

539
AAI

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

CASE NO 43621/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

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 Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.

Mk

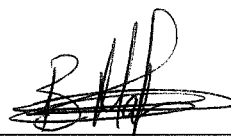
Bd

W.A.T.T

4. In particular, I confirm the contents of the Answering Affidavit 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 Department on the one hand, and the Applicant and the other stakeholders on the other hand.



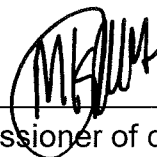
BONGIWE MABUSELA

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 Pretoria on 07th August 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.

B.M.

M.J.Z.

541



Commissioner of oaths

Full names:
Business address:
Designation:
Capacity:

Mabumetja Klaas Mabote
PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
PRACTISING ATTORNEYS, R.S.A

B.M

M.J.Z

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

542
AA2

CASE NO 43621/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

DAVID MSIZA

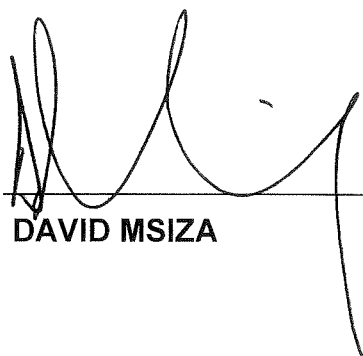
state under oath that:

1. I am the Chief Inspector of Mines in the Department of Mineral Resources,
I was the Acting 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.

DM MK

M.J.Z

3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit 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 Department on the one hand, and the Applicant and the other stakeholders on the other hand.



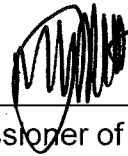
DAVID MSIZA

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 Pretoria on 07th August 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.

Mk

M. J. Z.

544



Commissioner of oaths

Full names:

Business address:

Designation:

Capacity:

Mabumetja Klaas Mabote

PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
PRACTISING ATTORNEYS, R.S.A

IM M.J.Z

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

CASE NO 43621/17

545
AA3

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MOSA MABUZA

state under oath that:

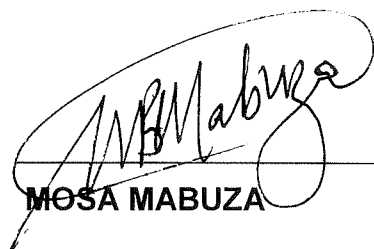
1. I am the Chief Executive Officer of the Council for Geoscience, I was the Deputy Director General in the Department of Mineral Resources (**"the Department"**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.

MR

MB.

M. J. Z.

3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit 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 Department on the one hand, and the Applicant and the other stakeholders on the other hand.

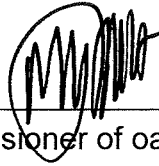

MOSA MABUZA

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 Pretoria on 07th August 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.

mk

MB.

M.J.Z



Commissioner of oaths

Full names:
Business address: *Mabumetja Klaas Mabote*
Designation: PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
Capacity: PRACTISING ATTORNEYS, R.S.A

MB.
M.J.Z.

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

548
AA4

CASE NO 43621/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MTHOKOSIZI ZONDI

state under oath that:

1. I am the Deputy Chief Inspector of Mines 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.

MZ

MR

M.J.Z

3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit 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 Department on the one hand, and the Applicant and the other stakeholders on the other hand.



MTHOKOSIZI ZONDI

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 Pretoria on 07th August 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.

M2

M.K

M.A.J.Z



Commissioner of oaths

Full names:

Business address:

Designation:

Capacity:

Mabumetja Klaas Mabote

PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
PRACTISING ATTORNEYS, R.S.A

MZ

M.J.Z

551
AA5

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

CASE NO 43621/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

PIETER ALBERTS

state under oath that:

1. I am the Chief Director Legal Services 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 Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.

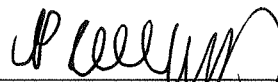
MK

M.J.Z

all

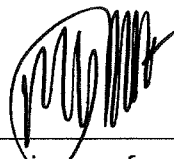
4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with:

- 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 Department on the one hand, and the Applicant and the other stakeholders on the other hand.



PIETER ALBERTS

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 Pretoria on 07th August 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:

Mabumetja Klaas Mabote
PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
PRACTISING ATTORNEYS, R.S.A

M.I.Z

dm

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

553
AA6

CASE NO 43621/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

AYANDA SHEZI

state under oath that:

1. I am the Chief Director Communications 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 Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.

AS
MK 11.5.17

4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with:

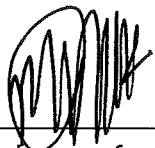
4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and

4.2 the consultation between the Respondent and the Department on the one hand, and the Applicant and the other stakeholders on the other hand.



AYANDA SHEZI

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 Pretoria on 07th August 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:

Mabumetja Klaas Mabote
PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
PRACTISING ATTORNEYS, R.S.A

M. S. 7

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

CASE NO 43621/17

555
AA7

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

RENDANI MUTHENGE

state under oath that:

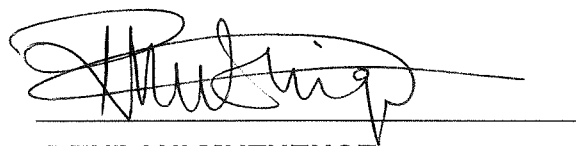
1. I am the Deputy Director Mineral Policy Development in the Department of Mineral Resources ("**the Department**").
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.

Mk

M.A.Z

R.

3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit 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 Department on the one hand, and the Applicant and the other stakeholders on the other hand.

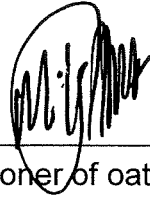

RENDANI MUTHENGE

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 Pretoria on 07th August 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.

MK

M.A.Z.

557



Commissioner of oaths

Full names:
Business address:
Designation:
Capacity:

Mabumetja Klaas Mabote
PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
PRACTISING ATTORNEYS, R.S.A

M.S.7

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

CASE NO 43621/17

558

AA8

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

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.

S.S. MK

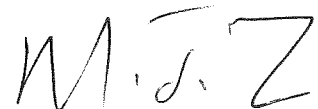
M.J.Z

3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit 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 Department on the one hand, and the Applicant and the other stakeholders on the other hand.

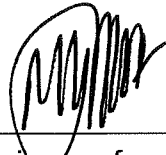


SIBONGILE JANE MALIE

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 Pretoria on 07th August 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.



560



Commissioner of oaths

Full names:
Business address:
Designation:
Capacity:

Mabumetja Klaas Mabote
PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
PRACTISING ATTORNEYS, R.S.A

S.S. M.J.Z

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

CASE NO 43621/17

561
AA9

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

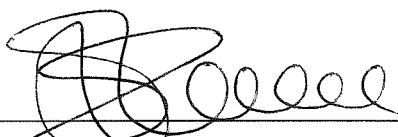
SETEPANE MOHALE

state under oath that:

1. I am the Chief Director Mineral Promotion and International Coordination 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 Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit 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 Department on the one hand, and the Applicant and the other stakeholders on the other hand.



SETEPANE MOHALE

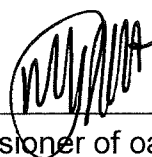
The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pretoria on 07th August 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

mk



M. J. Z

563



Commissioner of oaths

Full names:

Business address:

Designation:

Capacity:

Mabumetja Klaas Mabote

PREMIUM TOWERS, PRETORIA

COMMISSIONER OF OATHS

PRACTISING ATTORNEYS, R.S.A



M.J.Z

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

CASE NO 43621/17

564
AA10

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

ZARINA KELLERMAN

state under oath that:

1. I am the Special Advisor to Mosebenzi Joseph Zwane the Respondent in this urgent interdict application and the serving Minister of Mineral Resources.
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.

mk

Z
M. J. Z

3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department of Mineral Resources and me.
4. In particular, I confirm the contents of the Answering Affidavit ("**the Department**") 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 Department on the one hand, and the Applicant and the other stakeholders on the other hand.

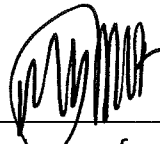

ZARINA KELLERMAN

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 Pretoria on 07th August 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.

mk

M.J.Z

566



Commissioner of oaths

Full names:

Business address:

Designation:

Capacity:

Mabumetja Klaas Mabote

PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
PRACTISING ATTORNEYS, R.S.A

2

11.1.7

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

CASE NO 43621/17

567
AA 11

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SEIPATI DHLAMINI

state under oath that:

1. I am the Acting Deputy Director General Mineral Regulation 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.

SSD

mk

11.1.7

3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit 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 Department on the one hand, and the Applicant and the other stakeholders on the other hand.



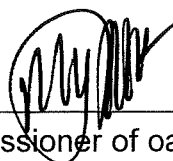
SEIPATI DHLAMINI

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 Pretoria on 09th August 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.

mk

M. J. Z

569



Commissioner of oaths

Full names:
Business address:
Designation:
Capacity:

Mabumetja Klaas Mabote
PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
PRACTISING ATTORNEYS, R.S.A

SSD

M. J. Z

570
AA 12

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

CASE NO 43621/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

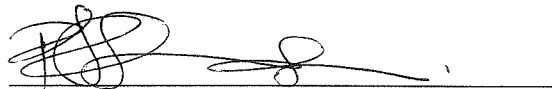
ROFHIWA IRENE SINGO

state under oath that:

1. I am the Chief Financial Officer in the Department of Mineral Resources
("the Deaprtment").
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.

Mk ~~RO~~ W.J.7

3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit 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 Department on the one hand, and the Applicant and the other stakeholders on the other hand.



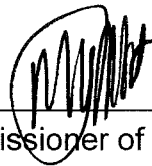
ROFHIWA IRENE SINGO

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 Pretoria on 07th August 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.

M.K

11.1.7

572



Commissioner of oaths

Full names:


Business address:

Designation:

Capacity:

Mabumetja Klaas Mabote

PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
PRACTISING ATTORNEYS, R.S.A


M.J.7

573

AA13

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

CASE NO 43621/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SIBUSISO KOBESÉ

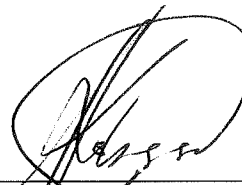
state under oath that:

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.

Mk

M. J. Z JK

3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit 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 Department on the one hand, and the Applicant and the other stakeholders on the other hand.



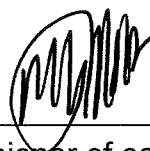
SIBUSISO KOBESE

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 Pretoria on 09th August 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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Commissioner of oaths

Full names:
Business address:
Designation:
Capacity:

Mabumetja Klaas Mabote
PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
PRACTISING ATTORNEYS, R.S.A

M.S.T. S.K

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AA 14
IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO 43621/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

JEANIFFER NNEPI 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.

MK J.N. M.T.D.

3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with:
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 - 4.2 the consultation between the Respondent and the Department on the one hand, and the Applicant and the other stakeholders on the other hand.

J. Nnepi Ntome

JEANIFFER NNEPI 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 Pretoria on 07th August 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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Commissioner of oaths

Full names:

Business address:

Designation:

Capacity:

Mabumetja Klaas Mabote

PREMIUM TOWERS, PRETORIA

COMMISSIONER OF OATHS

PRACTISING ATTORNEYS, R.S.A

J.N

M.J.Z

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

CASE NO 43621/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

KAGISO JOHN MENOE

state under oath that:

1. I am the Acting Chief Executive Officer of the State Diamond Trader, I was the Director Mineral Beneficiation Economics 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.

mk km
M.T.Z

3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.
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KAGISO JOHN MENOE

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Commissioner of oaths

Full names:
Business address:
Designation:
Capacity:

Mabumetja Klaas Mabote
PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
PRACTISING ATTORNEYS, R.S.A

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

CASE NO 43621/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

JOEL MALEATLALA RAPHELA

state under oath that:

1. I am the Acting Deputy Director General Mineral Policy and Promotion 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.

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1.1 A —

3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this urgent interdict application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit 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
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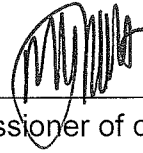
JOEL MALEATLALA RAPHELA

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 Pretoria on 07th August 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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Commissioner of oaths

Full names:
Business address: *Mabumetja Klaas Mabote*
Designation: PREMIUM TOWERS, PRETORIA
COMMISSIONER OF OATHS
Capacity: PRACTISING ATTORNEYS, R.S.A

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iii) Research on occupational health in the mining industry will, as recommended by the Leon Commission, receive due attention as part of the mine health and safety research programme.

iv) A system of matching grants will be considered for funding research and development projects.

v) Focussed and co-ordinated research on economic geology will be supported by Government and industry to attract exploration investment to South Africa.

vi) Co-operation between the various mining and mineral processing research and development institutions will be encouraged to make best use of existing facilities, to promote collaborative research efforts, to promote technology transfer and to ensure that minerals-related research and development is conducted in accordance with the country's science and technology policy and national objectives for the minerals industry. The results of the technology foresight exercise being conducted by the Department of Arts, Science, Culture and Technology will contribute to this endeavour.

Chapter Two:

PARTICIPATION IN OWNERSHIP AND MANAGEMENT

Past legislation and practices have inhibited black ownership of assets, in mining as in other of the country's principal producing sectors. While various initiatives are under way to introduce black investors into the industry, ownership of the main mining companies remains as yet essentially unchanged. A long-term perspective is needed because of the difficulties of raising the large capital sums involved.

Similarly, workplace discrimination (legislated in some cases) obstructed the advancement of black people into middle and senior management positions in the mining industry. Progress has been made in recent years, both on the mines (notably via apprenticeship and other training programmes) and in head offices. But the impact will take some years to start being really visible because of the long periods needed for employees to acquire the practical experience required for promotion.

Black participation in ownership and management of the mining industry will have special political significance for South Africa's development as a market-based democracy.

2.1 Background

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White Paper

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Minerals and Mining Policy

for

South Africa

October 1998

Pretoria

Department of Minerals and Energy Tel: (012) 317-9000
Private Bag X59 Fax: (012) 322-3416
Pretoria
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Introduction

South Africa's mining industry is supported by an extensive and diversified resource base, and has since its inception been a cornerstone of South Africa's economy. The changes which have come about in our country make it necessary to prepare the industry for the challenges which are facing all South Africans as we approach the twenty-first century.

The review process has taken account of the problems and opportunities confronting the mining industry against the backdrop of changes in the country's policy and institutional environment. In particular, the passage to the Mine Health and Safety Act of 1996 will have far-reaching impacts on the industry in the areas of health and safety and human resource development. Changes in labour legislation and the introduction of employment equity legislation, as well as the reform of the environmental regulatory system, create a dynamic context for this policy review. Beyond our borders increasing competition, both in commodity markets and for investment, from mineral-rich countries that have liberalised their economic and political systems to attract investment are significant influences on the policy reform process.

The policy review process took account of problems and opportunities facing the mining industry. The gold mining sector, particularly, is re-examining its production techniques in the light of a static gold price, deep levels of working and higher operating costs. Undoubtedly some of the older mines are reaching the end of their lives, leading to job losses and the other attendant negative effects of downscaling, but these problems are being tackled energetically within the sector, through restructuring of mining groups, technological advances and innovative methods of improving productivity. Apart from gold mining, there are many other minerals being produced, for some of which South Africa is the leading producer and holder of reserves. The White Paper also has a chapter on small-scale mining which is intended to encourage the small and medium sized operator, to the benefit of employment and the overall economy. Government mineral policy had to take account of the international nature of the mining industry in order to ensure the continuing prosperity of our own mines.

In September 1995, the Mineral Policy Process Steering Committee was formed consisting of representatives from both the executive and legislative branches of Government, as well as organised business and organised labour. The mandate given to the Steering Committee was to conduct an extensive consultative process to canvass stakeholder opinion for the preparation of a new minerals and mining policy for South Africa. In November 1995, a *Discussion Document on Minerals and Mining Policy for South Africa* was published and extensive written comments were received. Four hundred people attended public mineral policy workshops held in March 1996, at which a wide range of issues were debated. Bilateral meetings were held with *inter alia* provincial governments, ministries, departments, investment analysts, foreign-owned mining companies and environmental interest groups. In addition, written submissions were

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received from several interested parties during the consultative process. The end result of this, the most comprehensive consultative process yet conducted for a review of a minerals and mining policy in South Africa, was a document containing proposals that have been drafted after careful consideration of a very broad range of views. The submission of the document to the Minister of Minerals and Energy concluded the task of the Steering Committee.

The Minister requested the Department of Minerals and Energy to consider certain adjustments to the document in line with his budget speech in the National Assembly on 21 May 1997. The views of stakeholders, such as small-scale miners, environmental groupings and communities, who felt that they were not properly consulted by the Steering Committee, as well as the outcomes of other policy processes, were also considered in the final editing of the document. The document was then ratified by the Minister of Minerals and Energy and Cabinet as a Green Paper on Minerals and Mining Policy for South Africa.

The Green Paper was published on 3 February 1998 and the public was invited to respond not later than 31 March 1998. The Department of Minerals and Energy received more than a hundred written submissions from the public, and in addition, submissions were received from interested parties during public hearings held by the Parliamentary Portfolio Committee on Minerals and Energy.

The Department of Minerals and Energy established working groups to consider the various inputs and to effect appropriate amendments. The document was then ratified by the Minister of Minerals and Energy as a Draft White Paper. The Cabinet Committee for Economic Affairs requested further amendments, whereafter Cabinet on 23 September 1998 approved the document as a White Paper on Minerals and Mining Policy for South Africa.

The Draft White Paper is organised into six main themes:

- Business Climate and Mineral Development, which looks at the continuation of policy conducive to investment and includes a section on Mineral Rights and Prospecting Information which presents changes to the system of access to, and mobility of, mineral rights;
- Participation in Ownership and Management, which examines racial and other imbalances in the industry;
- People Issues, which looks at health and safety, housing needs, migrant labour, industrial relations and downscaling;
- Environmental Management;
- Regional co-operation; and
- Governance.

Each chapter and subchapter contains a general background to the particular issue, a statement of intent (policy objective), the views of the different stakeholders and, finally, the policy statements by Government.

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Policy making occurs in a dynamic setting, and minerals and mining policy, which is necessarily broad in its scope, needs to be co-ordinated with other policies which properly fall within the remit of other forums and spheres of government. Reference is therefore made in the document to matters that are being considered by other policy forums, and policies developed by other spheres of government.

Chapter One:

BUSINESS CLIMATE AND MINERAL DEVELOPMENT

This chapter covers seven topics relevant to the climate for mining business and mineral development.

Section 1.1 stresses the importance of a stable macro environment for economic growth in which measures that encourage investment in mining, as in other industries, are adopted.

Section 1.2 is concerned with fiscal policy as an integral part of mining and minerals policy. Several aspects of exploration and mining which have a major bearing on fiscal policy are raised together with policy statements that are prerequisites for minerals development. The Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa (Katz Commission) is currently considering mining taxation and the taxation of mineral rights. In due course the Commission's findings should be considered in conjunction with the broad objectives of minerals and mining policy. The topics of taxation of mineral rights and allocations from national revenue collection to provinces in which mining takes place are raised in section 1.3 and in chapter 6, respectively.

