. • Procurement must be a ringfenced element. • The proposed stakes for women empowerment must be increased.	
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		• The definition of HDSD to Black is supported. • Developmental funding institutions must come on board. • The Charter is silent on creation of Black enterprises.	
02/03/2017.	National Union of Mine Workers, Tshwane.	• The proposed transitional period on the Charter is too long and must be limited to 12 months. • How will the 18% cap on dilution be structured? • The obligation must be on the right holder to finance the ESOPS and community shareholding. • What steps to follow before gazetting?	• Submission and concerns noted.
02/03/2017.	RMB and Afro-pulse (Tshwane).	• Need clarity on the definition of net value and time graduation factor.	• Submission and concerns noted.

		• Make provision for dilution on mining right holders who have claimed the 11% beneficiation offset. • Does net value include actual shareholding or cash flow or both? • Existing deals never realised any value. • BEE's are just enablers why are they waiting? • ESOPS must include free carry and trickle flow of dividends. • BEE entrepreneurs must be able to absorb an element of risk. Further unpack net value. • The Banks and financial institutions are the biggest stumbling block to transformation. • 3% to play with is not a good idea.	
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		• 3% to be given to BEE entrepreneurs. • Further detail is needed on how communities will benefit from their shareholding. Whether to have free shares from day 1 or have an agreement on what will be a minimum despite the markets (share price).	
21/04/2017	Department of Trade and Industry, DMR offices.	• The process to be followed in developing the Charter should be similar to that conducted by other sectors when developing their codes and be gazetted for 60 (sixty) days for public comments. Acknowledged that DMR has already conducted the consultation and indicated that the department tick the box on this aspect of engagement, which was	• The mining industry's consultations have been conducted in terms of Section 100 of the MPRDA. The BBBEE Act process operates on the basis of consensus while the MPRDA process is based on consultations and this may cause challenges if the BBBEE Act process is to

	already undertaken. If DMR can do as indicated there will be no need for seeking deviation on the stakeholder engagement.	be followed. The meeting agreed that there is a separate process led by the Deputy President which will decide and resolve on the process issues and the status of section 100 of the MPRDA and section 9 of the BBBEE Act.
	• Verification of BEE credentials: It indicated that dual compliance by suppliers should be avoided; • DTI indicated that it will support DMR's position provided that there is a unit or division within the department comprised of competent persons who can conduct such verification and system in place to implement such verification. DTI	• DMR indicated that its position is to conduct in-house verification as opposed to independent verification agency

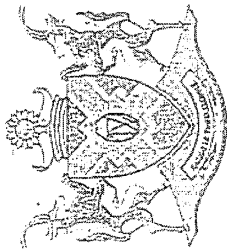
		also undertook to engage with the BEE Valuation Regulator (SANAS) in this regard. Another option was that the verification should be conducted by an independent agency while DMR can do internal due diligence and this option could be confirmed with SANAS and feedback will be provided during the next meeting. • DTI is fully supportive of the proposal for the increment of BEE ownership shareholding of 29% since it is not below the minimum of 25%; • DTI supports 11% offset for beneficiation against the ownership element. However, it required clarity on the implementation of the same.	• DMR indicated that such clarity will be provided on the proposed amended Section 26 and regulation of the MPRDA thereof.
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		• DTI also sought clarity on the downward adjustment of the ownership shareholding to 18%, which has to be empowered within as stipulated timeframe. DTI was satisfied that this takes care of the provision of once empowered always empowered provision. • DTI proposed that DMR should consider the option of using Equity Equivalence on suppliers instead of 1% of foreign suppliers' annual turnover since most companies will opt for it despite of less benefits when comparing the two options. DTI undertook to provide detail information on this option during the next meeting.	• Details of this to be shared during the next team engagement. • DMR indicated its main objective is to ensure that there is change of ownership completion of the mining industry. It expressed reservations regarding the equity equivalence suggestion.
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		• DTI proposes that women representation on the skills development be increased from 15% to 25% for it be in line with the Dfi Codes of Good Practice. It proposes for the increase of the employment target of people living with disability (black) 2% to 3% in line the codes. • DTI raised concern on the proposed companies' contribution of 2% to a trust or agency. However, it was satisfied when DMR indicated that such contribution will be ringfenced for skills development and be contributed towards the MTDA and it is engaging the National Treasury in this regard. • DTI supports the collapsing of the capital and consumables goods into	• DMR agreed to fully align with the Codes and the Employment Equity Act.
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		one category and the target of 70% thereof. However, it proposed that the transitional period for the implementation of this target should be changed from 5 to 2 years. • It proposes that the discretionary spend should exclude lubricants, coolants and energy; • It also proposed that the verification of local content should include the country of origin. • It further proposed for the alignment of the Mining Charter with the black industrialist Programme to be supported by the IDC and PIC while DMR can identify black people to be capacitated within the mining industry sector.	
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		• DMR proposal for higher target of 60% local content is supported. • Discrimination among local and multinational suppliers. 1 % for multinationals is an add-on. Fair treatment. • The targets must be staggered and progressively achieved. • Dti advised that community development contributions (SLP) must explicitly be biased in favour of black communities.	
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The Republic of South Africa