Section 1.3 deals with mineral rights and prospecting information. The nature, scope and content of rights to prospect and mine are central to any policy on minerals and mining. It has been contended that the system of mining and mineral rights currently in place in South Africa has frustrated new investment. Equally, however, others have argued that the legislative framework has helped materially in the exploration and mining of South Africa's unique mineral deposits. In reaching policy conclusions Government weighed these and other contending views. In order to improve current arrangements, Government seeks changes and adjustments that are conducive to increased minerals investment and address past racial inequity without disturbing investor confidence in the mining industry in South Africa. Several new policy statements are made.

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Section 1.4 focuses on small-scale mining and a number of policy statements are made directed at encouraging and facilitating the development of the small-scale exploration and mining sectors.

Section 1.5 looks at mineral beneficiation in broad outline. Several policies aimed at the development of South Africa's mineral wealth where this is economically justifiable are given.

Section 1.6 lists policy that endorses market principles and a supportive role for Government in the area of mineral marketing.

The last section focuses on research and development infrastructure conducive to the optimal development of the country's resources. A number of policies directed at stimulating such development and ensuring the continuing competitiveness of the minerals industry are given.

1.1 Investment and Regulatory Climate

1.1.1 Background

- i. The South African mining industry, one of the country's few world-class industries, has the capacity to continue to generate wealth and employment opportunities on a large scale.
- ii. Mining is an international business and South Africa has to compete against developed and developing countries to attract both foreign and local investment. Many mining projects in South Africa have tended to be unusually large and long term, requiring massive capital and entailing a high degree of risk.
- iii. South Africa has an exceptional minerals endowment, and in several major commodities has the potential to supply far more than the world markets can consume.
- iv. As articulated in its macroeconomic strategy, Government has committed itself to a continuing process of economic liberalisation, thus strengthening the competitive capacity of the economy, fiscal and tariff reform and bureaucratic deregulation. These are essential steps towards enhancing the country's competitiveness, attracting foreign direct and portfolio investment and creating a climate conducive to business expansion. The mining industry among others will benefit in the long term from these developments.
- v. By its very nature the mining industry has the potential to endanger human health and safety as well as the physical environment. It is the responsibility of Government to establish a regulatory framework that minimises such dangers without imposing excessive cost burdens on the industry and thereby jeopardising its economic viability.

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1.1.2 Intent

Government will create a stable macro-environment that supports economic development at national, provincial and local level and in which business, subject to appropriate regulation, can operate profitably, be internationally competitive and satisfy their shareholders' and employees' expectations. In this way Government will encourage investment in mining as in other industries.

In addition, Government will facilitate access to business opportunities and resources to those previously excluded, including helping equip such individuals/groups with the necessary skills to enable them to compete effectively in the market-place.

1.1.3 Policy Requirements

1.1.3.1 Views of the investment community and mining companies

- i. The distinctive characteristics of the mining industry need to be recognised in the formulation of the policy and regulatory framework. The framework must be consistent and stable so that investors can be confident in their financing decisions and the industry can be confident about its continuing ability to do business profitably.
- ii. Investors place a high premium on macro-economic, political and social stability, as well as smoothly functioning labour relations.
- iii. Foreign investors need the freedom to repatriate profits and capital.
- iv. South African-based mining companies wish to see a speeding-up in the comprehensive dismantling of foreign exchange controls.
- v. Investors need security that they will be allowed to exercise their rights to exploit minerals, subject to statutory requirements.
- vi. Non-confidential and publicly available information about the minerals sector needs to be well organised so that it is readily accessible to investors.
- vii. New investors need opportunities for access to mineral rights.
- viii. The cornerstones of any policy to promote investment must be market principles and economic efficiency.
- ix. The nature of international mineral markets and of South Africa's mineral resources must be taken into consideration when promoting investment, including the effect of increased supplies on prices.

1.1.3.2 Other views

- i. Equitable access to all natural resources is required, based on economic efficiency and sustainability.
- ii. The creation of wealth and employment is required for the economic empowerment of communities, both directly and through the multiplier effect. This is especially relevant in the underdeveloped regions of the country.

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- iii. Investment incentives and promotional activities should be cost-effective and should not lead to inequitable demands on the fiscus.

1.1.4 Government Policy

- i) Government will seek to create a macro and regulatory environment conducive to economic growth and development, in which the mining industry can make effective use of its human and capital resources.
- ii) Government will seek to create an enabling environment for municipalities to maximise the positive role the mining sector can play in promoting Local Economic Development and Integrated Development Planning.
- iii) Government will encourage municipalities to capitalise on the comparative advantage associated with mining activity in their area of jurisdiction and will support mutually beneficial partnership between the mining industry and municipalities.
- iv) Through the new Labour Relations Act and the specific industry-level and workplace structures it creates, Government will facilitate improved industrial relations in the industry.
- v) Government will seek to ensure, within the constraints of its available resources, the efficient provision and functioning of the physical, social and institutional infrastructure necessary for the competitiveness of the mining industry.
- vi) Government will ensure the effective organisation and accessibility of public information about the minerals sector.
- vii) Government will aim to lower barriers to entry to prospective new investors in the industry.

1.2 Taxation

1.2.1 Background

1.2.1.1 The current system of mining tax

- i. The taxation of mining activities follows the normal rules of taxation, subject to the following particular features:
 - a) Income

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A mining company may derive income from mining operations and non-mining operations. Different rules and tax rates are applied according to the nature of such income. Differences also apply according to whether the mining income is derived from gold or other operations.

b) Deduction of expenditure

A mining company incurs a wide range of expenditure. Some of this is in the nature of current expenditure (deductible in terms of the general deduction formula), and some in the nature of capital expenditure. The capital expenditure provisions of the Income Tax Act provide for the immediate deduction of capital expenditure and of expenditure on prospecting and incidental operations. Capital expenditure includes expenditure on shaft sinking, mine equipment, development, general administration and management. Some assets such as housing for residential accommodation, motor vehicles for private use of employees, and some railway lines and pipelines qualify only for a partial annual redemption.

c) Ring-fencing

The Income Tax Act applies a ring-fence to the taxable income of a mine, by restricting the deduction of its capital expenditure to the taxable income from mining on that mine. In certain circumstances the ring-fence may be breached by up to 25% of taxable income to allow a company to apply a portion of its expenditure on one mine against the taxable income of another of its mines.

d) Capital allowance

To encourage high capital investment during times of inflation, the Income Tax Act provides, in the case of gold and natural oil, for a capital allowance, calculated as a percentage per annum of total expenditure, which is transformed into a deduction against current capital expenditure.

e) Environmental funds

Mining companies are required by law to make financial provision for mining-related environmental rehabilitation. If in the form of a trust fund, the Income Tax Act permits the deduction of this provision from income, and exempts from tax the receipts and accruals of registered environmental funds established to hold these provisions.

f) Tax rate and formula tax

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Non-mining income, as well as mining income not derived from gold mining is taxed at the flat company rate. Income from gold mining is taxed on a formula basis. The effect of the formula is that gold mines which are marginally profitable pay tax at a lower rate than the normal company rate, or no tax at all, and more profitable gold mines pay tax at a rate greater than the normal company rate. The intention of this is to encourage the mining of marginal orebodies, while retaining an overall tax rate for the gold industry at approximately the same rate as the standard company rate. The formula tax, therefore, has the effect that a gold mine can continue to operate at marginal profit levels without paying tax until it regains profitability sufficient to attract tax. In this way it preserves employment in an industry which has a large number of employees and is prone to fluctuations in profitability.

g) Royalties

For purposes of this chapter, royalties are not regarded as a tax and are discussed in section 1.3.

h) Other

No severance tax is imposed. Mining companies are liable, in certain circumstances, to the secondary tax on companies. Indirect taxes paid by mining companies include value-added tax, regional services levies, transfer duties, customs and excise duties and donations tax. (In the case of value-added tax, a mining company does not pay the tax on its export sales, since all exports are zero-rated, and the mine is entitled to a refund in respect of all input taxes paid by it.)

1.2.1.2 Aspects of exploration and mining which have a bearing on mining tax

- i. Any mining taxation system needs to recognise the following aspects:
 - a. The risk to reward ratio in exploration is high, and mining itself is attended by a high degree of geological, project and market risks.
 - b. Particularly in big-scale and deep-level operations large amounts of capital are required. This capital is at high risk over long periods.
 - c. Mining companies are usually required to provide their own infrastructures because of the remote location of mineral deposits.
 - d. Mining involves the realisation of a wasting asset and the mine has little or no residual value. Continuing investment is therefore necessary in exploration, the acquisition of rights to mine and the development of new mines. All these activities form an essential part of the mining business cycle.
 - e. Increasing the cost of mining from whatever sources, has the effect of increasing the cut-off grade of ore, thus reducing the life of a mine and sterilising mineral resources.

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- f. Legitimate expenses should be treated in an appropriate way, the efficient use of resources should be encouraged and not retarded, and the system should not be subject to frequent change, change at short notice or change with retrospective effect.
- g. In view of international competition for investment funds, the tax system should be designed to assist in attracting and retaining investment in South Africa.

1.2.2 Intent

Government will maintain and promote a stable legal and fiscal climate that does not inhibit the mining industry from making the fullest possible contribution to the national, provincial and local economy.

1.2.3 Policy Requirements

1.2.3.1 Views of the investment community and mining companies

- i. There must be a consistent and stable fiscal regime that compares favourably with those in other jurisdictions.
- ii. The tax system should be such as to allow for attractive returns on capital.
- iii. The tax system should recognise, through appropriate measures, the risks inherent in mining, such as high capital commitment, long lead times, geological uncertainty and cyclical and volatile markets.
- iv. Mineral beneficiation projects share many of the risks referred to above.
- v. Mines should be taxed on profits and not in a way which increases costs.
- vi. The total tax burden is highly relevant to investment decisions so the levels and structures of national, provincial and local taxes, levies and imposts should be assessed in their entirety. The industry should be consulted when decisions regarding mining taxation are to be made.
- vii. The tax system should not discourage, in particular through ring-fencing, the use of the financial strengths of an existing company to invest in the establishment of new mines.
- viii. Severance taxes should not be imposed.

1.2.3.2 Other views

- i. The mineral industry should make its rightful contribution to tax revenues, both through taxes and royalties.
- ii. The tax system should encourage the adding of value to raw materials.
- iii. Levies and taxes should be used to fund environmental rehabilitation of land affected by past and current mining activities.
- iv. Inter-sectoral equity in terms of taxation should be achieved.
- v. Consideration should be given to using tax measures to improve access to mineral rights.

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- vi. The tax system should promote the optimal utilisation of South Africa's mineral resources.
- vii. The tax system should be used to empower the provinces to influence the economic development process and to deal with the effects of downscaling.

1.2.4 Government Policy

i) In developing mining tax policy, Government is committed to ensuring that the tax regime will be consistent and stable and that the aggregate rate of tax will be internationally competitive.

ii) The Katz Commission is investigating mining tax in South Africa. The Commission's recommendations will need to be considered in conjunction with the policy options set out here. It is understood that the Commission will be considering a number of tax issues, for example:

- a. redemption of capital expenditure in mining;
- b. capital allowances for gold mining;
- c. ring-fencing;
- d. tax deductions for exploration;
- e. a tax on mineral rights; and
- f. the extension of the gold-mining formula taxation to other types of mining.

1.3 Mineral Rights and Prospecting Information

1.3.1 Background

1.3.1.1 Nature and content of mineral rights

i) The South African system of mineral rights has developed over many years to its present state under a dual system in which some mineral rights are owned by the State and some by private holders. The State controls the exercise of prospecting and mining rights under the administrative system of prospecting permits and mining authorisations referred to below.

ii) Under common law, ownership of the land includes ownership of the minerals in the land. The law developed in such a way that the right to minerals in respect of land can be separated from the title to the land, for example upon original grant of the land or by subsequent transactions. The owner of land from which mineral rights have not been separated may separate the mineral rights from the land ownership by ceding them to another person or by reserving them to himself or herself. The mineral rights are then held under separate title which may include all the minerals in the land concerned or only a particular mineral or minerals.

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iii) Mineral rights constitute rights in land. They are officially registered by the State, and are a form of property protected under the Constitution.

iv) Mineral rights are tradeable. They have been and continue to be the subject of considerable financial investment that has resulted in the acquisition and registration of rights by prospectors and miners over relevant areas of interest.

v) Mineral rights represent a parcel of rights including the rights to prospect and mine together with ancillary rights to do what is reasonably necessary in order to effectively carry on prospecting or mining operations. The holder of mineral rights may grant subordinate rights to prospect under a prospecting contract or grant subordinate rights to mine under a mineral lease or may sell or otherwise dispose of the rights.

vi) The mineral rights owner is compensated by the exploiter of the minerals for the depletion of the non-renewable resource through the payment of royalties. It is generally accepted that in principle royalties are charged on production or revenue.

1.3.1.2 Ownership of mineral rights

i) The two main categories of owners of mineral rights are the State and private holders. Unfortunately, the current deeds registry system does not provide reliable overall figures indicating what percentage of the mineral rights is owned by each of these categories of holders. Statistics kept by the Department of Minerals and Energy since 1993 indicate that with the exclusion of the coastal zone and sea areas, the mineral rights in respect of which prospecting permits and mining authorisations have been issued are divided in the proportion 1/3 state-owned and 2/3 privately owned. This does not necessarily imply that for the country as a whole, including the coastal zone and sea areas, mineral rights are held in these proportions, but illustrates that the private sector is a substantial holder of mineral rights. A distinguishing feature of the South African mining industry at present is that almost all privately-owned mineral rights are in white hands.

ii) In the former TBVC states and self-governing territories mineral rights were largely owned by those states and territories but, for the purposes of prospecting and mining legislation, administered as if they were privately owned. It has been estimated that mineral rights in respect of some 19 million hectares, which represent 15% of the land area of the Republic, fall into this category, including mineral rights held by Government in trust for specific tribes and communities. This category also includes those mineral rights which vest in the Lebowa Minerals Trust under the Lebowa Minerals Trust Act, 1987, and the Ngonyama Trust under the Kwa-Zulu Ngonyama Trust Act, 1994. In terms of the present Constitution, mineral rights in this category vest in the State except for those held by the abovementioned two trusts as well as mineral rights held in trust for specific tribes.

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iii) The acquisition of mineral rights by the governments of the TBVC states and the self-governing territories was a result of the implementation of the South African Development and Trust Act, 1936, which provided for the vesting of these rights in the SA Development Trust (SADT) on behalf of Blacks. In terms of the Constitution of Self-governing Territories Act, 1971 and various statutes, these rights were transferred to the governments concerned.

Provision was also made for the vesting of trusteeship in the South African Government in cases where land together with mineral rights held by communities was incorporated into the jurisdictional areas of the governments of the TBVC states and the self-governing territories as well as land together with mineral rights which fell outside the jurisdictional areas of the aforementioned governments.

iv) The State is the owner of mineral rights in various areas of surveyed and unsurveyed State land as well as in privately-owned land where mineral rights have specifically been reserved to the State. Under prior legislation the latter class of land was known as "alienated State land" in respect of which prospecting rights together with the exclusive right to obtain mining rights were vested in the landowners or their nominees. According to section 43 of the Minerals Act, such rights were replaced with similar rights for a period of only five years which ended on 31 December 1996.

v) Mineral rights in certain rural areas, situated mainly in Namaqualand and in the Northern Cape (governed by the Rural Areas Act, 1974), are regarded as state-owned for the purposes of the minerals legislation. However, management boards in those areas exercised through the years extensive authority in respect of the granting of prospecting and mining rights. These management boards have after April 1994 been replaced by transitional local councils.

vi) Provision has been made in the Constitution read with the Restitution of Land Rights Act, for relief to persons or communities who were dispossessed of rights in land under any racially discriminatory law after 19 June 1913. Mineral rights are rights in land and can therefore be subject to the Act.

vii) There is an active market and continual movement in mineral rights, some 6 000 mineral cessions and prospecting contracts having been registered in deeds offices in South Africa for the five year period from 1991 to 1996.

1.3.1.3 Provisions for intervention by the State

In addition to the modes of acquisition of mineral rights referred to in paragraph 1.3.1.1 iv) above, the State can intervene under section 17 of the Minerals Act to grant prospecting rights in circumstances where an intending prospector cannot trace the holder of the mineral rights or where an heir has not taken cession of the mineral rights in an estate. According to section 24 of the Minerals Act, mineral

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rights and other rights in land may be expropriated in the public interest against compensation payable by the person requesting expropriation. It is therefore possible to expropriate the right to prospect and the right to mine. Under the current law, the State may, by virtue of section 18 of the Minerals Act, conduct an investigation on any land to establish the presence, nature and extent of minerals in or on that land, provided that such an investigation is in the national interest.

1.3.1.4 Other jurisdictions

- i. South Africa and the USA are two of the few major mining countries which have a dual system of public and private ownership of mineral rights. In most other countries the right to minerals is vested in the State. However, in some countries, of which Chile and Australia are good examples, the state system is such as to allow a mining company *de facto* permanent title to such rights.
- ii. In jurisdictions where mineral rights are publicly owned, a system of licensing is usually applied which provides security of tenure sufficient to attract exploration and mining. Many countries, notably in South America but increasingly elsewhere, which employ licensing systems for publicly-owned mineral rights, have successfully attracted large and continuing investment in exploration and mining.

1.3.1.5 The exercise of prospecting and mining rights in South Africa

- i. In South Africa, the mineral right owner is not permitted to prospect or mine for minerals without having obtained a prospecting permit or mining authorisation from the State. These licences are not transferable. They are aimed at controlling prospecting and mining, having regard to considerations of health and safety, environmental rehabilitation and responsible extraction of the ore. Conversely, a prospecting permit or mining authorisation cannot be granted unless the applicant is the holder of the relevant mineral right or has acquired the holder's consent to prospect or mine.
- ii. Reconnaissance work can and does take place without the necessity to hold a permit, provided the work does not fall within the definition of 'prospecting' in the Minerals Act.

1.3.1.6 Records of prospecting work

- i. According to section 19 of the Minerals Act, the holder of any prospecting permit or mining authorisation is obliged to furnish certain prospecting information to the State within one year after completing the digging of any excavation or drilling a borehole for the purpose of prospecting. The information must be kept confidential by the State. When 15 years have elapsed from the date of the completion of the excavation or borehole concerned, the State may disclose the information unless any person with a pecuniary interest in the excavation or borehole satisfies the State that his or her interest will be prejudiced by such disclosure.

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- ii. In most other jurisdictions confidentiality against disclosure to third parties of basic prospecting information furnished to the State is afforded during the currency of the prospecting licence or for very short periods. In such jurisdictions, where public ownership of mineral rights prevails, the policy is directed at assembling a public record of exploration work as a resource for future exploration.

1.3.2 Intent

Government will:

- i) promote exploration and investment leading to increased mining output and employment;
- ii) ensure security of tenure in respect of prospecting and mining operations;
 - iii) prevent hoarding of mineral rights and sterilisation of mineral resources;
 - iv) address past racial inequities by ensuring that those previously excluded from participating in the mining industry gain access to mineral resources or benefit from the exploitation thereof;
 - v) recognise the State as custodian of the nation's mineral resources for the benefit of all;
 - vi) take reasonable legislative and other measures, to foster conditions conducive to mining which will enable entrepreneurs to gain access to mineral resources on an equitable basis; and
 - vii) bring about changes in the current system of mineral rights ownership with as little disruption to the mining industry as possible.

1.3.3 The Present System: Views For and Against

Many differing views have been expressed in support of or against the current arrangements in respect of mineral rights and prospecting information.

1.3.3.1 Private ownership

- i. Proponents of private ownership maintain that:
 - a. It has been and remains ideally suited to effective utilisation of South Africa's distinctive ore bodies, for example, by providing the absolute security of tenure necessary in the development of very deep gold mining along the West Wits line. The capacity to retain mineral rights securely for

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the development of new mining ventures when these become possible is a positive feature of private ownership.

- b. Holding of mineral rights is a critical parameter in the valuation of a mining company by international investors. The company is valued according to its future potential ("blue sky") which depends on an ongoing flow of new projects derived from such mineral holdings.
 - c. Private ownership of mineral rights based in the law of property is preferable to a pure licensing system of rights based in administrative law and involving administrative discretion. Private ownership affords the absolute long-term security of tenure that attracts investment in exploration, mining and marketing.
 - d. South Africa has the ability to produce at a level far exceeding the world's ability to consume several commodities such as manganese, chrome, platinum and vanadium. Mineral rights in such commodities are held as part of long-term mining plans. Owners have a record of having expanded production in line with growth in demand and have also invested substantial funds in new product development and other forms of promotion to foster market growth.
 - e. Private ownership is consistent with a market economy and with an international trend towards reducing the direct role of Government in the mining industry.
 - f. Private ownership encourages trade in and utilisation of mineral rights, as is evident from the figures referred to in paragraph 1.3.1.2 above.
- ii. Critics of private ownership of mineral rights argue that:
- a. Minerals are part of the nation's endowment so that the State is the rightful custodian of this endowment.
 - b. South Africa (along with the USA) is out of step with other major mining countries, where public ownership of mineral rights has led to successful exploration and mining industries.
 - c. Private ownership of mineral rights suppresses exploration activity as well as the opportunity for alternative views to be taken of the economics of mining an unexploited ore body.

d) It allows hoarding of mineral rights. As such, the system is a barrier to entry against potential investors.

e) Complex and fragmented mineral right holdings and the multiplicity of owners in South Africa militate against new investment by prospective new entrants who encounter difficulty and cost in identifying holders of mineral rights and obtaining mineral rights.

f) The system is inaccessible to small-scale miners, and inhibits the development of a vibrant junior mining sector.

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g) Private ownership of mineral rights limits equal and equitable access to mineral rights and resources.

1.3.3.2 State ownership

i) Those in support of the transfer of privately-held mineral rights to the State contend that:

- a) Transfer of mineral rights to the State will release mineral terrains for new entrants, which will stimulate private sector activity.
- b) State control of mineral rights will remove difficulties in cost and delays surrounding fragmented mineral right holdings.
- c) A system of state-owned mineral rights would enable the State to enforce the submission and release of exploration information, thereby avoiding duplication of exploration activities.
- d) State ownership of mineral rights is more prevalent in the world than is private ownership of mineral rights.
- e) State ownership will prevent the hoarding of mineral rights and allow equal and equitable access to potential investors, in particular small-scale miners.

ii) Contentions raised against a transfer of mineral rights to the State are that:

- a. Transfer of mineral rights to the State will require the payment of compensation, which would be an inappropriate use of the State's limited financial resources.
- b. The blanket transfer of mineral rights to the State could easily lead to administrative difficulties in a system not geared to the management of mineral rights, extensive delays and hence a loss of investor confidence that could seriously damage the South African mining industry.
- c. There is no indication that the transfer of mineral rights to the State will automatically result in more successful exploration and mining. It is argued that in South Africa there is evidence to the contrary in that state ownership of mineral rights has made these rights subject to policies that have impeded rather than promoted mineral development. As indicated above, it has been estimated that two-thirds of the mineral rights in respect of which prospecting and mining activities are conducted are privately held. Management of deposits that will be brought to account in the future requires a long-term perspective attuned to changes in technology and markets that is more likely to be found in the private sector.

- d. State ownership based in a system of administrative law offers less security than a system of private ownership based in the law of property, and is susceptible to inefficiency and corruption.
- e. A bias towards state ownership would run counter to the Government's philosophy and policy on competition and privatisation.
- f. Prospecting information and mineral rights are separate forms of property. Ownership of the latter does not automatically confer title to the former.

1.3.3.3 Disclosure of prospecting information

In relation to prospecting information there are broadly two contending views. On the one hand, it is argued that more data on prospecting results should be made publicly available as a resource for future exploration efforts by new prospectors and prospectors with new techniques. Against this it is held that prospecting data are the product of effort and investment by prospecting companies, the data constitute property that can be bought and sold and an incentive should be provided for the prospecting effort to be undertaken by protecting the confidentiality of the data for a reasonable period. As a further complication, contentions in support of the public release of prospecting data after fixed periods ignore the nature of prospecting programmes that do not have a readily determinable point of completion.

1.3.4 Tax on Mineral Rights

i) One view is that a tax should be imposed on privately held mineral rights to open access to such rights. Such a tax would not be payable by operating mines or where the retention of mineral rights is part of a long-term mining strategy that is in the national interest, or where there is active exploration taking place. If the owner of the mineral rights is unable or unwilling to pay a mineral rights tax, the rights may either be sold to a willing purchaser or at no cost to the owner be transferred to the State.

ii) Opponents of such a tax reject the view that the rights would be better utilised if transferred to the State. They have also contended that it would be contrary to the Constitution to use a tax to induce taxpayers to surrender assets to the State without payment for these assets. In addition to questions about the constitutionality of such a tax, and whether it will achieve its objective, opponents of such a tax contend that there are practical difficulties in applying such a tax; for example, how could this be done equitably across a range of mineral rights where commercial values may differ greatly and which may be held by a multiplicity of holders? They argue that the tax would be contentious, wrongly burden the holding of rights intended for future use, raise the investment threshold, delay investment decisions, generate uncertainty about mineral right holdings and require considerable administrative effort. It could become a source of litigation, for example in so far as its application to property held in trust is concerned. In addition, such a tax directed at a policy purpose, as opposed to revenue

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generation, would be inconsistent with the guiding principles articulated by the Katz Commission and hence detract from the evolving coherence of the country's fiscal policy.

iii) It is also contended that, if a tax on mineral rights were introduced, expenditure on market development (such as R & D on possible new products and promotion of long-term growth in the market) incurred by the taxpayer should be allowed as a credit against the tax liability, in addition to the current value of past prospecting-related expenditures. Proponents of this view observe that ownership of mineral rights affords the long-term predictability of security of tenure on which major commitment to future development depends.

1.3.5 The Need and Capacity for Change

Whilst the Government recognises that the system currently in place has some positive features, it concludes that the *status quo* must be changed with a view to achieving the policy objectives set forth in paragraph 1.3.2 above. Government believes that changes will be implemented on an incremental basis. Notwithstanding changes to the current mineral rights dispensation, the State shall guarantee security of tenure.

1.3.6 Government Policy

1.3.6.1 Ownership of mineral rights

i) Government recognises the inherent constitutional constraints of changing the current mineral rights system. However, in terms of the Constitution the State is bound to take legislative and other measures to enable citizens to gain access to rights in land on an equitable basis. In addition, it empowers the State to bring about land rights (including mineral rights) and other related reforms to redress the results of past racial discrimination. Furthermore, article 2(1) of the UN Charter of Economic Rights and Duties of the State grants to States full permanent sovereignty, including possession and disposal, over all its natural resources. Government therefore does not accept South Africa's current system of dual state and private ownership of mineral rights.

ii) Government's long-term objective is for all mineral rights to vest in the State for the benefit of and on behalf of all the people of South Africa.

iii) State-owned mineral rights will not be alienated.

iv) Government will promote minerals development by applying the "use-it or lose-it"/"use-it and keep-it" principle.

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v) Government will take transfer of mineral rights in cases where a holder(s) of mineral rights cannot be traced or where mineral rights have not been taken cession of and are still registered in the name of a deceased person(s).

1.3.6.2 A new system for granting access to mineral rights

As a transitional arrangement in pursuance of the objective stated in section 1.3.6.1 ii above, the following new system for granting access to mineral rights will apply:

- i) The right to prospect and to mine for all minerals will vest in the State.
- ii) Government will develop detailed legislative proposals for the introduction of the new system of access to all mineral rights. In developing such proposals provision will be made for:
 - a) guaranteeing the continuation of current prospecting and mining operations in accordance with the "use-it and keep-it" principle;
 - b) a transitional period to allow holders of prospecting, mining and mineral rights to licence the operations referred to in (a) above, as well as extensions which are necessary to provide for the continuation of such operations;
 - c) a transitional period to allow holders of prospecting, mining and mineral rights to licence *bona fide* intended prospecting and mining operations in cases where (a) and (b) above do not apply;
 - d) a general notification to allow holders of prospecting, mining and mineral rights to substantiate in respect of areas other than those contemplated in (a), (b) and (c) above, why licences for prospecting and mining should not be granted to another party in accordance with the "use-it and keep-it" principle;
 - e) granting of prospecting and mining licences to applicants without the consent of the holders of prospecting, mining or mineral rights who have not been licensed in terms of (b), (c) and (d) above;
 - f) security of tenure by granting prospecting and mining licences for specified periods which are capable of cancellation or revocation only for material breach of the terms and conditions of the licence;
 - g) registerable prospecting and mining licences which will be transferable with the consent of the State;

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- h) the holder of a prospecting licence to be entitled to progress to a mining licence on compliance with prescribed criteria;
- i) annual minimum work and investment requirements to discourage the unproductive holding of prospecting and mining licences;
- j) a retention licence which may, upon written application, be granted to an applicant in cases where the applicant, having explored the area and established the existence of an ore reserve which is, at the time of completion of the exploration programme, considered to be uneconomical due to prevailing commodity prices (market conditions) or where the exploitation thereof might lead to market disruption not in the national interest. Such licence will enable the holder thereof to retain the reserve without the commitment to minimum work and investment requirements. The licence will be granted for a limited period in respect of the property concerned;
- k) precluding the granting of a prospecting or mining licence over an area in respect of which a currently valid prospecting retention or mining licence is held for the same mineral;
- l) predetermined standard terms and conditions, for all prospecting and mining licences;
- m) the reduction, as far as possible, of discretionary powers by applying standard requirements or objective criteria;
- n) payment of prospecting fees or royalties by the holder of the prospecting or mining licence to the registered holder of mineral rights. Such prospecting fees or royalties will be determined by the State after consultation with the registered holder of the mineral rights. In determining such fees and royalties, prospecting fees and royalties payable to the State will be used as a guide. The quantum of prospecting fees and royalties will be internationally competitive and will not inhibit the initiation of new projects;
- o) payment of a surface rental, determined by the State after consultation with the landowner, by the holder of a prospecting or mining licence to the registered land owner; and
- p) the processes of considering the granting of a prospecting or mining licence and the approval of an environmental management programme to run concurrently and to grant the prospecting or mining licence and approve the environmental management programme simultaneously.

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iii) Persons, including their successors in title, or assigns or nominees, who could lay claim, under section 43 of the Minerals Act, 1991, to the exclusive right to prospect for a mineral to which the right was reserved to the State, shall after the lapsing of the period that ended on 31 December 1996, or the approved longer period, no longer be deemed to be the holder of such right.

1.3.6.3 Reconnaissance work

A non-exclusive permission for broad-based, non-destructive exploration will be implemented. Such permissions will be for a limited period in respect of the area required. A reconnaissance permission will not entitle the holder thereof to a prospecting or mining licence.

1.3.6.4 Disclosure of prospecting information

It will be a condition of any prospecting licence or reconnaissance permission that all information and data from prospecting shall be submitted to the State after completion or abandonment of any particular prospecting activity. The State will release such information to the public at any time from the date of submission of such information unless the prospector retains a prospecting retention or mining licence in respect of the land concerned or an application therefor is pending. Such information submitted to the State will be used to create a national exploration data base.

1.3.6.5 Data base of mineral rights holdings

Government will through the Departments of Land Affairs and Minerals and Energy seek to obtain the additional resources which will be necessary in order to compile a readily-accessible data base.

1.3.6.6 Disincentive for non-utilisation of mineral rights

Government will investigate the feasibility of imposing disincentives which would be intended to discourage the non-utilisation of privately-owned mineral rights. Such disincentives will not apply in respect of areas where currently valid prospecting, retention or mining licences are held. Such investigation, which will be undertaken by the Department of Minerals and Energy in association with the Department of Finance, will take into account the findings of the Katz Commission.

1.4 Small-scale Mining

1.4.1 Background

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i) A flourishing small-business sector usually increases competitiveness in an economy and is an efficient vehicle for the creation of jobs. The fall in the real price of minerals has led to the closure of numerous large-scale operations. Well-managed small-scale mining has the potential to take over and mine economically where large-scale mining is unable to operate profitably. In this way small-scale mining can make a meaningful contribution to the total global production.

ii) The development of small-scale mining alongside mining in underdeveloped regions would also increase the portfolio of minerals being produced and could lead to the exploitation of resources that would otherwise be sterilised. In addition, it could provide a channel for increased access to the mining industry.

iii) For the sake of clarity, the concept of small-scale and artisanal mining needs to be defined. There are significant potential environmental and health and safety problems associated with artisanal mining, which is often the only means of subsistence available to individuals. By artisanal mining is meant small-scale mining involving the extraction of minerals with the simplest of tools, on a subsistence level. There is no generally agreed definition of the term small-scale mining - although it is often defined with regard to mine's output, capital investment, numbers employed or managerial structure. Small-scale mining is a relative term; thus the choice of limiting criteria to distinguish between small and larger-scale mining (such as production rate, capital and labour employed) will differ from commodity to commodity and from country to country. In South Africa, small-scale mining ranges from very small operations that provide subsistence living (artisanal mining), to the "junior" companies for which revenue is such that subsistence living is not the prime motivator.

iv) In many countries with large mining industries, both small and large exploration and mining companies compete aggressively and successfully side by side. This allows for the exploitation of small (low capital) and large (high capital) projects and provides opportunities for more entrepreneurial operators.

v) Worldwide, it is apparent that many new and major ore deposits have been located by small and lean exploration companies, who make decisions efficiently and rapidly. Typically these companies locate deposits and either sell them off to larger companies or, because they wish to be involved in the mining phase, enter into joint ventures with larger companies which provide expertise and/or capital to develop the project. This provides a healthy synergy between large and small operators.

vi) The interests of the country and the community demand that all forms of mining, whether large, small or artisanal, should be subject to the same requirements in respect of licensing, safety, health and the environment.

vii) Small-scale mining already takes place on a sizeable scale in South Africa. Opportunities for small-scale mining projects are found mainly in gold, diamonds,

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coal, industrial minerals and in minerals derived from pegmatites. These opportunities are often confronted by problems, such as:

- a) access to mineral rights - the present South African mineral rights ownership system is seen by many as a major blockage in the development of small-scale mining.
- b) access to finance - financiers are seldom willing to participate in small-scale mining ventures which often provide limited security and financial returns.
- c) incoherent structure - there is a lack of appropriate structures that assist small-scale mining development.
- d) location of operations far from major markets.
- e) lack of management, marketing and technical skills - new small-scale mine operators face technical barriers to participate in mining, including lack of skills in dealing with aspects such as complex metallurgical processes, practical mining problems and business skills.

1.4.2 Intent

Government will encourage and facilitate the sustainable development of small-scale mining in order to ensure the optimal exploitation of small mineral deposits and to enable this sector to make a positive contribution to the national, provincial and local economy.

1.4.3 Policy Requirements

1.4.3.1 Views of small-scale miners

- i. Small-scale miners require information on the availability of mineral rights and mineral deposits.
- ii. Access is required to mineral rights and to the surface areas necessary to exploit these rights.
- iii. Unfragmented and adequate information is required on mineral regulations, geology, mining and environmental aspects and mineral marketing.
- iv. Technical assistance and training is required for small-scale miners in the broad spectrum of mineral-related activities.
- v. Access to investment financing is required.

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- vi. Regulations in respect of mining should be relevant, understandable and affordable to the small-scale miner and should be enforced in a site-specific manner.
- vii. Administrative procedures should be simplified and speeded up.
- viii. Institutional research and development in respect of all the aspects of mineral development and exploitation relevant to small-scale mining is required, as well as the transfer of this technology to small-scale miners.
- ix. Tax and royalties rates, levies and financial guarantees for rehabilitation should not constrain the development of small-scale operations.
- x. An integrated and co-ordinated approach is required from all the government departments and other agencies to promote and develop small-scale mining activities.
- xi. A co-operative and supportive approach towards the small-scale mining sector is required from the other sectors of the mining industry.

1.4.3.2 Other views

- i) Minimum standards in respect of the environment should be maintained for all mining operations.
- ii) Other land-use options should not be curtailed by small-scale mining activities.
- iii) Health and safety standards and the rights of workers should be maintained in small-scale mining operations.
- iv) Development of the mineral potential of especially the underdeveloped regions of the country is required.
- v) Communities should be consulted regarding mineral development and should enjoy lasting benefits from such developments.
- vi) Government should promote and encourage small-scale miners to operate within sound business principles.
- vii) The deleterious effects of artisanal or subsistence mining on the environment and on safety and health elsewhere in the world, dictates the necessity for research in this area. Meanwhile, resources need to be employed by the State to control artisanal mining as effectively as possible.

1.4.4 Government Policy

1.4.4.1 Mineral rights

Information on mineral rights and mineral deposits available for development will be made accessible, particularly for the benefit of small-scale miners.