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MINING CHARTER ENGAGEMENT WITH TRADITIONAL LEADERS

DATE: 03 NOVEMBER 2016-11-03

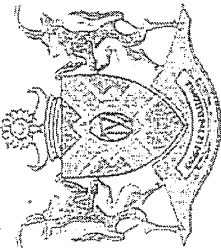
TIME: 10:00 – 12:30

VENUE: RUSTENBURG RECREATION CENTRE

TRADITIONAL LEADERS

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Coat of arms

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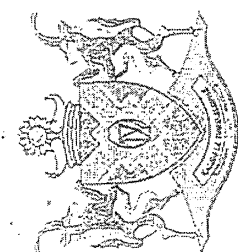
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TRADITIONAL LEADERS

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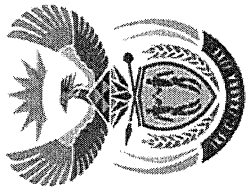
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mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA



MATJHABENG LOCAL MUNICIPALITY

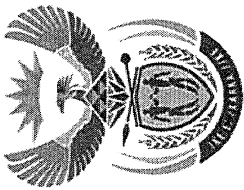
ATTENDANCE REGISTER MINING CHARTER COMMUNITY CONSULTATION

18 November 2016

Event Venue: Toronto Community Hall, Welkom CBD
Event Time: 10:00 – 12:30

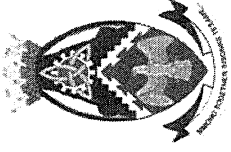
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ATTENDANCE REGISTER: MINING CHARTER COMMUNITY CONSULTATION



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA



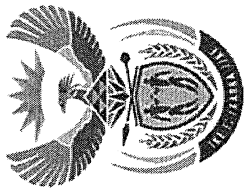
MATJHABENG LOCAL MUNICIPALITY

ATTENDANCE REGISTER MINING CHARTER COMMUNITY CONSULTATION

18 November 2016

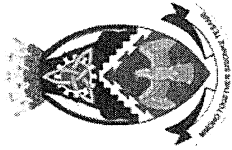
Event Venue: Toronto Community Hall, Welkom CBD
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2	M.J Manjani	MEN'S FORUM	0714561418	—	
3	MP Mameani	—	0835512967	manahhembangeni@gmail.com	
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5	Tebello Rakwosi	LESWATLEPUTSWA unemployment Forum	079 1960878		



mineral resources

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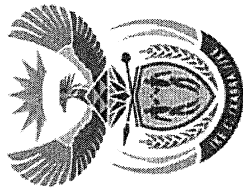
MATJHABENG LOCAL MUNICIPALITY

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18 November 2016

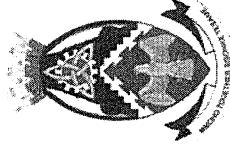
Event Venue: Toronto Community Hall, Welkom CBD
Event Time: 10:00 – 12:30

NO	NAME & SURNAME	ORGANISATION	TEL	EMAIL	SIGNATURE
1	AYANDA SHEZI	DMK.	012 444 3000	ayanda.shezi@dmk.gov.za	
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mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA



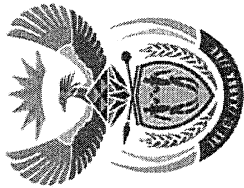
MATJHABENG LOCAL MUNICIPALITY

ATTENDANCE REGISTER MINING CHARTER COMMUNITY CONSULTATION

18 November 2016

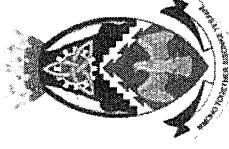
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NO	NAME & SURNAME	ORGANISATION	TEL	EMAIL	SIGNATURE
1	Sibongile Makhre	DMR	012 444 3538	Sibongile.makhre@dmr.gov.za	
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3	Jeanette Ntome	DMR	012 444-3531	Jeanette.Ntome@dmr.gov.za	
4	Nkhobla Jali	DMR	# 5508	nkhobla.jali@dmr.gov.za	
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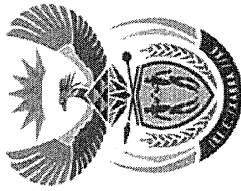
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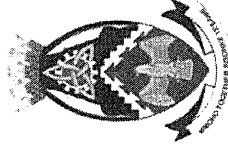
NO	NAME & SURNAME	ORGANISATION	TEL	EMAIL	SIGNATURE
1	Mmaditkeledi Notito	Lepuleputswa unemployment forum	0763290511	mmditkeledi@gmail.com	
2	Mahlwane Masito Wellington	Lepuleputswa Unemployment f	0733880835	m.mahlwane@gmail.com	
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ATTENDANCE REGISTER: MINING CHARTER COMMUNITY CONSULTATION