1.4.4.2 Access to finance and technology

- i) Access to funding for small-scale mining will be encouraged and facilitated through appropriate and targeted institutions.
- ii) The costs of state advice and support for the small-scale mining sector will be weighed against the benefits of the application of such support to other mining or non-mining activities.
- iii) The Department of Minerals and Energy (DME) will co-ordinate needs-driven research by the Science Councils and ensure that this information and technology is accessible to the small-scale mining sector.
- iv) The DME, in consultation with private industry, organised labour, non-governmental organisations, tertiary institutions, research organisations and foreign aid agencies, will investigate the establishment of training facilities for small-scale miners, not only in South Africa, but in the region as a whole.
- v) Information on all aspects relating to mineral development and exploitation will be made available by the DME by means of a "one-stop shop" approach.
- vi) All spheres of government and development agencies will work towards co-ordinating their activities in respect of the promotion of small-scale mining activities. Municipalities in particular will be encouraged to support the development and emergence of small-scale mining through appropriate Local Economic Development strategies.
- vii) The capacity of the DME will be enhanced to efficiently facilitate small-scale mining support on the broad spectrum of activities involved in such endeavours. The DME will further facilitate the establishment of a self-sustaining institutional support mechanism for small-scale mining.
- viii) Government will facilitate the mutually beneficial co-existence of big and small-scale mining operations.

1.4.4.3 Regulation and administration

- i) Mining regulations will be administered consistently, while adopting an approach of guidance and advice towards small-scale miners.
- ii) The DME, in conjunction with other relevant Government departments, will streamline the regulatory and administrative procedures in respect of mineral exploration and exploitation.

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iii) Health and safety standards will be maintained in small-scale mining operations.

1.4.4.4 Environmental management

i) Small-scale mining, like the rest of the mining industry, will be required to adopt measures that will promote environmental sustainability by means of the application of consistent standards and acceptance of the "polluter pays" concept. All the policy principals contained in Chapter four (Environmental Management) will also apply in the case of small-scale mining.

ii) Government will support the provision of training and skills development for small-scale miners in environmental management.

iii) Intensive environmental management guidance will be provided in areas where there is a high concentration of small-scale miners.

iv) Financial guarantees for rehabilitation will be flexible and site specific.

1.5 Mineral Beneficiation

1.5.1 Background

- i. The term beneficiation, used broadly to describe the successive processes of adding value to raw materials from their extraction through to the sale of finished products to consumers, covers a wide range of very different activities. These include large-scale and capital-intensive operations like smelting and technologically sophisticated refining as well as labour-intensive activities such as craft jewellery.
- ii. Through adding value or beneficiating mineral resources a country can maximise the rent it derives from exploitation of its natural resource base and have it serve as a foundation for further industrial development.
- iii. For many decades, where there have been viable opportunities, the mining industry has invested in mineral beneficiation. However, South Africa has the potential to increase the proportion of mineral output that is beneficiated by virtue of its large reserves, technological skills and low energy costs.
- iv. That South Africa has an abundance of raw materials available for beneficiation is not sufficient, or even necessary, for beneficiation to take place economically here. Other factors on the demand side need to be taken into account too, of which proximity and access to markets are the most weighty.
- v. Economic and fiscal certainty is required for the long-term planning needed for developments of the magnitude of mineral beneficiation projects.

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- vi. Raw materials prices paid by local beneficiators should not place them at a disadvantage in relation to overseas competitors.
- vii. Stable and competitive tariffs for electricity and the transport of beneficiated products are required.
- viii. Hurdles to beneficiation include a limited local market for beneficiated products, high capital costs and a lack of technology in certain fields.
- ix. Due to a combination of factors, the real prices of numerous minerals have declined over the past four decades, leading to a general deterioration in the terms of trade for raw material exporting countries, as well as appreciable volatility in export revenues.

1.5.2 Intent

The aim of the policy will be to develop South Africa's mineral wealth to its full potential and to the maximum benefit of the entire population. Government, therefore, will promote the establishment of secondary and tertiary mineral-based industries aimed at adding maximum value to raw materials.

1.5.3 Policy Requirements

1.5.3.1 Views of the mining industry and minerals industry

- i. Beneficiation projects should be initiated on the basis of market forces and decisions taken by individual companies pursuing well-considered business objectives.
- ii. Demand-side factors, such as relationships with existing customers, should be taken into account in respect of mineral beneficiation.
- iii. Measures instituted to promote mineral beneficiation should not be detrimental to the international competitiveness of the mining industry in respect of unbeneficiated mineral exports.
- iv. Raw materials prices should be determined by the market and not by Government.

1.5.3.2 Other views

- i. Due to the risks inherent in large-scale mineral beneficiation projects, supply-side incentive measures should be instituted by Government to promote value-adding activities.
- ii. Policies and regulations that constrain the acquisition and ownership of precious metals and minerals by jewellery manufacturers should be reviewed.

1.5.4 Government Policy

- i) A greater degree of co-operation and co-ordination will be established between the Departments of Minerals and Energy and Trade and Industry in respect of mineral beneficiation.

ii) In order to promote mineral beneficiation, efficient supply-side measures will be introduced, such as lower royalty rates for projects that include beneficiation. Qualification for such incentives will, however, require a commitment to promote further local downstream beneficiation through, inter alia, export parity pricing of products.

iii) Government is committed to promote investment in mineral beneficiation activities through ensuring competitive and stable costs of public services and goods, such as electricity and transport.

iv) The State will continue to support research with a view to developing new or improved beneficiation techniques and to developing new applications for locally produced mineral products.

v) Non-confidential information that could promote the beneficiation of South Africa's minerals held by Government departments and parastatal research organisations will be effectively disseminated to the private sector.

vi) Science Councils and Government departments will endeavour to establish joint-venture research and training programmes with universities and the private sector in order to produce the necessary skilled and productive manpower required for mineral beneficiation developments.

vii) Decisions regarding beneficiation projects will be based on sound economic and market principles, monitored by the Department of Minerals and Energy (DME).

viii) Prices for minerals and processed mineral products will be determined by the market.

ix) Policies and regulations that constrain the downstream development, for example in the local jewellery manufacturing industry, will be reviewed by the DME and other departments and institutions involved.

1.6 Minerals Marketing

1.6.1 Background

- i. South Africa possesses an exceptional mineral endowment. The role that mining plays in the economy and the share that minerals contribute to exports, define South Africa as a minerals-based economy.
- ii. The minerals industry energetically promotes, markets and sells its products domestically and internationally on competitive markets.

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1.6.2 Intent

Mineral marketing policy will be based on market principles. Government's role will be supportive, and intervention will generally be limited to addressing market failures.

1.6.3 Policy Requirements

1.6.3.1 Views in favour of state intervention in marketing

- i. Government intervention in respect of minerals marketing should be limited to protecting the national interest.
- ii. Transfer pricing should be dealt with by law enforcement.
- iii. There may be merit in researching co-ordinated marketing of certain commodities as a means to increase foreign exchange earnings.
- iv. The potential role of a mineral marketing audit office should be researched.
- v. Consideration should be given to a small levy on sales to fund market development efforts.

1.6.3.2 Views against state intervention in marketing

- i. The view that the State could match the marketing and sales performance of the private sector is contradicted by experience elsewhere in the world.
- ii. Government intervention in minerals marketing is unwarranted and harmful and is emphatically opposed by mining companies.
- iii. The establishment of a minerals marketing audit office is not necessary. The Reserve Bank has sufficient statutory power to regulate the flow of funds into and out of the country.
- iv. The imposition of a levy on sales is opposed as an unnecessary additional form of taxation.
- v. Minerals marketing is a private sector activity that is best handled by the producers themselves as has been done successfully throughout the years. There is no necessity for nor benefit in the establishment of a statutory minerals promotion body.

1.6.4 Government Policy

i) The marketing of South African minerals will be determined by market forces. State intervention will generally be limited to addressing market failures.

ii) Barriers, economic and otherwise, to mineral exports will be identified and appropriate strategies for their removal will be devised. All measures which restrict the sale of South African minerals on foreign markets will be opposed.

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iii) Transfer pricing will be dealt with by the application and enforcement of laws. To this end co-operation and co-ordination will be established between the Department of Finance and the Department of Minerals and Energy.

iv) Government will encourage and support market development by producers.

1.7 Research and Development

1.7.1 Background

- i. South Africa's diversity of mineral deposits poses a spectrum of technological challenges for the country's mining industry. World leadership has been achieved in the technology and practices to exploit the deep, complex and difficult mineralogy of many of South Africa's unique resources. Innovative solutions have been developed by the established mining houses and research institutions.
- ii. Research and development in the mineral industry needs to conform to the development of a comprehensive science and technology policy that will address the country's needs. Policy in this regard is set out in the Science and Technology White Paper and tackles issues such as directing the country's research and development effort towards addressing the needs of its citizens, the balance between applied and fundamental work, redressing past discrimination in access to training related to research and development and the methods of funding these activities.
- iii. A relatively large number of stakeholders representing a variety of disciplines perform research and development activities for the minerals and mining industry and these efforts need to be synergistic and complementary.
- iv. The State is involved in research and development both as part of the national scientific and technological effort and on behalf of the industry through the CSIR, Mintek and the Council for Geoscience as well as at universities and technikons.
- v. The Science Councils form part of the technology bridge between mining operations and available science, engineering and technology. It is here that the State's contribution is greatest.
- vi. Co-operative research on health and safety is essential. The Leon Commission has commented on the role of the Safety in Mines Research Advisory Committee (SIMRAC) that the selection of research fields reflects a failure to apply a rigorous needs-based assessment and to carry out research related to occupational health.
- vii. In instances where mining houses have identified advantages they have co-operated on research and development activities.
- viii. Mining companies remain committed to research and development on process cost reduction and customer satisfaction, which serves their own interests and is funded by themselves, whilst recognising the potential contribution of user-influenced public sector research for common interests.

1.7.2 Intent

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Government will undertake and promote research, technology development and technology transfer that will stimulate the optimal development of the country's resources in the longer term and ensure that the industry remains competitive.

1.7.3 Policy Requirements

1.7.3.1 Views of the minerals industry

- i. Research and development undertaken by the State should be user influenced and complement private sector activity.
- ii. Funding for the work of SIMRAC is provided exclusively by the mining industry. However, the Chief Inspector of Mines has control over the allocation of such funds and no limit exists on the funding for SIMRAC that the Inspector may demand of the industry. Such research should be funded in good part by Government. The costs of administering SIMRAC are to be borne by the public in terms of the Mine Health and Safety Act.

1.7.3.2 Other views

- i) Appropriate fiscal incentives for research and development need to be developed.
- ii) Focused and co-ordinated research on applied economic geology should be supported by Government and industry to attract new exploration companies to South Africa and locate new ore deposits.
- iii) There should be a provision within the Mine Health and Safety Act to make levy funds available for the administration of SIMRAC activities.
- iv) Capacity relating to the minerals and mining industry within various research institutions should be developed.

1.7.4 Government Policy

- i) Research and development efforts will be needs-driven and directed to develop solutions in exploration, mining, processing, beneficiation and environmental conservation and rehabilitation of the environment as well as to satisfy the needs of global customers and to exploit the value adding potential of the country's minerals. This applies to large and small-scale mining.
- ii) The recommendations of the Leon Commission on the restructuring of SIMRAC, ie the need for competent research management and overseeing of its programmes, will be implemented.

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iii) Research on occupational health in the mining industry will, as recommended by the Leon Commission, receive due attention as part of the mine health and safety research programme.

iv) A system of matching grants will be considered for funding research and development projects.

v) Focussed and co-ordinated research on economic geology will be supported by Government and industry to attract exploration investment to South Africa.

vi) Co-operation between the various mining and mineral processing research and development institutions will be encouraged to make best use of existing facilities, to promote collaborative research efforts, to promote technology transfer and to ensure that minerals-related research and development is conducted in accordance with the country's science and technology policy and national objectives for the minerals industry. The results of the technology foresight exercise being conducted by the Department of Arts, Science, Culture and Technology will contribute to this endeavour.

Chapter Two:

PARTICIPATION IN OWNERSHIP AND MANAGEMENT

Past legislation and practices have inhibited black ownership of assets, in mining as in other of the country's principal producing sectors. While various initiatives are under way to introduce black investors into the industry, ownership of the main mining companies remains as yet essentially unchanged. A long-term perspective is needed because of the difficulties of raising the large capital sums involved.

Similarly, workplace discrimination (legislated in some cases) obstructed the advancement of black people into middle and senior management positions in the mining industry. Progress has been made in recent years, both on the mines (notably via apprenticeship and other training programmes) and in head offices. But the impact will take some years to start being really visible because of the long periods needed for employees to acquire the practical experience required for promotion.

Black participation in ownership and management of the mining industry will have special political significance for South Africa's development as a market-based democracy.

2.1 Background

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- i) Government is unshakeable in its commitment to removal of racial discrimination in the workplace, in mining and elsewhere, through the bill of rights entrenched in the Constitution, as well as other supportive legislation.
- ii) In similar spirit, Government believes that it will be profoundly in the interests of the economy for the mining industry to have a wider spread of ownership and to be regarded with pride by South African society in general.
- iii) The Labour Relations Act (LRA) and other relevant legislation will assist in eliminating racially discriminatory practices at all levels within the mining industry. Mining companies have also taken steps to remove barriers to the advancement of black people and women in the industry. It will, nevertheless, require a considerable period of time before previously excluded groups can gain the technical and academic qualifications and experience that are required for the exercise of high level management and technical responsibilities in the mining industry. Government will continually monitor progress in addressing the racial and other imbalances and review whether intervention targeted at the mining industry is required.
- iv) The Government has decided not to embark upon a programme of nationalisation to reverse ownership patterns in the mining sector.
- v) The Labour Market Commission has recommended that steps be taken to facilitate worker participation in the organisation of work, as provided for in the LRA. These measures should create smooth industrial relations and facilitate workplace efficiency.
- vi) The Mine Health and Safety Act, 1996 embodies a commitment to building a culture of co-operation in the workplace by establishing a range of tripartite structures. At mine level, health and safety committees consisting of employee and management representatives will promote workplace democracy as well as mine health and safety.

2.2 Intent

Government will encourage changes leading to equity of opportunity in respect of access to ownership and management of the mining industry.

2.3 Policy Requirements

2.3.1 Views concerning previously disadvantaged groups

- i. The State should take a constructive interventionist role in altering the patterns of ownership in the industry and promoting black ownership at all levels.

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- ii. There should be a Workplace Anti-Discrimination Act that provides for an official audit of the extent of racial discrimination at every mine and puts in place a procedure, backed by law, to remove racial discrimination.
- iii. The South African mining industry is heavily dominated by a small number of mining houses, all of which are white owned. Business ownership and control in the country in general, and particularly in the mining industry given its complexion should be deracialised. The mining industry needs to demonstrate rapid, visible and significant transformation in line with the rest of South African society.
- iv. By virtue of their contribution to insurance and pension funds, mine employees and black people in general already have significant financial interests in the industry. Such financial interests should be used to secure significant participation in the control of mining companies through exercising governance rights of shareholders.
- v. Changes in ownership to achieve a broader spread as well as greater participation in managing mining companies on the basis of ownership should be promoted through the development of Employee Share Ownership Participation Schemes (ESOPS). Criteria used in developing ESOPS in the mining industry need to provide for genuine participation in managing operations, be of sustained value rather than linked to operations with a short life and be tailored for low income workers. Corporate initiatives around ESOPS are hampered by Income Tax laws and the Companies Act which should be amended so as to remove obstacles to such schemes.
- vi. Due to the concentrated ownership that characterises the mining industry and in recognition of the long time that will be required for deracialisation of ownership to occur through market forces, specific initiatives are required to achieve effective deracialisation. A new form of corporate governance is required that will create conditions for effective employee participation through a system of co-determination.
- vii. Development of the small-scale mining sector resulting from companies disposing of unwanted properties to black-owned companies or through the State purposefully allocating its mineral rights to black-owned companies will not produce genuine economic empowerment as this will be confined to small deposits or to future mining and will not address the inequity in the present distribution of mining industry ownership.

2.3.2 Views of the investment community and mining companies

- i. Participation and ownership issues are of general application and should not be at the core of mining and minerals policy.
- ii. Market forces dictate ownership of mining companies. Investment in public companies is open to everyone. Principally via insurance and pension funds, people of all races already have significant financial interests in the industry.
- iii. The evolution of a wider spread of ownership will take place through market processes. Over the past few years a number of black-led financial companies have emerged with the resources to get involved in the large-scale sector, and

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various transactions are under consideration in the small-scale sector too. Some large corporations are actively facilitating these processes. It is only a matter of time before such developments come to fruition on a meaningful scale.

- iv. Removal of discrimination is already well advanced via legislative and regulatory change supplemented by education, training, work reorganisation and other corporate initiatives.
- v. In general, especially given the country's demographics, effective participation by blacks in ownership and management will be far better achieved by encouraging investment and growth rather than by directives and controls.
- vi. Consequently, while greater such participation is both essential and welcome, there is no case for government intervention to achieve it. Radical changes to the system of corporate governance are similarly unwarranted: generic reforms are already well under way in the light of the 1995 report of the King Committee on Corporate Governance.

2.4 Government Policy

- i. Government will continuously promote a wider spread of ownership and seek to facilitate acceleration of the changes that are already under way.
- ii. Consequently Government will consider the introduction of specific initiatives such as those set out below:
 - a) Government will facilitate steps to deracialise business ownership and control by means of focused policies of black economic empowerment. In the mining sector, State intervention through parastatal development finance institutions (including the Industrial Development Corporation and the Development Bank of SA) to finance investment in new and existing mining ventures in partnership with black companies will be encouraged.
 - b) Employee Share Ownership Participation Schemes are a practical vehicle to promote a broader spread of ownership and participation in industry. Government will facilitate such changes by adjusting the administration of tax and company law to reduce obstacles to establishing ESOPS for low income workers. (The third Interim Report of the Katz Commission "very much supports the objective of greater employee share ownership in South Africa, " and states that ESOPS should include "the entire labour complement of a company ... particularly employees at the lower level of the organisation").
- iii) Government will encourage real worker participation in the management of all mines.

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Chapter Three:

PEOPLE ISSUES

The mining industry provides jobs for over half a million people directly, and for many more when both up- and down-stream multiplier effects are taken into account. The industry has created towns and nodes of economic development throughout the country. Because of the nature of the work, especially in the very deep mines, the industry has provided large numbers of employment opportunities for less skilled workers, from South Africa itself and from the region.

The labour situation in mining has been associated with the most controversial aspects of colonial and apartheid rule. These include pass laws, compounds, the migrant labour system, the reservation of skilled work for white people, and the denial of trade union rights to black workers up until 1982. The special control of mine labour and application of racial domination in the industry pre-dates the apartheid era by three-quarters of a century.

Reform began, slowly at first, in the early 1980s. While the process of change has accelerated in the past few years, the legacy of decades of discriminatory practice cannot be eradicated overnight - indeed the impact of some reforms will take a good many years to be fully visible.

Across the labour market as a whole, Government has embarked upon a programme of legislation that will ensure that the momentum of change is maintained. The tripartite approach embodied in the National Economic Development and Labour Council (NEDLAC) and other relevant statutory bodies should help underpin the process of constructive engagement among the concerned parties.