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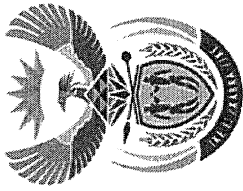
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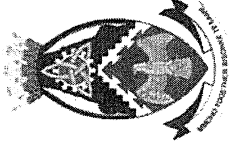
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NO	NAME & SURNAME	ORGANISATION	TEL	EMAIL	SIGNATURE
1	Uthobonolo Rantoko	Kics Holdings	057 353 3081	uraming@kicsholdings.co.za	
2	Mohau Ramakhale	Thabong Concern Resident Forum	0789925681	topleadersholdings@webmail.com	
3		Pha Vae Mining	0781153984	isaac_eany@clashmail.co.za	
4	Mosiko Monishe	Xhibit it	0769878254	mosiko@xhibitit.co.za	
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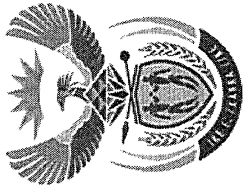
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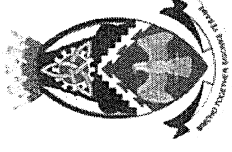
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NO	NAME & SURNAME	ORGANISATION	TEL	EMAIL	SIGNATURE
1	M. L. NTHATISI	MOROANE Trading	078 339 9169	—	
2	D. E. MOREANE	LESA-NALEDI	083 423 1337	diemiso1212@gmail.com	
3	A. Thabo Tseke	Ntshu Trading	074 734 8672	tseke'thabo@gmail.com	
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NO	NAME & SURNAME	ORGANISATION	TEL	EMAIL	SIGNATURE
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2	Sellwane Mokwene	DMR	057 391 1329	sellwane.mokwene@dmr.gov.za	
3	Mashudu Mulanda	DMR	057 391 1386	mashudu.mulanda@dmr.gov.za	
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COMMUNITY CONSULTATIONS ON THE REVIEWED MINING CHARTER 2017.

The following communities were consulted on the Reviewed Mining Charter 2017.

29/06/2017.	Communities in Mokopane, Limpopo Province
03/11/2016.	Traditional leaders in North West. Province, Bojanala District.
18/11/2016.	Community consultation in Free State Province, Matjhabeng Local Municipality.
13/12/2016.	Community consultation in Limpopo Province, Mogalakwena Local Municipality.
19/07/2016.	Various Community Organisations and Representatives including: (a) Centre for Environmental rights. (b) Mining Affected Communities United in Action (MACAU). (c) Serodumo SA Rona Community Based Organization. (d) Bulelani Mkhonto.
20/07/2016.	Centre for applied legal studies.
26/07/2016.	South African Mining and Beneficiation Co-operatives (SAMBCO).

DATE.	STAKEHOLDER.	COMMENTS.	DMR RESPONSE.
29/06/2017	Community in Mokopane, Limpopo.	Background	Ministers Responses.

AA8

	The Mining Charter 2017, was gazetted for implementation on the 15th June 2017. The Minister Mineral Resources is currently engaging the communities to present the Mining Charter and clarify some of the things encapsulated on the Mining Charter. Recently, the Minister hosted a Mining Charter Advocacy in Limpopo, Mokopane (Tayob Ayob Community Hall). The attendance was highly appreciated by the Minister, however community raised their concerns about the Gazetted Charter and how mines are not consulting with them. The Minister touched on numerous points in his opening remarks. He pointed out that the Mining charter is advancing radical economic transformation. Black people must start owning land and not be labours all the time. The 30% ownership consists of communities, workers and	• The minister welcomed all the concerns raised by the community and promised that they will be addressed. • On the concerns of the graveyards been removed, the minister promised the community that a delegation will conduct site inspection after the meeting. • The minister also promised community that a follow up meeting will be conducted in Sekhukhune and Lephalale. • The chairperson thanked everyone for participating and attending the advocacy programme. •
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		entrepreneurs. An advert will be published in the government gazette or newspapers calling all unemployed people with requisite mining skills and qualification to submit their curriculum vitae. The said information will be kept in a database. The government is doing this because most of the mining industry are saying that their failure to comply with the employment equity because no enough Black person with requisite skills. The minister also emphasized that the procurement has been increased to 70% for capital goods. The department was given an opportunity to present the Mining Charter and thereafter the community was given an opportunity to pose any questions and seek clarity on the issues which they did not understand. Questions asked by the community:	
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		◀The community welcomes the published Mining Charter. ◀The Mining Charter was adopted without consulting the community. ◀What happened to the task team which was formed by Adv Ramatlhodi. ◀The community is not benefiting from the social and labour plans. ◀Clarity was sought on the proposed change from HDSEA to Black person. ◀Tribunal resolution must be sought as proof of consultation between mining community and companies. ◀The 8% on the Mining Charter is too little and must be increased to 10%. ◀If the department received an application on the communal land,	
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		then the department of Rural development must be increased. ◀The Department must establish a team monitoring social and labour plans at the mines. ◀The issue of fronting must be addressed and people involved must be prosecuted. ◀The department is consulting traditional leaders without informing communities. ◀How does a mining company determine the needs of the people with regards to Social and Labour Plans? ◀Penalty for non-compliance must be increased. ◀Most of the people employed at the mines are not from Limpopo and have requisite skill and expertise.	
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		◀ The graveyards in the community have been relocated to another area without their consent.	
03/11/2016.	Traditional leaders in North West Province, Bojanala District.	• The Department of Mineral Resources conducted an engagement with the traditional leaders on the Gazetted Draft Mining Charter, 2016. The meeting was attended traditional leaders and was addressed by the minister of Mineral Resources and Premier of the North-West Province. • The Department of Mineral Resources presented the draft Charter to the traditional leaders who expressed their support of the draft Mining Charter and enquired on how the draft document will assist them in applying Mining Rights for communities. They also highlighted their support for the beneficiation which can have spin-offs in addressing poverty and	• Submission noted.

		unemployment within their respective communities. • They also indicated their hope for the establishment of factories which can provide them with fertilizers to be used for agricultural purposes. The traditional leaders raised their concern on the non-implementation of the mining related policy framework. In its respond the Department of mineral resources indicated that the communities have preference in terms of Section 104 of the MPRDA. • The Premier also outlined the province's strategy to improve communities lives through the Small towns and Dorpies strategy which can be complemented by the benefits to be	• Mineral beneficiation will further be elaborated on in the MPRDA Bill. • Submission noted.
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18/11/2016.	Community consultation in Free State Province, Matjhabeng Local Municipality.	derived from the provisions of the Mining Charter. • The Executive Major (Mr Speelman) of Matjhabeng Local Municipality opened the proceedings and welcomed everyone present. The Major thanked the DMR for keeping their promise of coming back to Welkom. However, the Major indicated ex-miners were promised to receive their money by the Deputy Minister during his state visit, and till today they have not received anything. The Major made a plea to the Department to give people of Matjhabeng licence to operate Mines. • IDP's will assist or drives the economy. The municipality had identified one of the poorest IDP's in the municipality. There is no channel of communication between the municipality and the	• The Deputy Minister is on a work trip overseas and will most definitely working hard to ensure the issues of ex-mine workers are resolved. • Department is committed to improving relations with its stakeholders and has an open door policy. • The Charter responds to the issue of alignment of SLP contributions to IDP's.
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	Department of Mineral Resources and needs to be improved drastically. • Indicated that a forum has been created by the municipality and DMR is one of the members. The municipality is concentrating on the environmental impact of mining in the community. • MTDA is a duplication of MQA. • MHSA been used at the mine as a tool for retrenchment. • Black managers do not have powers at the mines • DMR does not have effective monitoring and enforcement body. • Local Black people do not have procurement opportunities in Welkom, instead they take people from Johannesburg and there are lot of red tapes. • Mining dumps are been rehabilitated by outside companies, and local people are	• The Department is working on improving its capacity to monitor and evaluate implementation and enforcement of the law. • Issues of discrimination at work place are noted and must be elevated to relevant structure for attention. • The MPRDA and Charter provide for benefits for all South Africans from exploitation of mineral resources. The issues of mine
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		not given opportunities because DMR states that they do not have jurisdiction over them. • Transformation in the mining industry is taking too long to happen. • The rate of poverty, unemployment and disease is very high in the Free State. • It is very expensive to venture into mining. • What type of legacy is the mining companies creating. • Harmony Gold is the biggest zama zama in Welkom. • The procurement does not work for Black people, and the tendering process must be amended. • Public participation must be regarded as critical process. • The department must hold meeting every Thursday to educate people about mining.	communities who are negatively impacted by mining by virtue of their proximity are receiving the necessary attention. • Transformation is an ongoing process and government will do all that is necessary to ensure that Broad based and meaningful economic empowerment becomes a reality. • Government is stepping up efforts to deal with issues of illegal mining and Zama-Zama's. A multi-stakeholder task team is dealing with these issues in a co-
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		• Most of the mining sites of Harmony are not rehabilitated. • Does the department conduct research before a mine can be closed? • What informs the department to close the mine.	ordinated and multidisciplinary manner. • This will be taken up with the Ministry to ensure that the provisions of NEMA are complied with. Environmental inspectorate has been capacitated to deal with these kinds of transgressions. • Mine closure is informed by a variety of factors including completion of activities by the mining operation and lodgement of an application for a closure certificate. Some mines are put on care and maintenance and not necessarily closed.
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13/12/2016.	Community consultation in Limpopo Province, Mogalakwena Local Municipality.	Communities raised the following questions: • How is the mining industry redressing the imbalances of the past in the industry? • What is the DMR doing to ensure transformation becomes a reality in the mining industry? • More clarity on how the agency referred to on the presentation going to unfold. • What is the department doing to ensure that the mines comply with the procurement? • How will the department assist the locals to ensure that they adhere to the SABS standards? • Is the department doing something on skill outreach and is the charter linked with the job saving strategy of the country?	• The department responded that in the past women, Black people were not allowed to own minerals in South Africa. The charter is redressing the imbalances of the past by allowing women and Black people to own minerals and hold management positions in the mining companies. • Foreign suppliers are required to contribute 1% of the revenue generated from the South African mining industry towards the Mining Transformation and Development Agency. • The MTDA will be responsible for supplier and enterprise development (including community based companies).