Improving relationships between people in the industry, allowing opportunities for human development and addressing the need for a safer and more healthy working environment are essential if the mineral wealth of the country is to be used to its greatest potential. At the same time, the industry has shed almost a third of its jobs in the last eight years and this trend of shrinking employment levels, in the gold sector in particular, is likely to continue, although its timing and scale cannot be accurately anticipated. A major challenge lies ahead in managing the social consequences of downscaling in the industry - which extends to linked industries and to urban and rural communities all over [S]outhern Africa.

3.1 Mine Health and Safety

3.1.1 Background

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- i. The current fatality, injury and disease rates in the South African mining industry are unacceptably high.
- ii. Following the 1995 report of the Leon Commission of Inquiry into Health and Safety in Mines, Parliament has passed the Mine Health and Safety Act, 1996. It is hoped that this will lead to a significant improvement in the health and safety profile of the South African mining industry.
- iii. At national level, tripartite institutions have been established in terms of the Act. These institutions will continually influence policy development and law on matters relating to health and safety in line with the provisions of the Mine Health and Safety Act:

a) The Mine Health and Safety Council will advise the Minister of Minerals and Energy on health and safety at mines.

b) The Mining Qualifications Authority will advise the Minister of Minerals and Energy on education and training policy in the mining industry, in line with the Mine Health and Safety Act of 1996 and the South African Qualification Act of 1995.

iv) The Mine Health and Safety Inspectorate has been restructured as a separate branch under the Chief Inspector, within the Department of Minerals and Energy.

v) At mine level, the manager is required by the Act to develop and implement a health and safety policy, based on the officially approved policies set at national level and in consultation with health and safety committees at the mine which include management and employee representatives.

vi) The health and safety policies that are developed at national level and mine level are implemented within a context that is laid down by the Act:

a) In pursuance of a health and safety culture each mine must establish a policy that will incorporate the employees' rights set out in the Mine Health and Safety Act:

1. the right to representation and participation;
2. the right to education and training;
3. the right to health and safety information;
4. the right to leave a dangerous working place.

b) All employees have the responsibility to:

- take care of their own health and safety and safety of others who may be affected by their activities;
- use and take proper care of protective clothing, and other health and safety facilities and equipment provided for that purpose;
- report any situation which presents a risk to the health or safety of persons;

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- comply with the provisions of the act.

vii) Previous legislation did not, in practice, address the occupational health care and compensation problems of mineworkers.

viii) The spread of HIV/AIDS through the workforce is likely to be a feature of the mining and other industries over the next decade and beyond.

ix) There are health and safety problems associated with small-scale mining which the current legislation and government policies do not adequately address.

3.1.2 Intent

Government will promote healthy and safe working conditions at all mines and, in accordance with national health policies, ensure that mines deal humanely with the health consequences of work in the mining industry.

3.1.3 Policy Requirements

3.1.3.1 Views of the employers

- Policy should have as its objective the creation of an affordable, equitable and sustainable health-care system for employees.
- It is imperative that regulations governing safety in mines should be realistic and practically enforceable and are focused on areas where they are most needed.
- Health and safety in mines should be regulated by Acts of Parliament.
- Employees must accept the obligation to comply with safety standards.
- Government should develop a national HIV/AIDS plan in consultation with all stakeholders.

3.1.3.2 Views of labour

- Trade union representatives should be included in decision making on health and safety matters.
- Health and safety training for employees should take a priority position in the training programmes of the mines.
- The capacity of the Department of Minerals and Energy to deal effectively with health and safety issues needs to be upgraded urgently.

3.1.3.3 Other views

- The State must recognise the cost to society and especially to rural communities of disabled and ill mineworkers and ex-mineworkers. It must be recognised that

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these persons have little or no chance of re-employment and must rely on disability payments or pensions.

ii) The State must recognise the health and safety aspects associated with small-scale mining.

3.1.4 Government Policy

- i. Government will expedite the full implementation of the Mine Health and Safety Act which makes the employer primarily responsible for the protection of the health and safety of employees.
- ii. Government will, in consultation with employers and labour, develop a programme in the mining industry that ensures the physical, psychological and vocational rehabilitation of disabled workers to enable them to earn a living.
- iii. A national database on occupational health will be developed by the Department of Minerals and Energy in collaboration with the Department of Health that reflects the prevalence and incidence of occupational disease among mineworkers and ex-mineworkers. (Policy in regard to currently employed mineworkers will be developed by the Mine Health and Safety Council (MHSC) in terms of the Mine Health and Safety Act. Policy for ex-mineworkers will be developed by the Department of Health in consultation with the MHSC).
- iv. Government will, in consultation with employers and labour, review the system of compensation payouts to mineworkers and ex-mineworkers in the light of increases in the cost of living.
- v. The system of implementing proper medical care for disabled and diseased ex-mineworkers will be reviewed
- vi. A coherent and comprehensive policy towards HIV/AIDS will be developed by the State in consultation with the stakeholders as part of a national policy. Government will address the manner in which epidemiological research into HIV/AIDS is conducted; the manner in which mineworkers are tested, and counselled, educated and treated; and specifically ensure that no pre-employment testing for HIV/Aids is conducted and that workers with HIV/AIDS are not discriminated against.
- vii. The International Labour Organisation Safety and Health in Mines Convention will be referred for consideration to the National Economic Development and Labour Council and the MHSC before ratification by Government.

viii) Whilst maintaining health and safety standards in the small-scale mining sector, Government will review current legislation to ensure that the relevant provisions are practically applicable.

ix) Government has accepted that a properly structured system of administrative penalties could be more effective than a system of criminal enforcement in achieving the ultimate goal of the Mine Health and Safety Act, which is to improve health and safety in the mining industry. In this regard, Government will, in consultation with employers and labour, introduce an appropriate system of

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administrative penalties into the Act to replace, in respect of certain offences, the current system of criminal sanctions.

3.2 Human Resource Development

3.2.1 Background

i) The mineral industry has been characterised by racism in past practices of job reservation and in restricted access to training and advancement. Problems that are present, but not confined to the minerals industry, are a poorly developed human resource base and a concentration of skills and positions of responsibility in the hands of whites.

ii) The advancement of black workers and professionals into positions of seniority and into management in the mining industry has been limited.

iii) The majority of mineworkers have not had access to education and training opportunities and, as a result, the majority are functionally illiterate. This situation has a negative impact on safety and health standards and on productivity.

iv) In recent years, many mining companies have made efforts to redress past discrimination and to ensure that individuals with potential have the opportunity to reach higher levels of responsibility in the industry. Although aggregate statistical evidence is not yet to hand, individual mining houses report that a good majority of their apprentice artisans, learner-miners and other trainees are black and that, given the country's demography, this situation will continue into the foreseeable future. Over and above expenditure on training for purposes of ensuring a more productive and safer workforce, individual mining companies have invested in the education of communities connected to their activities. Up until now, training provided by mining companies has been, perforce, fragmented and lacks national standardisation. This situation is being addressed by the South African Qualifications Authority Act.

v) The Mine Health and Safety Act provides for the establishment of a Mining Qualifications Authority (MQA) which will advise the Minister of Minerals and Energy on education and training policy in the mining industry.

vi) A more comprehensive concept of human resource development which aims to have a more efficient, productive and better paid workforce through education and training is being adopted by all role players. This will upgrade the quality of life of the entire workforce.

vii) The Leon Commission has found that it is unsatisfactory to use Fanagalo as the language of the mines, because the language has a very limited vocabulary. While it may be satisfactory for giving simple commands it is quite inadequate to

convey the nature and extent of the dangers that lurk beneath the surface, the source of such dangers, and how best to avoid them.

3.2.2 Intent

Government will encourage, support and facilitate human resource development in the mining and mineral industry.

3.2.3 Policy Requirements

3.2.3.1 Views of the employers

- i. Primary responsibility for education from the basic to the advanced level lies with the State through the academic and vocational education system.
- ii. For a competitive industry, South Africa needs an education and training system which provides a high quality secondary and tertiary education to meet the industry's operational and strategic needs in a cost-effective manner. The learning system should provide employees with flexible skills and attitudes to contribute to the profitability and safety of the enterprise.

3.2.3.2 Views of labour

- i. Full union participation in structures dealing with education and training issues, from mine level to industry level, is essential.
- ii. Education and training needs to incorporate a new set of values reflecting democratic change in the country.
- iii. Education and training programmes provided by the unions should be recognised by the State and by mine employers. Union committees should have access to proper facilities from which to conduct their duties in the workplace. They should have access to training venues and equipment in order to conduct steward and membership education and training.
- iv. Educational subsidies, including contributions from the mining industry, should be made available for the study of disciplines related to mining in line with general policies on support for technical and vocational training.
- v. An industry training fund should be established via a small training levy on the mining industry wage bill. Mining companies providing or funding recognised training should be refunded from the training fund.
- vi. In line with the National Qualifications Framework, on-mine training programmes and capacity building should be adapted to incorporate life-long skills and to provide flexibility in workers' career paths to assist miners to find post-mining employment in the context of downscaling and mine closure.

3.2.3.3 Other views

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- i. Entry of black students to minerals-related fields of study needs to be promoted to overcome the legacy of past discriminatory practices.
- ii. Hardships caused by job losses due to retrenchments and mine closures need to be ameliorated through appropriate education and training programmes to provide affected workers with enhanced employment possibilities, whether within the mining industry or elsewhere.

3.2.4 Government Policy

- i. Government will support and promote provision of appropriate education and training in the mining industry. Particular emphasis will be placed on Adult Basic Education and Training (ABET), and health and safety training at all levels.

ii) ABET will be aimed at the following:

- a. to provide workers with an education and training base for further learning and career path advancement;
- b. to enhance health and safety in the workplace;
- c. to develop workers' skills and understanding to enable them to participate more actively in the process of change within the workplace and the community;
- d. to contribute to the removal of all discriminatory barriers within the industry, particularly those of a racial nature.

iii) The Department of Minerals and Energy will continue to promote representivity and redress past imbalances in selection of staff and in its support for internal education and training.

iv) Government will discourage the use of Fanagalo as a medium of communication in the minerals and mining industry. The language policy of the mining industry will be guided by the multi-lingual reality of South Africa, and constitutional rights regarding language.

v) Government will require that all learning achievements in the minerals and mining industry are registered on the National Qualifications Framework, to enable people to progress through various learning pathways, across levels of learning, and throughout their lives.

vi) Funds of the Mining Qualifications Authority will consist of monies appropriated by Parliament; monies collected in terms of the Mine Health and Safety Regulations and other applicable laws; fees obtained from services provided by the MQA; and any other monies received from any other source.

vii) The MQA will also be established as a sectoral Education and Training Authority in terms of the Skills Development Initiative by the Department of Labour with added functions as contemplated in that initiative.

viii Government will ensure that people in the minerals and mining industry have access to quality education and training so that they can gain the knowledge and skills they need for work and to improve their lives.

3.3 Housing and Living Conditions

3.3.1 Background

- i. Hostels have been a significant feature of the system of labour on the mines since the birth of the modern mining industry in the late nineteenth century. Workers were often forced to live in austere, regimented single-sex hostels, subject to strict legal and extra-legal controls.
- ii. The housing and living conditions for many workers in the mining industry are sub-standard. These conditions impact adversely on their health, productivity and well-being.
- iii. The hostel system for black workers has been run on racial and ethnic lines and has been discriminatory.
- iv. Progress has been made in upgrading hostel accommodation which has, in some instances, included the provision of married quarters.
- v. Since mining operations are frequently located far from existing settlements, the provision of housing has been undertaken by employers as part of the infrastructure required to develop the mine. South Africa is unusual among the world's major mining countries in the provision of accommodation by employers.
- vi. There is merit both in continuing to provide accommodation (and to upgrade accommodation), within the constraints of costs, and in encouraging and facilitating home ownership/rental by employees within nearby communities.
- vii. The large number of workers housed in hostels and the costs of converting such accommodation requires a planned and phased approach to improving mineworkers' living conditions. The principles of choice and full consultation with key stakeholders should apply to the planning and implementation of upgrading of accommodation and living conditions.
- viii. The whole structure of mining towns and settlements must be altered to integrate mineworkers into the local economy and to end the racially discriminatory provisions that apply to housing for black mineworkers.

3.3.2 Intent

To seek to ensure that all employees have a choice in their pursuit of suitable housing and living conditions.

3.3.3 Policy Requirements

3.3.3.1 Views of the employers

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- i. Accommodation should be affordable and sustainable.
- ii. Financing schemes used to improve mineworkers' living conditions should be based on payment for services rendered.
- iii. Housing is part of remuneration and is settled by collective bargaining.

3.3.3.2 Views of labour

- i. A range of tenure types should be offered to workers including rental accommodation, home ownership and social housing. Housing options should include single and family accommodation, accommodation in nearby settlements where feasible, and accommodation in mineworkers' home areas. The principle of choice for mineworkers over a wide range of flexible housing options should apply.
- ii. Existing hostels on mines should be converted over time into family units and into single units for miners without families, or who elect not to live with their families. Included in the provision of family housing should be community and education services and facilities.
- iii. Every mine should, in conjunction with representative trade unions, be required to draw up a five-year plan for the improvement of living conditions for workers, incorporating specific targets.
- iv. The management of hostels must be democratised so that residents participate jointly with mine management in all areas of decision making around running the hostels.

3.3.3.3 Other views

The provision of family housing should be associated with expanded community services and facilities, including education.

3.3.4 Government Policy

- i) Government will, in consultation with the Mine Health and Safety Council, propose measures regarding the standard of housing and nutrition of employees who are accommodated at mines. These measures should include the monitoring of compliance.
- ii) Government will investigate the improvement of housing and accommodation for mineworkers and their families, with due regard to the sustainability of communities involved. The mining industry will be encouraged to plan their housing needs in support of compact, integrated, liveable and mixed land use environments.
- iii) State assistance for both the upgrading of hostels to single accommodation and the conversion of hostels to family housing will be investigated.

3.4 Migrant Labour

3.4.1 Background

- i. The system of migrant labour for black workers in the mining industry is deeply entrenched in the industry and within communities that have supplied labour for the mines, in some cases for over 120 years.
- ii. The system was used by the mining industry to provide labour at low wages and low cost for the labour-intensive work on the mines. At the same time political, economic and social factors affecting rural communities throughout southern Africa made migrant labour in many instances the only option to generate income.
- iii. Migrant labour is associated with a range of negative consequences including the denial of normal family life to migrant workers, poor living conditions in single-sex hostels, and social disruptions including the break-up of marriages.
- iv. The underdevelopment of parts of South Africa and of foreign countries supplying labour has created a situation of dependence on migrant labour for jobs and mineworkers' remittances. Approximately half the Gross National Product of Mozambique and Lesotho comprises mineworkers' remittances. As a result, individuals, communities and foreign countries have an interest in preserving the current system.
- v. Mine employment patterns show a trend towards stabilisation of the workforce and a greater reliance on local recruitment. Despite such trends, migrant labour from rural areas within South Africa and from neighbouring countries will be a feature of mine employment for a long time to come.
- vi. Migrant labour is an important topic that affects the mining industry. It is a complex issue that is under consideration by the Chamber of Mines, the Employment Bureau of Africa, the National Union of Mineworkers and the South African and foreign governments.
- vii. The Labour Market Commission of 1996 considered a new approach for dealing with access to the SA labour market by non-South African nationals. The Commission:
 - a. believes that the migrant labour system should be phased out, but that in the process the terms of access of citizens of the southern African region should be easier than for citizens of other countries;
 - b. finds that compulsory deferred pay arrangements constitute a human rights violation;
 - c. recommends that the current migration policy be thoroughly reviewed. Policy should be informed by a coherent set of non-discriminatory principles based on international norms. The revised policy will be effected by a single immigration statute governing the entry of all foreigners into the country.

3.4.2 Intent

The system of circulating migrant labour will be regularly reviewed with the intention of minimising the adverse social consequences. In the longer term, Government will seek to phase out the migrant labour system.

3.4.3 Policy Requirements

3.4.3.1 Views of the employers

- i. The principle of choice for employees and for employers over the offering and the engaging of labour should apply.
- ii. Mining companies should have the right to hire workers from anywhere they choose without restraint, including all the countries in the region.
- iii. Employers and employees should have the right to agree upon conditions of employment suited to their mutual needs.

3.4.3.2 Views of labour

- i. There should be no discrimination against mineworkers on the basis of their geographical origin.
- ii. Workers on South African mines should be granted the same rights and freedoms as all other workers in the country. Employers and foreign states should be prohibited from treating migrant workers as a special category as they have in the past.
- iii. Employment contracts for mineworkers should be identical to those for all other workers. Workers and their trade union representatives should be entitled to re-negotiate their employment contracts directly with their employers and not be compelled to return home to do so.
- iv. As the mining industry cuts its labour requirements through the increased use of technology and stabilises its workforce, it is likely that foreign and less-skilled migrant mineworkers will suffer most as they are the least equipped to deal with the consequences of job loss and have fewer job opportunities. It is important that the interest of these workers are safeguarded.
- v. Use of foreign labour should be regulated. The regulation should be aimed at keeping the volume of labour from outside at acceptable levels so that the region is supported in the process of addressing the endemic unemployment without unleashing anger in South Africa. However, people already working in the mining industry should have a right to retain those jobs.

3.4.4 Government Policy

- i. The migrant labour system as it applies to the mining industry in its present form will be reformed.
- ii. Government will convene a South African regional forum for multi-party consultation on changes to the migrant labour system in order to protect the

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- interests of migrant mineworkers and to manage the effects on neighbouring countries and on labour-supplying regions within South Africa.
- iii. Government will continue to permit citizens of the South African Customs Union countries and Mozambique access to the mining labour market on an acceptable basis.
 - iv. Government will instigate a review of the system of compulsory deferred pay with a view to it being phased out after consultations with affected parties. Voluntary deferred pay schemes will be permitted.
 - v. Foreign miners will have the right to be treated as any other potential immigrant to South Africa or temporary resident. Employers will be required to observe the regulations and protocols of immigration law in their hiring practices. All the rights and benefits of a particular category of employment will be enjoyed by foreign miners, including the right of temporary residents to bring accompanying dependants into the country. Migrants will be eligible for permanent residence or citizenship once they have worked in South Africa for the required period. Years worked will be deemed continuous notwithstanding the annual end-of-contract breaks.
 - vi. South Africa will subscribe to the International Labour Organisation conventions on migrant labour where relevant to the country's situation. Government will refer these conventions to the National Economic Development and Labour Council prior to their ratification.