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		• Development in the mining towns is very poor, what is the department doing to ensure that the SLP is aligned to the needs of the communities where mining is taking place? • Is the SLP not supposed to be discussed with the communities through consultation and engagement? • What are the consequences of none compliance with the SLP commitments? • The communities needed for explanation on the term labour sending areas. • What is the department doing with non-compliant companies?	• Labour sending area is where most of the employees are sourced from within Southern African borders. • Every mining company is being monitored with the terms and conditions of the contract. If the mining company does not comply, then the department can cancel or suspend the licence. Mining companies are given the opportunity to correct their mistakes before the department can issue suspension or cancellation of contract. • The social and Labour plans must be in line with the Municipalities IDP's. If the
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19/07/2017.	Various Community Organisations and Representatives including:	(a) Serodumo acting on behalf of its members wishes to exercise the	supplier buys goods in China and brings them in the country that would not be regarded as been procured locally. There are goods which can be procured locally and does not exclude people from other provinces to render the services. The SABS would conduct verification on goods. Mining companies must consult with the general public before they can be issued with a mining right and anyone in South Africa can object to the granting of such right. Section 26 of the MPRDA promotes beneficiation. Mining companies would be restricted to benefitate on certain strategic minerals. • DMR's considered views.
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(a) Centre for Environmental rights. (b) Mining Affected Communities United in Action (MACAU). (c) Serodumo SA Rona Based Community Organization. (d) Bulelani Mkhonto	right to equally voice the concerns on the draft reviewed Mining Charter. However, given the time period allocated for making submissions, it is not practical for the CBO to adequately brief its members residing in the far flung rural areas and engage meaningfully on these important issues. We plead for a sixty (60) days extension for the "meaningful participation" to indeed take place within our communities and constituency. (b) <i>Definitions</i> The definition of community should be expanded to permit mines to apply the zone of influence definition. (c) <i>Objects</i>	The Charter was gazetted for a 30 days period as defined in the MPRDA to solicit public comments on same. The Department is open to further meaningful and progressive proposals on the draft Charter. o <i>Definitions</i> The Department will consider definition of the following terms as suggested by stakeholders: Capital Goods, Services, Consumables, Multinational suppliers of goods, Economic interest, EME's, QSE's, BEE transaction, <i>material constraints</i>, Empowerment transaction, enterprise development, small business development, BEE entrepreneur, host community, life of mining right, local
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	The preamble. Vision, mission should recognize that a proliferation of communities living in abject poverty continues to be largely characteristic of the surroundings of mining operations. Charter should make reference the Sustainable Development Goals. <i>(d) Ownership</i> Target for this element should be informed by the population dynamics, the Black people form the majority of the population, and the 26% should thus be increased to 80%. Communities do not want to be represented by traditional leaders in the proposed Community Trust. Trust representation should reflect the democratic principles and widened to other democratic forums chosen by communities. Charter still accords 5% for Community Development without clarity on how such will work or it is even	community and ring-fenced. The Department will further expand on the existing definition of the following terms; BEE compliant (to link it with specific Dti Code level), Labour sending area (clarify extraterritorial application), Black people (to include juristic persons), Core and critical skills (align with the Dti Codes), ESOPS (to expand on the meaning). - o <i>Objects</i> The department will consider inclusion of reference to ownership in the objects of the Mining Charter. - o <i>Ownership</i> The department will review the ownership element taking into account the stakeholder concerns
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	calculated. This is despite huge sacrifices made by communities. <i>(e) Procurement</i> The 1% of annual turn-over ought to be extended to multinational suppliers of services. The funds to contribute towards impactful and sustainable development of communities. Increased targets are welcome and appreciated despite the lack of provision for ensuring that a % of this expenditure occurs locally. <i>(f) Beneficiation</i> No comments received on this element of the draft Reviewed Mining Charter, 2016. <i>(g) Employment Equity</i> What should have been 40% across the board by 2014, should be 51% by 2020 now. Executive Management (Board)- 51 %, Senior Management (Exco)- 51%, Core & Critical (specialized engineering	relating to SPV structure, relating to the ownership target, empowerment at company level, expand on trust representation, funding mechanisms, and provide clarity on consolidation of empowerment transactions. o <i>Procurement</i> The department will provide clarity and consider stakeholders submissions regarding the use of specific percentage targets, establishment of the Social Development Trust Fund, ring-fencing the funds for supplier development, define undefined terms, replace BEE compliant on services with Black owned, use of NPAT and annual turnover, verification of samples to be done by suppliers, provision for
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		)Skills -51%, Middle Management – 51%, Junior Management – 51%. (h) <i>Human Resource Development</i> No comment received on this element of the draft Reviewed Mining Charter, 2016. (i) <i>Mine Community Development</i> Contribution to be made towards sustainable and scalable programmes and projects should the mine close to ensure longevity. It is also amiss that the SLP is not made mention of noting that this has been the main mechanism for ensuring LED in communities. What is the relation between the 1% annual turnover and SLP requirements? (j) <i>Housing and Living Conditions</i> No comment received on this element of the draft Reviewed Mining Charter, 2016. (k) <i>Application of the Mining Charter for permits/licences granted in</i>	exemption. The use of Actual Procurement Spend and Total Measured Procurement Spend. o <i>Beneficiation</i> The Department will provide the required clarity regarding guidelines and mechanisms for implementation of the 11% offset against the value of beneficiation. o <i>Employment Equity</i> The department will consider separation of executive and non-executive directors, Exco and senior management, the use of EAP's vs. Demographics, removing reference to Black on the employees with disabilities, the use of specific percentages per target.
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		<i>terms of the Diamonds Act and the Precious Metals Act</i> No comments received on this element of the draft Reviewed Mining Charter, 2016. <i>(l) Reporting (Monitoring and Compliance)</i> The methodology for monitoring and evaluation needs to be fully outlined to remove any ambiguity which may exist. There must be a clear process to validate data and compliance to the Charter targets. <i>(m) Applicability of targets</i> No comments received on this element of the draft Reviewed Mining Charter, 2016. <i>(n) Transitional arrangements</i> No comments received on this element of the draft Reviewed Mining Charter, 2016. <i>(o) Non compliance</i> There must be collaboration with communities to ensure that mining	- o <i>Human Resource Development</i> The department will consider the usage of the learner Programme matrix, clarify expenditure on non-employees and recognition of expenditure on mandatory sectorial training. - o <i>Mine Community Development</i> The department will consider the use of NPAT over revenue, provide clarity regarding the linkages with SLP's and IDPs. - o <i>Housing and Living Conditions</i> The department will provide clarity regarding the measurability of compliance with this element and
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		operations are held accountable for noncompliance with the Charter objectives. (p) <i>Review of the Charter</i> The review of the Charter and its effectiveness every five years should be incorporated. (q) <i>Scorecard</i> No comments received on Charter scorecard.	revision of the Housing and Living Conditions Standards, - o <i>Application of the Mining Charter for permits/licences granted in terms of the Diamonds Act and the Precious Metals Act</i> The department will consider increased targets, definition of terms (EME's and QSE's) and proper alignment of the Charter with the Diamonds Act and the Precious Metals Act. - o <i>Reporting (Monitoring and Compliance)</i> The department will consider development of reporting guidelines.
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		○ <i>Applicability of targets</i> The department will consider replacement of reference to life of mine to life of mining right. ○ <i>Transitional arrangements</i> The department will provide clarity regarding progressive realization of targets. The Charter will apply to both existing rights and new mining right applications. The three years transitional period is sufficient to enable existing right holders to adjust their empowerment credential to comply with the reviewed charter requirements. ○ <i>Non compliance</i>
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			The department will expand on this element by making express reference to the relevant provisions of the MPRDA, i.e. section 47, 93, 98 and 99. - o <i>Review of the Charter</i> The department will reconsider the wording used in this element to provide certainty. - o <i>Scorecard</i> The department will consider the removal of reference to HDSEA and replace same with Black persons. • The suggested 26% is a minimum, there is nothing that precludes a mining company from going beyond this minimum target. The Department is open to alternative proposals to help
		Bulelani: I just want to state it clear that the black community would like far more than 26%. Black people are approximately 89% of the population, Coloureds, Indians and Whites sharing the remaining 11%. That means that should be the percentage	