3.5 Industrial Relations and Employment Conditions

3.5.1 Background

- i) It is the duty of the State to create a framework that will facilitate a healthy and productive relationship between employers and employees.
- ii) The Labour Relations Act provides a framework for industrial relations in the mining industry to take a less adversarial and more productive approach than has existed hitherto. This should underpin workplace efficiency and national economic growth.
- iii) The Labour Market Commission has recommended that the Department of Labour establish a Section for Mining within the Chief Directorate: Labour Relations. This directorate would be responsible for facilitating smooth industrial relations in this industry and, in particular, for facilitating the establishment of workplace forums and councils and putting in place the necessary training and guidance infrastructure.
- iv) In terms of the Mines and Works Act, mining on Sunday is prohibited. Essential maintenance work is allowed on Sundays. Additional work may be permitted by the Minister of Minerals and Energy "in the national interest". Extended operating times, not only in mines but in other sectors of the economy,

has important employment creation potential. The prohibition on Sunday work in general and the regulation of working hours in the mining industry in particular, were seen by the Labour Market Commission as detrimental to the productivity of labour and capital.

3.5.2 Intent

Government will create a framework to facilitate a productive and non-adversarial approach to industrial relations and ensure that minimum standards apply to work in mining.

3.5.3 Policy Requirements

3.5.3.1 Views of the employers

- i. All the necessary institutional arrangements are in place for meaningful discussions between employers and employees on all issues of mutual interest in the workplace. Any Government attempt to influence the balance between employers and employees could have serious implications, not only for the workplace partners, but also for Government itself.
- ii. In the new approach to industrial relations and improvement in workplace conditions, relationships should encourage rather than inhibit workplace efficiency and flexibility in a balanced and performance-based system.
- iii. Industrial relations matters are best left to arrangements agreed between employers and employees. Government should commit itself to ensuring a legislative and regulatory environment which secures opportunity for the workplace parties to settle their affairs without intervention.

3.5.3.2 Views of labour

- i. The same basic conditions applicable to other workers should be extended to mineworkers.
- ii. There should be a national job grading system, linked to a national minimum wage safety net. Profit sharing across the industry should be facilitated by new tax laws and tax paybacks to ensure that the "same job, same pay" principle can be implemented across the industry. This system should be developed by a commission of inquiry under Government guidance. This will necessitate the formation of a National Bargaining Council for the mining industry, which should be encouraged by Government policy.

3.5.4 Government Policy

- i) Government will encourage the formation of workplace participation at every mine.

ii) Government will facilitate a process to establish a Bargaining Council for the mining industry.

iii) Government will review the current restriction of Sunday work. It will be guided in this regard by the provisions of labour legislation.

3.6 Downscaling

3.6.1 Background

- i. Since 1987, the South African mining industry has shed over 250 000 jobs. A substantial number of jobs have also been lost in the industries supplying mines and providing goods for mineworkers and mining communities. The social costs of this process have been huge. The remoteness of many mines and their dominance in local economies make mine downscaling a particularly destructive process. A disproportionate burden of suffering has been and is being borne by workers and their families in rural areas, which have, for generations, supplied labour to the mines and in mining towns.
- ii. Mining involves the extraction of finite resources and there inevitably comes a time when a mine must close. Up until 1987, mine closures were more than compensated for by the expansion of existing mines and the establishment of new operations. This pattern has now been broken. The depletion of ore reserves, combined with labour-saving technology required to improve competitiveness, will ensure a contraction of mining employment for the foreseeable future. A decline in a long-established mining centre has enormous knock-on effects for regions and for provinces, particularly when volatile economic events dictate the pace of contraction.
- iii. Government policy on the national management of the social consequences of industrial restructuring is currently under review within the National Economic Development and Labour Council.
- iv. The Labour Market Commission has recommended the adoption of a social plan approach to structural job losses such as those which are at present a feature of significant parts of the mining industry.
- v. The social plan may encompass a wide range of interventions, some in the traditional areas of "active labour market policy", others in the areas of regional/local economic development and rural development. It is an attempt to ameliorate the significant social disruption generated by structural employment loss and, more ambitiously, to create a formulation for future development both of individuals and of communities and localities. Social plans must be stakeholder driven, and firmly rooted in collective agreements and social accords. The following is proposed by the Commission:
 - a. an amendment to the Labour Relations Act to include specific reference to the negotiation of a social plan;

- b. the development of a capacity within Government to advise on the structuring of a social plan and, in partnership with relevant industry training bodies, to facilitate training programmes;
- c. the establishment of a Social Plan Fund to support strategies and programmes negotiated between employers and workers facing structural employment decline. State funding should only be provided to augment financial contributions negotiated between employers, unions, municipalities and provincial governments in a partnership to deal with the consequences of employment loss in a community.

vi) Substantial benefits would accrue to the country if mines could continue to operate profitably until their reserves have been fully exploited. It may be in the national interest to provide some form of temporary assistance to those mines which have the potential to bring to account their remaining orebodies profitably. These considerations obviously apply particularly in local areas dependent on the mining industry and therefore vulnerable to its contraction.

3.6.2 Intent

Government will endeavour to ameliorate the social consequences of sizeable downscaling and mine closure.

3.6.3 Policy Requirements

3.6.3.1 Views of the employers

- i. Existing laws already require extensive consultation with the workforce in the event of significant down-sizing. The downscaling process, in all its aspects, is most appropriately dealt with by collective bargaining.
- ii. Employers need to be fully informed of existing government programmes that may be of assistance to retrenched workers.
- iii. Because of the general level of unemployment and because of the remoteness of many mines, retrenched mineworkers often experience difficulty in finding alternative employment. Government has an important role to play, firstly, in co-ordinating counselling, training and other initiatives targeted at the retrenched through existing government programmes, and secondly, in providing an environment that encourages companies to equip retrenched employees with skills to enhance their prospects of finding jobs outside the mining industry.
- iv. In addition, Government should facilitate the involvement of affected communities (including municipalities) in any process intended to deal with the consequences of mine downscaling and closure.

3.6.3.2 Views of labour

- i. Employers have an obligation to keep the workforce informed of developments that may impact on employment security and to plan, jointly with government and labour, measures to preserve employment or mitigate the consequences of retrenchment.
- ii. Labour proposes active state intervention to prolong the lives of mines and to protect the interests of workers and communities affected by forces that lead to mine downscaling. Proposals include:
 - a. targeted assistance from the State to prolong the lives of marginal mines;
 - b. a Government agency that will manage and co-ordinate processes related to mine downscaling;
 - c. State stewardship of mines that are scheduled for closure within five years.

3.6.3.3 Other views

- i. All spheres of government need to be fully aware of the likely pace, scope and effects of mine downscaling and to co-ordinate activities in this respect.
- ii. Government needs to ensure that the requirements for environmental rehabilitation are properly met in the case of unplanned downscaling.
- iii. Alternative economic uses for mine assets and the infrastructure of mining regions need to be investigated and promoted.

3.6.4 Government Policy

- i. Government has an obligation to assist employers, employees, industry suppliers and mine-linked communities in anticipating and managing the consequences of large-scale job losses.
- ii. Preserving mining employment
 - a) Because unemployment in South Africa is so high, every effort will be made to preserve employment in mining for as long as is economically viable and socially desirable. This goal should recognise the benefits of maximum output and foreign exchange generated by the mining industry.
 - b) Employment will be best protected and promoted by creation of a business climate that recognises the fundamental importance of long-term profitability and hence that encourages investment.
 - c) Government will investigate whether public assistance should be available for mines and regions faced with downscaling and, if appropriate, to formulate guidelines for such assistance.
- iii Dealing with retrenchments and restructuring
 - a) Government strongly endorses the proposal that social plans capable of cushioning the impact of structural job loss be drawn up.

b) Urgent action towards drawing up social plans is required in those mining sectors and geographical areas where large-scale restructuring is underway or imminent. Institutional support for the drawing-up of social plans is required.

c) Municipalities will be encouraged to take proactive steps, through their Integrated Development Planning, and Local Economic Development strategy, to ameliorate the negative impacts of downscaling and job losses in the mining sector.

d) In the short term:

1. Government will develop specific capacity to monitor and forecast trends in employment and output in the mining sector. The implications of this information will be reviewed on a regular basis by a tripartite meeting convened by Government.
2. Government will facilitate the establishment of forums at all mines. A tri-partite forum in the industry will review the trends identified by these forums on a regular basis. The tri-partite forum will outline agreed procedures for the process.
3. Government will draw up guidelines for mine downscaling and closure to provide all parties with a check-list and a time frame that can be adapted to their specific needs.
4. Government will assist mines to manage the retrenchment process. This assistance will include; assistance with information, unemployment insurance fund claims, counselling and skills development - on condition that the industry makes the agreed level of matching support.
5. Communities which are severely affected by large-scale retrenchments will be supported to identify alternative areas of economic activity.

e) In the medium term:

- Government will introduce a provision that requires mining companies to notify Government in the case of retrenchments that cumulatively exceed 10% of the workforce in any twelve-month period.
- Government will entrust the Advisory Board contemplated in 6.3.4 below with the task of monitoring restructuring in the mining industry and providing recommendations and options for the Minister of Minerals and Energy.
- Government will encourage mines to establish social plan funds.

Chapter Four:

ENVIRONMENTAL MANAGEMENT

The Constitution provides that everyone has the right to an environment that is not harmful to their health or well-being and to have the environment protected for the benefit of present and future generations. This must be done through reasonable legislative and other measures that will prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

To be able to meet the development needs of the people while ensuring that the integrity of the environment remains unimpaired, it is essential to integrate environmental impact management into all economic development activities. This is in the interest of Government's overarching goal of sustainable development.

4.1 Background

i) Mining activities impact on the environment to varying degrees. Three important areas identify themselves for policy and regulation:

- a) the environmental impact of exploration;
- b) the environmental impact over the life of a mine including mine closure and financial assurances for mine site rehabilitation;
- c) maintaining rehabilitation measures where mining activity has ceased.

ii) South African society and the economy are characterised by the inequitable distribution of wealth and resources. This has resulted in the basic needs of the majority of South Africans not being met. To satisfy the needs of all South Africans, the utilisation of the mineral resources of the country, within a framework of responsible environmental management, is essential.

iii) Development in South Africa requires the optimum and environmentally sustainable use of all the natural resources of the country. A balance must therefore be attained between a cost-effective and competitive mining industry and the imperative to protect the environment.

iv) The complex nature, both underground and above ground, of on- and offshore mining operations requires a dedicated approach and specific skills from controlling authorities. Adequate personnel who are qualified in the earth, biological and environmental sciences and who have been subjected to specialist training relevant to environmental management and mineral extraction are therefore required by the controlling authority.

v) Government will have to ensure that the costs of environmental impacts of the mining industry are not passed over to the community. This calls for:

- a) a co-ordinated and integrated environmental management approach to the planning, management and use of all natural resources;
- b) an increased public involvement to ensure pro-active and informed decision-making;
- c) the implementation of effective and affordable measures and standards for environmental impact management, the prevention or efficient management of water, soil and atmospheric pollution, and the rehabilitation of areas affected by past mining operations; and
- d) ongoing research with a view to improving and strengthening the measures, standards and practice applied to managing the impacts on the environment and to control pollution.

vi) Under the Minerals Act, prospecting and mining operations may not be conducted without an environmental management programme (EMP) having being approved by the authorities. To assist prospecting and mining companies to comply with this requirement, the Environmental Management Programme Report (EMPR) process was developed and has been approved for use in the mining industry. The EMPR covers a description of the pre-mining environment, a motivation for and detailed description of the proposed project, an environmental impact assessment, and an indication of how the impacts will be managed. Adequate consideration must be given to alternative methods of mining. The EMP, furthermore, requires adequate provision for financial guarantees for rehabilitation and arrangements for monitoring and auditing.

4.2 Intent

Government, in recognition of the responsibility of the State as custodian of the nation's natural resources, will ensure that the essential development of the country's mineral resources will take place within a framework of sustainable development and in accordance with national environmental policy, norms and standards.

4.3 Policy Requirements

4.3.1 Views of employers

- i. A balance should be maintained between encouraging economic development and preserving high standards of environmental management.
- ii. Subject to the site-specific nature of the operation, uniform standards of environmental management should be applied across mining operations of varying scale so that all mining is conducted in an environmentally responsible manner. Artisanal mining, which has frequently caused severe environmental damage in other countries, should not be treated more leniently.
- iii. In principle, there should be no area, other possibly than those which have been sterilised by proclaimed townships, where prospecting and mining are prohibited, but the degree of sensitivity of the area must affect the standards of environmental control exercised by the mining operation. Should an economically viable ore body be discovered in a sensitive area, approval to mine should be subject to the full assessment of environmental impacts provided for in the Minerals Act, in which the "no project" option can be considered.
- iv. Cognisance should be taken of the stage of economic development of the country in framing environmental regulations. Environmental protection legislation that follows the example of highly developed countries should be adopted with caution. Prospecting and investment in mining have on occasion been substantially diminished as a direct result of ever-higher standards.
- v. Mining should be granted precedence in land use, while taking cognisance of environmental factors.
- vi. Appropriate environmental standards should be set for different stages of mining so that low impact activities, such as prospecting, are not burdened with cumbersome regulations.
- vii. The interdepartmental consultation required for approval of environmental management programmes should be facilitated and expedited through a "one-stop shop" approach in which the Department of Minerals and Energy acts as a lead agent and liaises with other departments, provincial authorities and interested and affected parties.
- viii. Delays in obtaining environmental approvals should be eliminated through improved administration.

4.3.2 Views of small-scale miners

- i. Government support should be provided for the education of small-scale miners on environmental management.
- ii. Intensive environmental management services should be provided in areas where there is a high concentration of small-scale miners. Measures should include providing technical and environmental management assistance and simplifying the procedures for complying with environmental management regulations. Explicit budgetary allocations should be made for this purpose.
- iii. Rehabilitation procedures should be made more affordable by devising a more flexible system for providing the necessary rehabilitation moneys.

4.3.3 Other views

- i. Conservation areas including parks, reserves, wilderness areas, and cultural and archaeological sites should be protected.
- ii. The rehabilitation of defunct and derelict mines which are a risk to the environment, public safety and human health should be provided for by appropriate regulation.
- iii. The environmental damage caused by the mining industry should be managed and contained irrespective of the size of the mine.
- iv. It should be ensured that the rehabilitation of land for post-mine use is carried out to standards that permit its use for the purpose set out in the EMPR and that closure be granted only after satisfying that there are no foreseeable residual impacts that will be inherited by parties acquiring such land.
- v. Communities directly affected by mining should be enabled to participate in environmental impact assessments studies at the planning stage.
- vi. South Africa should comply with international environmental standards to meet international obligations.
- vii. Concerns that the DME lacks capacity to enforce existing environmental provisions should be addressed.
- viii. Environmental management for the minerals industry should be improved by expanding the scope of EMPRs, which presently address the physical environment, to include assessment of the impact on the social environment.
- ix. A conflict of interest between the promotion of the minerals industry and the enforcement of environmental standards within the DME should be prevented by providing a clear separation of powers.
- x. Land-use decisions should be based on economic efficiency and mining should not enjoy a claim to precedence.

4.4 Government Policy

Government will ensure that the following principles are adhered to:

- i) In order to achieve integrated and holistic environmental management throughout South Africa, Government requires compliance with a single national environmental policy and governance within a framework of co-operative governance. While Government has appointed the national Department of Environmental Affairs and Tourism as its lead agent for this role, the DME will, in support of the lead agent and in accordance with national principles, norms and standards, develop and apply the necessary policies and measures to ensure the mining industry's compliance with the national policy on environmental management and other relevant policies such as the national water policy.

Similarly, due recognition will be given to the Department of Water Affairs and Forestry as lead agent for the national water resource.

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The processes of considering the granting of a prospecting or mining licence and the approval of an environmental management programme will run concurrently and the granting of the prospecting or mining licence and approval of the environmental management programme will take place simultaneously. The DME, in consultation with the relevant State Departments, will develop procedures to accommodate their requirements. These procedures will provide for decisionmaking in consultation with such Departments.

ii) During decision-making, a risk-averse and cautious approach that recognises the limits of current environmental management expertise will be adopted. Where there is uncertainty, action is required to be taken to limit the risk. This will include consideration of the "no go" option.

iii) The polluter-pays principle will be applied in the regulation and enforcement of environmental management. The mining entrepreneur will be responsible for all costs pertaining to the impact of the operation on the environment. Where for reasons such as the demise or incapacity of a mining entrepreneur, no responsible person exists or can be identified to address pollution emanating from past mining operations, the State may accept responsibility or co-responsibility for the rehabilitation required. Government may require that any person benefiting from such rehabilitation should contribute to the cost involved in such proportions as may be negotiated.

iv) A consistent standard of environmental impact management will be applied and maintained irrespective of the scale of the mining operation. Special attention will be afforded to the education and the provision of guidelines for mining entrepreneurs concerning environmental management, especially for small-scale miners. Furthermore, intensified attention and guidance will be provided in areas where a high concentration of small mining activities occur.

v) Equitable and effective consultation with interested and affected parties will be undertaken pro-actively to ensure public participation in the decision-making process and the *audi alteram partem* (hear the other side) rule shall apply to all decision-making. The decision-making process shall provide for the right to appeal. Access to information shall be in accordance with the requirements of the Constitution.

vi) Mining companies will be required to comply with the local Development Objectives, spatial development framework and Integrated Development Planning of the municipalities within which they operate and will be encouraged to promote social participation by conducting their operations in such a manner that the needs of local communities are taken

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into consideration. On closure of a mine, every opportunity must be taken to ensure the continued availability of useful infrastructure.

vii) Clear guidelines on the process and sequence of events for implementation of environmental management procedures and decision-making will be provided.

viii) The principles of Integrated Environmental Management (IEM) will be applied to environmental management in the mining industry. These must be amplified to include cradle-to-grave management of environmental impacts in all phases of a mine's life, effective monitoring and auditing procedures, financial guarantees for total environmental rehabilitation responsibilities, controlled decommissioning and closure procedures, procedures for the determination of possible latent environmental risks after mine closure and the retention of responsibility by a mine until an exonerating certificate is granted.

ix) The building of capacity to -

- a) effectively implement environmental management measures;
- b) monitor occurrences of pollution; and
- c) monitor compliance with the requirements of the national environmental management policy.

x) The principle of multiple land use will be adhered to in planning decisions, and contending options will be assessed and prioritised on economic, social and environmental grounds.

xi) The mining industry will be required to reduce pollution and encouraged to promote a culture of waste minimisation and creative recycling and re-use of waste products.

xii) Problem areas in environmental management will be identified proactively with a view to the co-ordination of research thereanent.

Chapter Five:

REGIONAL CO-OPERATION

Sustainable development in South Africa depends in good part on sustainable reconstruction and development in southern Africa as a whole. An element of Government's long-term thinking is the gradual integration of the economies of southern Africa through the trade and investment protocols of the Southern African Development Community (SADC). The region has considerable mineral potential and therefore the mining sector has a particularly significant contribution to make to the economic development of the region. Mutually beneficial programmes have the potential in the short as well as longer term to yield benefits for the region as a whole.