		you should make amendments in proportion to. 26% is an insult to our democracy- because democracy means the majority shall rule, however your Department of Mineral Resources, is counter-revolutionary. Your department should learn alot from the SABC....we want 90% across the board. That mean in terms of ownership, skills development, enterprise development, black representation at executive level and black representation on all boards (directorship), organisations, charters and councils. I wish our concerns will be considered by you! We demand 90% and not 26%. Thank you for being conscious driven.	drive meaningful, broad based Black Economic transformation. •
20/06/2017	Centre for Applied Legal Studies.	I. Opportunities for public participation in the draft Reviewed Mining Charter appear to have been less than adequate. First, the	I. The Department submits that the 30 days period for public comments was

		Department of Mineral Resources (the DMR), when it published the draft Reviewed Mining Charter on Friday 15 April 2016 in the Government Gazette, did not upload the bill on the website. As a result the bill was inaccessible to much of the public who do not enjoy ready access to a government gazette. This is likely to disproportionately exclude mine-affected communities, workers as opposed to well-resourced groups and individuals. For many stakeholders, therefore, the month period cannot be regarded as commencing from 15 April. Further, given the significant barriers experienced by members of directly affected groups such as mine-affected communities in	sufficient and is open to further engagements on the draft Charter before it is gazetted for implementation. II. The communities are allocated stake in the ring fenced ownership element as part of the comprehensive benefits including the 1% community development requirement. The said percentages are just minimums and a mining operation is not precluded from going beyond the stated minimum percentages.
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	relation to resources, location and language, and the need for a charter to reflect their needs and priorities, it is vital that more extensive public participation be undertaken than a mere 1 month notice and comment period on a finished draft II. It is apparent from reading the obligations set out in the draft Reviewed Mining Charter that the interests of communities are still not accorded central priority. This is illustrated by the failure to include community development expenditure as one of the targets for which anything short of 100% compliance is non-compliance. The benefits conferred by the Charter are still not commensurate with the sacrifices they undergo in	III. Communities are welcome to approach the Department for assistance with the challenges regarding mining operations. IV. The Department will consider reconciling the Charter and SLP to remove any ambiguities. The 1% is intended to create certainty and the Department supports actual expenditure. V. The Department will consider reconciling the Charter and SLP to remove any ambiguities. VI. Refer to point V above. VII Compensation is regulated in terms of section 54 of the MPRDA
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		order for mining to occur. A far larger share than a portion of 5% (designated for communities and workers) should go to community development. III. There are community calls for effective and independent grievance mechanisms for rights violations and failure to meet social obligations by mining companies and an independent capacity development fund to assist communities in accessing the economic planning, ecological and legal (etc) knowledge enabling communities to make informed decisions and participate in decision-making on an equal footing with companies. IV. The draft Reviewed Mining Charter, under the 'mine	read with NEMA and MHSA. The Department will consider reinstating the sustainable development element. Viii. The concern is noted, the Department will reconsider the wording used. IX The Department disagrees. X The Department will consider broadening the scope of representation in the Trusts to include communities. Management of trust moneys will
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		<i>community development</i> section provides that mining companies contribute 'a minimum of 1% of their annual turnover to towards local community development and labour sending areas. Reading the draft Charter does not yield certainty as to whether this 1% is to constitute SLP expenditure or is required over and above SLP expenditure. If the former interpretation is correct, the use of actual (as opposed to projected) turnover is problematic as lower than projected turnover could result in SLP expenditure being revised downwards. V. There is no reference at all to SLPs in the draft reviewed mining charter. We therefore call for the clarification, in legislation and	be governed by the trust instrument. XI Refer to point X above. XII The submission is noted, the Department will rework the wording and percentages used.
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		policy, of the respective roles of the Charter and SLP systems and for their alignment. VI. In CALS' preliminary research on the implementation of the SLP system, a persistent theme echoed across a variety of role players in community organisations, local government and in the mining sector is of a lack of effective communication and co-ordination. The draft Reviewed Mining Charter does not indicate the mechanisms for co-ordination or provide guidance on how this should be achieved. In this regard, the development of a new Charter represents a missed opportunity. VII. The Charter does not recognise the need to compensate for environmental losses as a result of	XIII. The MPRDA provides for compensation in terms of section 54. XIV This is addressed in the Mine Health and Safety Act, 1996.
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		mining. The lack of attention to environmental justice is also reinforced by the removal of sustainable development from the objectives of the Charter. VIII. We welcome what appears to be a new requirement that the procurement targets for capital goods and consumables must be manufactured in South Africa. This is critical as if the ultimately goes offshore to purchase goods, for example from developed countries, the desired impact of stimulating domestic industrial development and job creation is largely negated. However, the effect of this is blunted by the ambiguity of the wording used which, in both cases of capital goods and consumables refers to 'a minimum of...of locally	