5.1 Background

- i. International economic relations are increasingly influenced by the formation of regional trade blocks, such as those in Europe and North America, offering the advantage of co-ordinated policies, large markets and the free flow of goods and services.
- ii. Southern Africa has immense mineral wealth and the region produces over a third of the world's supply of gold, diamonds, platinum-group metals, vanadium, chrome and cobalt as well as over a tenth of other important minerals such as copper, manganese, granite and zircon.
- iii. Since its inception, the South African mining industry has had extensive involvement and interests in the region, recruiting labour, prospecting and conducting mining operations. Historically, mining has played a role in integrating the economies of southern African countries. The industry can provide the foundation for renewed economic growth in southern Africa.
- iv. With the demise of apartheid and the normalisation of relations with our neighbours, South African companies are re-entering the region with vigour. Care will need to be taken to manage South Africa's integration into the region's economy to prevent it unduly dominating and attracting resources away from smaller countries.
- v. A protocol on co-operation and integration of the mining sector in the SADC has been adopted which should result in economic development, alleviation of poverty and the improvement of the standard and quality of life throughout the region.

5.2 Intent

Government will encourage co-operation on mineral and mining matters amongst the countries of the southern African region and base that co-operation on the principle of mutual benefit. It will devise policies to enhance South Africa's capacity to contribute to the development of the region. The objective will be to achieve an equitable, balanced and mutually beneficial order in southern Africa.

5.3 Policy Requirements

5.3.1 Views of employers

South African mining companies, equipment suppliers and consultancies have technologies, expertise and services potentially in great demand in the region and the rest of the continent. South Africa's economy stands to gain from increased regional, continental and international co-operation. For profound and enduring economic benefits of co-operation to be realised, a phased removal of barriers to the free movement of labour, capital, goods and services needs to take place, without destabilising any of the countries involved.

5.4 Government Policy

- i. South African mining and related companies will be encouraged to apply their expertise to tap business opportunities in the region and across the continent.
 - ii. Government will participate in the co-ordination of the policies of southern African countries so that the region can benefit optimally from its mineral wealth by taking specific steps to:
 - a. remove barriers to the movement of labour, capital, goods and services, but in a phased manner that will avoid destabilising the countries involved;
 - b. co-operate in the harmonisation of the minerals and related legislation in the region, including the harmonisation of mineral-related industrial and technical standards;
 - c. encourage cross-border mineral processing, which optimises capacity utilisation and increases value adding in the region;
 - d. foster regional co-operation in technology development; this should be facilitated through the exchange of geoscience and mineral processing information, technology, facilities and expertise;
 - e. encourage co-operation in the development of human resources in the region by facilitating the upgrading of the institutional capacity of southern African mining and geology departments at tertiary institutions, and by pooling resources in the form of laboratory facilities, research centres and institutions;
 - f. disseminate investment and exploration information among member countries.
 - iii) Government will work co-operatively with other governments, private industry and international agencies to address environmental concerns, as well as mine health and safety standards in respect of mining and minerals.
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Chapter Six:

GOVERNANCE

In order to contribute to a competitive and sustainable minerals industry in South Africa, Government involvement should be focused on efficient and cost-effective resource management. This includes the mineral, human, and environmental resources of the country. Such governance will require both regulatory and developmental dimensions, but with a clear separation of powers in order to maintain transparency and equity.

The activities of the Department of Minerals and Energy (DME) must be responsive to the needs of stakeholders and transformation within the industry. In this respect a special duty rests on the Department, being charged with a national function with wide impacts throughout the country, to co-operate with all spheres of government. Furthermore, the principle of tripartitism and consultation, which is necessary for open and inclusive governance, should be accommodated. This should include the opportunity for other parties and individuals to constructively engage Government and the main stakeholders on matters of common concern.

6.1 Regulation and Promotion

6.1.1 Background

- i. In order to promote, support and regulate minerals and mining it is essential that Government institutions are competent and efficient. Exploration and mining are high risk businesses and consequently it is important that individuals and companies are confident in their dealings with state institutions, and that decisions are made timeously and efficiently. If contracts are to be negotiated and investment mobilised it will be important that institutions respond rapidly and professionally.
- ii. The governance of the mining industry involves a number of players, including specialised government agencies, such as the Council for Nuclear Safety and the Council for Geoscience and Mintek, that have a significant influence on the industry. At the level of central Government - in which a number of departments have an interest in the industry - it is the DME which has the primary role in governance.
- iii. The Leon Commission proposals regarding restructuring in the DME in order to address safety and health issues, have been incorporated in the Mine Health and Safety Act of 1996. These will, therefore, not be discussed in this chapter, other than to note that certain provisions of the Act remain to be implemented.

6.1.2 Intent

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The regulatory and promotional activities of Government will be conducted in a transparent and efficient manner in carrying out its brief to manage the development of South Africa's mineral resources, and to regulate the mineral industry to meet national objectives and bring optimum benefit to the nation.

6.1.3 Policy Requirements

6.1.3.1 Views of the minerals industry

- i. Sensible regulation requires an understanding of the nature and interrelated technical complexities of mining, making the existence of a single, central regulatory agency highly desirable. That agency should be the DME, working as necessary through its own regional offices.
- ii. The Department should serve as the pivotal link between the industry and other government departments and regulatory agencies.
- iii. Subject to any obligations to maintain confidentiality of private information, the DME should make adequate information available on all the aspects involved in mineral investment and exploitation.
- iv. Mineral regulation and administration should be conducted efficiently and expeditiously.
- v. The DME must be adequately staffed by skilled personnel.
- vi. The structure of the DME must be such that it is accessible and responsive to all sectors of the mineral industry in all parts of the country, and that the span of control is not stretched.
- vii. In order to improve access to and investment in the mineral industry, relevant government institutions should not only assume a regulatory role but should actively pursue a promotional role as well.
- viii. Interdepartmental communications, particularly between the DME and the Departments of Environmental Affairs, Water Affairs, and Trade and Industry, should be improved in order to decrease the potential for cross-cutting legislation.
- ix. An overall review is needed of which organisations of government will best serve the industry. The review should focus, in particular, on efficiency and competence in the administration and functioning of government agencies whose activities have a direct bearing on the mining industry. Regulatory and service agencies of the government should be attuned and responsive to the needs of and constraints upon the industry.

6.1.3.2 Other views

- i. The DME should look after the interests not only of the minerals industry, but also of the communities in the areas where mineral exploitation activities take place.
- ii. The racial and cultural make-up of the DME should better reflect that of the community.

- iii. The DME should cultivate a culture of development and promotion of the industry and people associated with it as well as functioning as a regulatory body.
- iv. No intermediate institutions such as minerals trusts, should be involved in the process of mineral regulation and administration.

6.1.4 Government Policy

- i. The DME will be the lead agent for governance of the minerals industry.
- ii) The structure of the DME will, amongst others, provide for:
 - a) separate intra-departmental components and mechanisms to handle mineral resource management and the promotion of the industry on the one hand and mineral resource administration and regulation on the other;
 - b) a separate structure, within the regulatory component, to control environmental management in the mining industry;
 - c) a separate mine, health and safety inspectorate;
 - d) the improvement of administrative procedures in respect of the granting of prospecting and mining rights;
 - e) the provision of a cost-effective "one-stop shop" information and advice service to the minerals industry; and
 - f) ongoing research, co-ordination and review of minerals and mining policy.
- iii) Government will ensure that all associated institutions concerned with the minerals industry will be guided in terms of national objectives and priorities. To this end it will be a statutory requirement that representatives from the DME serve on the boards of such institutions.
- iv) In particular, the Council for Geoscience should focus on serving as a national resource for South Africa that can make data available at nominal cost. This may require a review of the Council's mission and Government's funding policy towards this institution.
- v) The staff composition of the DME will reflect the demographics of South Africa.
- vi) In the process of establishing mining operations, the relevant mining company will consult the affected community, taking due cognisance of the local economic development needs and local intergrated development plans.

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vii) Intermediate statutory regulatory institutions, such as minerals trusts, will be phased out.

6.2 National and Provincial Governments and Municipalities

6.2.1 Background

- i. Mineral affairs are allocated to the national level. In the Constitution mineral affairs are not mentioned in schedule 4 stipulating functional areas of concurrent national and provincial legislative competence, nor in schedule 5 stipulating functional areas of exclusive provincial legislative competence.
- ii. The Minerals Act provides for the Department of Minerals and Energy to regulate prospecting, the exploitation of minerals, utilisation of land and environmental impact studies whilst health and safety issues are regulated in terms of the Mine Health and Safety Act.
- iii. Irrespective of the emphasis in the Constitution on national responsibility for mineral affairs, in practice the provinces, due to the wide range of functions they have, also impact on mineral affairs, and vice versa. Several provinces are keen to promote mining in their areas.
- iv. Mineral affairs interact with the following functions referred to in schedule 4 or 5 of the Constitution: agriculture, environment, health services, local government, nature conservation, regional planning and development, soil conservation, industrial promotion, urban and rural development, and public works.
- v. In view of the Constitution, it is important to ensure that uniform mineral management and regulatory standards be maintained throughout South Africa and that services provided by Government be rendered in an equitable manner.
- vi. Constitutional provision is made for the equitable division of revenue raised nationally among the national and provincial governments and municipalities. This sharing of a national pool of revenue, which includes revenue from mining taxation, involves intricate considerations which fall within the functions of the Financial and Fiscal Commission.

6.2.2 Intent

Government will ensure equal treatment and standards in respect of the management and regulation of the mineral industry in all the provinces of South Africa.

6.2.3 Policy Requirements

6.2.3.1 Views of the minerals industry and investors

- i. Sensible regulation requires an understanding of the nature and interrelated technical complexities of mining, making the existence of a single, central regulatory agency highly desirable.
- ii. Because of the way the industry has evolved, as well as the need for consistency of policy and practice across provincial and local boundaries, there should be minimal devolution of authority to separate provincial or lower level bodies. Such bodies should not be empowered to create laws or regulations which impact on mining.
- iii. In cases where there is a need for issues to be dealt with at sub-national level, a consultative process with all affected parties is essential.
- iv. The relationship between a mine and its provincial authority and municipality has many dimensions but the basic criterion should be that the authorities avoid undue involvement in the operations of a mine.
- v. Where a mine uses services provided by a municipality such services should be charged for on an economic and equitable basis, governed by the costs of provision; mines should not be burdened with inflated prices designed to improve the financial position of the municipality.
- vi. Where a mine supplies its own services or can obtain them competitively from a supplier other than the municipality, it should not be obliged either to pay rates in respect of such services or to acquire them from the municipality.

6.2.3.3 Views of provincial governments and municipalities

- i. In order to guide or affect the economic growth and development process, some influence is required in the minerals arena, be it at legislative, executive or operational level.
- ii. Mechanisms are required whereby the negative social and economic consequences of mine closures can be planned for and ameliorated.
- iii. There is a clear need for integration of regional/local, DME and Department of Trade and Industry attempts to stimulate small-scale entrepreneurial activities.

6.2.4 Government Policy

- i. The minerals and mining industry will be governed at national level through a single lead department, but will obviously be required to comply with all national, provincial and municipal legislation.
- ii. Services provided to a mine by provincial governments or municipalities will be charged for on an equitable basis.

iii) A formal mechanism will be established whereby provinces can engage with national government on mineral industry issues where these relate to agriculture, the environment, economic affairs and other relevant provincial and local government competencies.

iv) Provincial governments and municipalities will have access to the expertise and information available in the DME and associated institutions.

6.3 Stakeholder Consultation

6.3.1 Background

- i. The mineral industry has been an important factor in the development of South Africa's infrastructure and much of its secondary industry. It is a major provider of employment and other business opportunities, both directly and through backward and forward linkages. In order for the mineral industry to play its required role in respect of economic growth and the earning of foreign exchange, good co-operation will be required between Government, labour and the industry. This can only be achieved when policy formulation, management and regulation are conducted in an atmosphere of openness and in close consultation with stakeholders in the industry.
- ii. South Africans recognise that there are large and complicated issues involved in mineral development activities. Development decisions affect the public in more ways than just providing employment opportunities. The stakeholders and affected communities should be involved in discussing all the issues surrounding mineral development activities and should participate in the decision-making process.
- iii. The Mine Health and Safety Act includes a variety of provisions relating to tripartite consultation and co-operation in respect of different health, safety, education and training issues; these will, therefore, not be addressed in this section.

6.3.2 Intent

The management and regulatory activities of Government will be conducted in a transparent manner and will take into account the views and interests of all the stakeholders in the minerals industry.

6.3.3. Policy Requirements

6.3.3.1 Views of the minerals industry

- i. An ongoing opportunity to debate all issues pertinent to mining and minerals policy, that would also provide a forum in which the views of other interested parties could be canvassed, is required. Such a structure and process are essential in order to achieve a collaborative approach to policy formulation, as well as to give coherence and focus to what could otherwise be a fragmented and insufficiently consultative approach to policy.
- ii. The minerals industry will be promoted through information and education programmes relating to the contribution of the industry to the economy, the role

of minerals in everyday life, and mineral-related issues such as the environment and safety and health.

6.3.3.2 Other views

- i. A forum should be established where the views of communities affected by mining could be heard.
- ii. A greater degree of co-operation and co-ordination between government departments is required, as well as between Government and the private sector.
- iii. A tripartite forum is required to advise the Minister of Minerals and Energy on issues related to mining, such as the environment.

6.3.4 Government Policy

A statutory board will be established that will advise the Minister of Minerals and Energy on mining and mineral matters that fall outside the Mine Health and Safety Act. It will provide a forum in which government departments, representatives of the principal stakeholders, viz. business and labour, as well as other interested parties, can debate issues that bear upon existing or new policies. The board will *inter alia* be required by law to advise the Minister on whether, when and how to intervene in cases where a dispute arises in the granting of prospecting, mining and retention licences.

List of Abbreviations and Names

ABET - Adult Basic Education and Training (see ABET National Interim Guidelines, Department of Education, September 1995)

Council for Science - Council responsible for geological mapping, State earth science

Geoscience research and a repository of geological information

DME - Department of Minerals and Energy

EMP - Environmental Management Programme

EMPR - Environmental Management Programme Report

ESOPS - Employee Share Ownership Participation Schemes

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Fanagalo - Dialect of commands combining various languages developed on mines early this century

ILO - International Labour Organisation

LRA - Labour Relations Act

MHSC - Mine Health and Safety Council

MQA - Mining Qualifications Authority

NEDLAC - National Economic Development and Labour Council

NQF - National Qualifications Framework

SADC - Southern African Development Community

SIMRAC - Safety in Mines Research Advisory Committee

TBVC - Transkei, Bophuthatswana, Venda and Ciskei

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Income Tax Act no. 58 of 1962

KwaZulu Ngonyama Trust Act of 1994

Labour Relations Act no. 66 of 1995

Lebowa Minerals Trust Act of 1987

Mine Health and Safety Act no. 29 of 1996

Minerals Act no. 50 of 1991

Mines and Works Act no. 27 of 1956

Restitution of Land Rights Act no. 22 of 1994

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Rural Areas Act, 1974

South African Development Trust Act no 18 of 1936

South African Qualifications Authority Act no. 58 of 1995

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Katz Commission: Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa

King Committee: The King Report on Corporate Governance, 1994

Labour Market Commission: Restructuring of the South African Labour Market: Report of the Commission of Inquiry into the Development of a Comprehensive Labour Market Policy RP83/1996

Leon Commission: Commission of Inquiry into Safety and Health in the Mining Industry, 1994

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By Jeremy Michaels

It's that time of the year again when Cape Town undergoes its year-end transition, from legislative seat to holidaymakers' playground. A219

Members of parliament have packed their goodies, put their cars on trains inland and boarded planes, fleeing the city before the hordes of holidaymakers take to the roads on their way to the Western Cape's seaside mecca.

And with parliament having wrapped up its business for the year 2002, voters will be wondering what their public representatives, the proverbial "fat cats", achieved this year.



Despite public perceptions that members of parliament do little but shout each other down in the chambers, even the official opposition will concede that 2002 has been one of the most business-like years for parliament.

MPs have toiled to deliver volumes of legislation since President Thabo Mbeki's state of the nation address at the beginning of the year. Parliament has passed several crucial pieces of

legislation, some more controversial than others.

The package of bills aimed at facilitating the defection of councillors and MPs from one party to another without losing their seats - and the accompanying salaries - undoubtedly provided the most entertaining political drama both inside and outside parliament this year.

Hot on the heels of the New National Party's bitter divorce from the Democratic Alliance, the NNP fed its former partner a bitter pill by jumping into bed with the ruling African National Congress. And, after the Constitutional Court approved the "crossing the floor" laws applicable to local government, the NNP defectors in the unicity helped

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their new bedmates to vote the DA out, handing Tony Leon's only significant example of his party's ability to govern to the ANC.

The defection legislation for provincial and national government - which the court found was sound in principle but technically flawed - has already been tabled in parliament and is sure to provide more fireworks early in the new year.

The Mineral and Petroleum Resources Bill, now an Act, proved to be one of the most contentious, with business and government clashing over what mining bosses perceived to be an attempt to nationalise the country's mineral wealth.

Mining stocks also took a dive in July when a leaked copy of the government's mining charter - containing proposals for black business to own 51 percent of all new mining operations within 10 years - triggered panic in the industry.

But, according to the Institute for Democracy in South Africa (Idasa), the furore around the new mining laws was a typical example of the government failing to communicate its message effectively.

Judith February, the head of Idasa's Governance Unit, says the controversy around the bill was unnecessary as the government eventually made it clear that it wanted only 26 percent of mines in black hands by 2012, and the mining houses' concerns about the custodianship of minerals were unfounded as this was not unique to South Africa.

"I'm less alarmist about it," said February.

The business sector eventually came to the party, making R100-billion available to assist black empowerment, with Minerals and Energy Minister Phumzile Mlambo-Ngcuka hailing the government's historic agreement with the industry as "one of the brightest days in the history of our transformation".

The National Conventional Arms Control Committee Bill and the Broadcasting Amendment Bill brought parliament's crucial oversight role into sharp relief as MPs tackled the executive, losing the first battle and winning the second.

In the case of the Arms Control Bill, Thandi Modise - the ANC stalwart who heads the portfolio committee on defence - went head-to-head with Kader Asmal - another ANC stalwart who doubles up as education minister and head of the Arms Control Committee.

After a bitter struggle between Modise's committee and Asmal, the minister's wishes prevailed over parliament's intention to review arms sales to other nations before the transactions were concluded, so-called "prospective oversight".

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Idasa's February points to the struggle between Modise and Asmal as an example of how difficult it is for ANC MPs to exercise their oversight powers in what is essentially a "dominant-party democracy".

"It's really hard for back-bencher MPs, who are meant to be exercising this oversight role, because they have to go head-to-head with the executive, who are senior members of their party," said February.

Again, this was not unique to SA. "The scenario is similar to that in the UK, where Labour Party MPs find themselves in the same predicament."