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		manufactured consumables from BEE compliant manufacturing companies,' If read literally, this would mean, rather than requiring a specific percentage of goods that are both procured from BEE are compliant companies and are locally manufactured, that instead only those goods that are manufactured locally need to be from BEE compliant companies. To achieve what seems to be the purpose of the provision, this ambiguity should be removed IX. There should be a requirement that companies, where possible, procure a proportion of goods and services from local BEE compliant companies based within the area surrounding the mine or the	
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		municipality and for companies to report on this. X. Our concerns regarding the Social Development Trust Fund (SDTF) are that provisions do not indicate how spending will be directed to communities. Furthermore communities are excluded from list of stakeholders who must be trustees. We suggest that multinationals should be required to contribute to the SLPs of the mines they supply, 'through a transparent, ring-fenced allocation of funds.' XI. It is important that the charter regulates the composition of the board of trustees for the community trusts. However, by only requiring traditional leadership to serve as community representatives on the	
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		board, the effect is to entrench the power of traditional leaders and undermine the self-determination of members of traditional communities. There is a pattern of community members alleging that traditional authorities are usurping the community share for their own benefit. It is therefore critical that democratically elected community organisations should also be accorded a right to be represented on the board. It is critical that communities are able to choose their representatives. XII. The draft Reviewed Mining Charter represents an improvement in that there are gender specific targets (for black women) representation at various levels of the company. It is not clear whether the targets	
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		refer to the percentages of the share of the positions to be held by black people or a percentage of all positions. If the former is the case, these targets are very low. For example, the draft Reviewed Mining Charter provides for a minimum of 50% Black executive directors, '25% of which must be black female.' The literal meaning of this would be that 25% of 50% of executive directors are to be black women, i.e. 12.5%. This would be a very low target. The other interpretation would be 25% of directors would be black women. XIII. The Amended Charter still fails to respond to the manner in which the externalised costs of mining fall predominantly on women. These costs include the loss of economic	
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		autonomy, where many women in rural areas lose access to arable land. Where agriculture is replaced by mining, relatively few women, in practice, are employed on the new mines with the result that the economic marginalisation of women is exacerbated. XIV. Further the Charter does not address barriers to the advancement of women in the workplace. It does not provide for measures to address harassment and gender-based violence on mines. It does not set a deadline for all mines to have equipment for women, separate bathrooms and sanitation needs for women. It does not require a timeframe for on-site childcare facilities for parents working on the mine.	
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26/06/2016.	South African Beneficiation (SAMBCO).	Mining and Co-operatives	I. According to the Definition of the BBBEE Act's first two Objectives: ◀The number of Historical disadvantaged people must be increased in Management, Ownership, Control of Enterprises or Co-Operatives and Productive assets. ◀B. Facilitating Ownerships and Management of enterprises and Productive Assets by Communities, Workers, Co-Operatives and other collective enterprises. At SAMBCO we believe that the Two Primary objectives of the BBBEE Act can be easily achieved in the Mining Charter	I. The Department will consider alternative models to give effect to broad based and meaningful transformation of the mining industry.
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	through Mining and Beneficiation Co-Operatives. Co-Operatives have proven to be inclusive in Nature and can benefit a larger portion of the Nation/population taking into account the poorest of the poor. At SAMBCO we believe that "Meaningful Economic Participation" can only be achieved through BEE Transactions with Co-Operatives in the form of Community Co-Operative, ESOP's Co-Operatives and Workers Co-Operative, such Co-Operatives will be able to divers into Services Co-Operatives, Consumables Co-Operatives and Capital Goods Co-Operatives, Housing Co-Operatives and Health Co-Operatives. According to the Mining Charter's first two Objectives:	II. Refer to point I above. III. The suggestion is noted.
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		< Promote equitable access to the Nation's Minerals resources to all the people of South Africa. < Substantially and meaningfully expand opportunities for black people to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources. At SAMBCO we have seen Mining Co-Operatives benefiting their communities in BRICS member countries like Brazil,	
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		China and India. Black people opportunities are more increased in the form of Co-Operatives through Tax Incentive, Grants and Soft Loans. SAMBCO is also partnered to a number of International and Local Educators in Mining and Beneficiation, to insure on the success of our Co-Operatives At SAMBCO we see ourselves as partners in the BBBEE Act as the poorest of the poor and the BBBEE Act recognizes Co-Operatives as an alternative for the poorest of the poor. II. We Request the Mining Charter to give a minimum of 10% ownership per Mining Right unto Co-Operatives to enable the growth of Co-Operatives or Artisanal Small-	
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		Scale Miners and a Minimum of 26% were there is no BEE partner or the Miner is struggling to find suitable BEE partners. III. It is requested the DMR to empower Co-Operatives with the 6 152 Abandoned Mines, We also request that the mining Dumps be given to Co-Operatives, The dumps are terrorizing communities with illegal miners or Zama-Zamas and Co-Operatives in the form of Communities, un-employed women and youths will eradicate the Zama-Zamas from the face of our economic landscape.	
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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

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;

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”;

- 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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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.