On a more "positive" note, MPs over-ruled the executive in the case of the controversial Broadcasting Bill - which Communications Minister Ivy Matsepe-Casaburri wanted to use to take control of the South African Broadcasting Corporation's editorial and programming content. "It was a good note to end the year on," said February.

However, Lynne Abrahams, editor of the Parliamentary Monitoring Group (PMG) website, warned that Matsepe-Casaburri may have wanted to test public opinion on increased government control over the public broadcaster.

"The minister was trying to float the idea in public of ministerial control over the SABC's policies, and she may try again in the future," said Abrahams.

Home Affairs Minister Mangosuthu Buthelezi's landmark Immigration Bill was finally passed by parliament in May, but not before a huge showdown between Buthelezi and his Inkatha Freedom Party on the one hand, and the ANC on the other - pointing again to rising tensions between the ruling party and its partner in government.

The bill replaced the apartheid-era Aliens Control Act, parts of which were found to be unconstitutional by the highest court in the land. It was also meant to make it easier for foreigners to be employed in South Africa - and in so doing address the dire shortage of skilled labour in the country.

Even Trade and Industry Minister Alec Erwin expressed misgivings about some of the provisions in the bill, which his party had forced through parliament. His department estimates that there are about 500 000 jobs available which can't be filled because of the skills shortage.

Amid the tensions between the ANC and IFP, Buthelezi gave notice that the IFP had "rejected" the draft Communal Land Rights Bill and the White Paper on Traditional Leadership, setting the stage for another clash between the parties next year.

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Mbeki, in his annual speech to the National Council of Provinces, warned that the issue would have to be resolved without confrontation and, "through an inclusive dialogue and not through one party threatening all others with violence" - an apparent reference to the IFP.

"Apart from the fact that the law enforcement authorities will act vigorously to protect lives and property against anybody who decides to use force to advance his or her goals, it is time that all of us outgrow the period in our history when resort to violence to attain political objectives resulted in the loss of thousands of innocent lives," he said in reference to the bloody war between the ANC and IFP in KwaZulu-Natal.

On the technological front, parliament passed the Electronic Communications and Transactions Bill, the main feature of which was the legalisation of electronic signatures.

However, the storm over the ".co.za" domain name overshadowed the fact that this piece of legislation actually legalises electronic documents. The Telecommunications Amendment Act was another important law, opening the way for a "second national operator" to provide competition for communications parastatal Telkom.

The Defence Bill formally put the military under civilian control and, despite minister Mosiuoa Lekota's reservations, unions for defence force personnel are now officially recognised.

Domestic workers, especially those who claim to be exploited by parliamentarians, have also benefited from this year's parliamentary session. Labour Minister Membathisi Mdladlana briefed MPs on regulations issued in terms of the basic Conditions of Employment Act which set minimum wages for domestics.

The Administration of Estates Amendment Bill, passed recently, ensures that black citizens will join their fellow citizens in having the Master of the Court administer their estates if they die before leaving a will. Previously, black estates were administered by the archaic Black Administration Act.

African customary law will now no longer apply and all estates will go through the master's office. "This is an excellent piece of transformatory legislation," said PMG editor Abrahams.

Looking ahead to 2003, the government has already given notice that anti-terrorism legislation will be high on the agenda, while the Prevention of Corruption Bill promises to add to the authorities' existing arsenal of laws to deal with crime and corruption.

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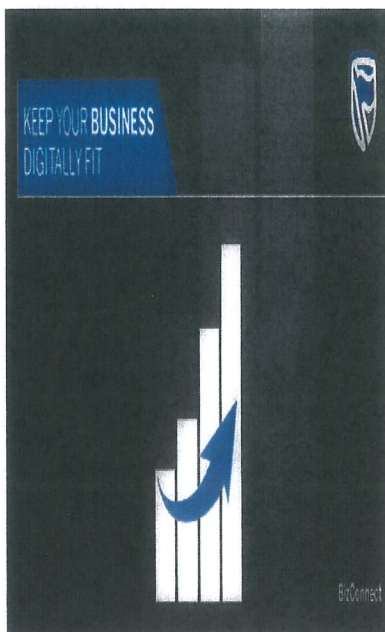
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The Community Re-investment Bill, focusing on the banking sector's apparent refusal to grant housing loans to poorer people, is another candidate for wide public interest. Judith February described the bill as being crucial to the "implementation of the constitutional right to housing".

"Similar to the Mining Charter, you need to get business, in this case the banks, to buy into it. It's going to be a tough one between the government and the banking sector," she said.

With the almost daily outcry over crimes against and by children, the Child Justice Bill is also certain to attract a lot of attention when it is tabled during the next session.

And, with South Africa's third general election looming in 2004, next year promises much more bickering, grand-standing and, hopefully, also hard work from our politicians.



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mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

**MINING CHARTER IMPACT ASSESSMENT
REPORT**

OCTOBER 2009

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EXECUTIVE SUMMARY

On the 11th of October 2002, the erstwhile DME (now DMR) together with mining industry stakeholders, including the Chamber of Mines, South African Mining Development Association and the National Union of Mine Workers signed the Mining Charter. Stakeholders agreed to meet after five years to review the progress and to determine what steps, if any, need to be made to achieve the objectives of the Mining Charter.

The DMR has undertaken this assessment to determine the extent to which the objectives of the Mining Charter have been achieved. In particular, the report records progress made against each element of the Charter. Contrary to the good progress made in terms of compliance with HDSA participation in management, examination of other elements paints a gloomy picture.

Although the findings of the report indicate that the Mining Charter is a useful tool to effect transformation, they also illuminate challenges and opportunities in as far as the effective implementation of the Mining Charter is concerned. The shortcomings identified in the report necessitate an urgent need for review.

1. PREAMBLE

This report presents the main findings of the assessment of the Mining Charter conducted by the DMR, with a view to strengthening the effectiveness of the Charter as a policy instrument to effect the transformation of the Mining sector in South Africa. The report provides a snapshot of the South African Mining Charter, details the impact of the Mining Charter or its lack thereof to address the challenges of transformation of the mining sector in South Africa.

In addition, the report delineates the historical background to the South African Mining Charter, spells out the relevant legislation for mining of mineral resources, outlines the statistical account of the progress made by the mining houses with regard to the nine elements of the Mining Charter intended to facilitate the transformation of the mining sector, teases out the contesting relationship between the State and the Mining Sector in South Africa and outlines the limitations or grey areas of the Mining Charter that often leads to different interpretations. In so doing, and while cognisant of what is in the general interest of South Africa and its people, the analysis of limitations provides a scope for solutions towards the transformation of the South African Mining sector.

2. THE MINING CHARTER IN CONTEXT

The South African government, like many other governments globally endowed with abundant mineral resources, has developed market-driven policies to accelerate the pace of the transformation of the mining Sector. Mineral resources are the common heritage of all the people of South Africa and the State is the custodian thereof for the benefit of all South Africans. Mining companies in South Africa have to apply for rights (and permits) to the State for exploration and exploitation of the mineral resources. As a result, the Mining Charter attaches

cautiously thought-out conditions meant to accelerate the transformation of the mining sector, which right holders must comply with in order to continue participating in the country's mineral and mining sector. These conditions are imbued with the importance of operating in solid and tested policy directives aimed at avoiding the folly of potential harm through policies that have the propensity to freeze South Africa's economy into a catatonic state of zero progress.

The South African Mining Charter provides for the aspiration that for any meaningful transformation to be attained in the mining industry, transformation should actually permeate through the ranks of the international market as well in the manner that it be a consequence of a broad based economic model for the benefit of all South Africans and for the continued sustenance of the international investor confidence. Therefore, the South African Mining Industry does not operate as an island in isolation from the South African economic landscape.

Recognising that mining was used as a tool to perpetuate the inequalities in favour of a select group in a manner that precluded HDSA's from participating in a meaningful way within the broader South African economic pie in mineral resources, the South African Mining Charter was developed and adopted as a tool to effect broader transformation of the mining sector.

The creation of the Mining Charter in the main is intended to avert the status quo where HDSA's are generally considered as a repository for cheap labour. On the other hand, management and company ownership was a reserved privilege benchmarked along racial lines in South Africa, and to be precise in favour of the minority white South Africans. Therefore, the Mining Charter is derived from the same values of the supreme law of the country, which is, the Constitution of the Republic of South Africa as it is more vociferous on the subject of equality, in inter alia section 9 on equality and discrimination (in the Bill of rights) that talks to redressing historical and social inequalities.

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Section 100(2)(a) of the Mineral and Petroleum Resources Development Act [MPRDA] provides that the Minister, inter alia, *"must within six months from the date on which this Act take effect develop a broad based socio economic empowerment charter that will set the framework, targets and time-table for effecting the entry of Historically Disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources"*.

To give effect to section 100 (2) (a) and thus promote transformation in the mining sector, stakeholders have developed the Mining Charter which seeks to achieve the following six objectives:

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

The Mining Charter introduced nine (9) elements (incorporating relevant legislation) aimed at redressing past racially discriminatory practices that were perpetuated during the apartheid era to exclude the HDSA's from actively participating in the ownership and management of the mining sector. Stakeholders have agreed to create an enabling environment for the empowerment of the HDSA's by adhering to the following:

- Human resource development (*Skills Development Act 97 of 1998*)
- Employment equity (*Employment Equity Act 55 of 1998*)
- Migrant labour (*Immigration Act 13 of 2002*)
- Mine Community development
- Housing and living conditions
- Procurement (*Preferential Procurement Policy Framework Act 5 of 2000*)
- Ownership and joint venture (*Competition Act 89 of 1998*)
- Beneficiation
- Reporting

Stakeholders recognised that the achievement of the objectives set out in the Charter entails continuous engagement on reporting, monitoring and evaluation and further agreed to review the Charter if required.

3. ANALYSIS OF PROGRESS AGAINST CHARTER ELEMENTS

As a vehicle to redress the socio-economic imbalances of the past, the Mining Charter, as a negotiated instrument, identified nine basic elements to effect the transformation of the South African mining industry. The analysis is informed by the DMRs internal inspection processes and findings from an independent assessment conducted by a consultancy group appointed by the Department. The question that this section answers is as follows: What progress has been made towards the attainment of the objectives of the Charter?

3.1 Human Resource Development

The mining industry is knowledge based, thus requiring greater emphasis placed on skills development. The Charter recognised that the South African labour market does not produce enough requisite skills for the mining industry. Consequently, stakeholders agreed to work together in addressing the inherent skills deficit and adopted measures to effect skills development which would be measured as follows:

- (i) Has the company offered every employee the opportunity to be functionally literate and numerate by the year 2005 and are employees being trained?
- (ii) Has the company implemented career paths for HDSA employees including skills development plans?
- (iii) Has the company developed systems through which empowerment groups can be mentored?

In respect of the abovementioned measures, the assessment yielded the following results:

Functional Literacy: An average of 17.1 percent was achieved.

Career Pathing: An average of 17.1 percent was achieved.

Mentoring of empowerment groups: An average of 11.4 percent was achieved.

The assessment of this Charter element further indicates innate inhibitions against progress on skills development, which include, albeit not limited to lack of management support for staff participating in Adult Basic Education and Training (ABET), as evidenced by recalling of staff from classes to accelerate production, loss of bonuses for ABET attendees and classes arranged after working hours, typically non-proximal to employees residences. Consequently, the prevailing conditions are less attractive for employees to enrol on the programs of skills development. The findings further indicate that the bulk of ABET training beneficiaries are mostly characterised by non-South Africans.

Additionally, investigations of the career pathing and mentoring of empowerment groups measures indicate a disconnect between the plans submitted to the Department of Mineral Resources and actual implementation. The bulk of interviewed mentors and protégés of these programs purport to be oblivious to the plans, as a result of which their participation is limited. Additionally, career plans are typically focussed on development of senior managers at the exclusion of lower level employees.

The companies that are succeeding in the implementation of agreed measures of the HRD element tend to provide sufficient resources and incentives for training.

The continuing paucity of skills in the industry, coinciding with the longest commodity boom, as corroborated by perpetual utterances by the industry captains, bears testimony to the lack of investment in critical skills development. While the original intent of the Charter was to use and expand the existing skills base to contribute to sustainable development of the mining industry, it appears that the implementation of this element has focussed on basic skills development at the expense of developing the requisite skills to effect meaningful transformation of the industry.

Government created the Mining Qualification Authority (MQA) to drive skills development in the mining sector, in terms of the Skills Development Act No. 97 of 1998. Furthermore, the MQA gives credence to the objectives of the Charter by executing Government's undertaking to provide training in mining and entrepreneurial skills. The MQA is also mandated to conduct skills audits, in partnership with the stakeholders, on the basis of which comprehensive skills development strategies were to be developed. The apparent lack of skills resulted in South Africa's mining industry not benefiting nearly as optimally from the commodity super-cycle, owing to poor investment in the development of core skills.

3.2 *Employment Equity*

As cornerstone of apartheid discriminatory employment practices, the mining industry remained, to a large extent, unreformed at the time of the promulgation of the Charter. Consequently, stakeholders deemed it appropriate to include Employment Equity as an element of the Charter to effect a demographically representative workforce in the mining sector, consistent with the central tenets of

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the Employment Equity Act No. 55 of 1998 and the Basic Conditions of Employment Act No. 75 of 1997, as amended.

Stakeholders agreed to cooperate in facilitating the achievement of a representative workforce, and adopted the following measures:

- (i) Has the company published its employment equity plan and reported on its annual progress in meeting that plan?
- (ii) Has the company established a plan to achieve a target for HDSA participation in management of 40percent within five years and is implementing the plan?

Has the company identified a talent pool and is it fast tracking it?

- (iv) Has the company established a plan to achieve the target for women participation in mining of 10percent within the five years and is implementing the plan?

Employment Equity Plans and reports

Only 37 percent of mining companies have developed Employment Equity (EE) plans, while a lesser number of companies have published these plans. There is no evidence of EE reports (either audited or unaudited) submitted to the Department of Mineral Resources. These findings demonstrate the intransigence and lack of commitment by the industry to transform.

HDSA participation in management

An average of 26 percent of mining companies achieved a threshold of 40 percent of HDSA participation at management level, while the average achievement for the industry is 33 percent. It has to be noted that HDSA participation includes white women participation, which currently stands at 10 percent. However, it was further established that a large number of HDSA's occupy middle management

positions while an insignificant number of HDSA's are in key decision making positions.

Women participation in mining

The results reveal that only 26 percent of mining companies have complied with the 10 percent women (inclusive of white women) participation in mining. However, the average rate of women participation is 6 percent, the bulk of whom are represented in support functions with less than 1 percent in core management positions, a large proportion of which represents a preserve for white women.

Talent pool identification and fast tracking

An average of 83 percent of mining companies have not identified talent pool, while only 17 percent are in the process of fast tracking those identified for management positions.

Employment patterns in the mining industry reflect that the majority of HDSA still occupy lower levels of employment and the targeted 40 percent of HDSA participation in management, as espoused in the Charter, has not yet been achieved.

The Human Rights Commission report dated 4th November 2008 confirms the afore-mentioned findings relating to the lack of compliance with the employment equity targets in the mining companies, in terms of race and gender representations. This observation is corroborated by the findings of the 9th Employment Equity Commission report, which highlight that white South Africans (female and male) continue to occupy top management positions and earn more than blacks regardless of skills and experience.

The assessment further revealed the prevalence of racially discriminatory practices in the mining industry, which impacted negatively on the progress towards attainment of equitably transformed workplace.

The lack of investment in HDSA skills development by the industry has created a limited pool of expertise required to effect meaningful gender and racial representation. As a result, retention of a few skilled HDSAs in companies has proven to be a challenge. There is evidence that progress on employment equity remains minimal, with most mining companies developing equity plans for regulatory compliance purposes.

3.3 Migrant Labour

Since the mining industry was developed on the blood and sweat of both South African and migrant labourers, the signatories to the Charter deemed it necessary to make special provision to ensure non discrimination of migrant labourers.

The following measure was adopted to assess progress made in regard to this element:

Has the company subscribed to government and industry agreements to ensure non-discrimination against foreign migrant labour?

This element appears to have been significantly complied with, consistent with the objects of the Immigration Act No. 13 of 2002. This is illustrated by the benefits enjoyed by immigrant workers in terms of skills development. However, evidence of agreements to promote non-discrimination entered into between companies and government was not readily available.

3.4 Mine Community Development

Minerals exploration and mining activities are located in remote and under-developed areas of the country. Mining activities in South Africa, which extend

beyond a century, have led to the proliferation of mining ghost towns, due to poor mining practices of the past' which were inconsistent with sustainable development principles. To ensure the achievement of the triple bottom line, particularly the socio-economic dimension, stakeholders agreed to pursue community upliftment programmes to support communities within which mining takes place as well as labour sending areas. It was agreed that this element would be measured as follows:

Has the company cooperated in the formulation of integrated development plans and is the company cooperating with government in the implementation of these plans for communities where mining takes place and for major labour sending areas?

Has there been an effort on the side of the company to engage local mine community and labour sending area communities? (Companies will be required to cite a pattern of consultation, indicate money expenditure and show a plan)

The assessment indicates that 63 percent of companies engaged in consultation processes with communities, while 49 percent of companies participated in the formulation of Integrated Development Plans (IDP) in mine communities. However, only 14 percent of companies extended their participation in the development of IDPs for labour-sending areas. A mere 37 percent of companies showed proof of expenditure in accordance with commitments set out in approved Social Labour Plans (SLP). The rest of the companies implement corporate social responsibility projects and report these as part of their contribution to IDPs.

Despite seemingly high compliance levels in terms of community consultation, there is no evidence of a direct link between the proposed and implemented community development projects as far as the needs of affected communities are concerned. This is a result of inefficient consultation process, poor or lack of collaboration with communities and lack of alignment to established Local Economic Development (LED) frameworks. The disjuncture between consultation and collaboration with affected communities minimises the developmental impact

of the mining industry on communities, as corroborated by the poor correlation between SLP commitments and related expenditure.

The assessment further identified the narrow empowerment approach of handpicked individual disguised as representing the broader interest of host communities.

The industry expressed a need for a uniform approach to SLP models countrywide, contrary to the unique development requirements of every community. This proposal contradicts international best practice of the same mining companies operating in developed countries where significant investments are made towards community development projects, which address specific needs of those communities prior to the commencement of mining activities.

A model of integrated resource management, which is characterised by mining companies intending to develop projects within the same proximity through pooling of their respective resources in pursuit of high impact development within the host communities, has been proven successful.

3.5 Housing and Living conditions

The appalling living conditions under which black mine workers were made to live before the advent of democracy led to a myriad of social ills, including the destruction of the social fabric of communities, substance abuse, as well as the contraction and spread of diseases, particularly HIV/AIDS. These conditions necessitated stakeholders' intervention to promote humane living conditions for affected workers. To address the situation, stakeholders agreed to implement redress mechanisms which would be measured as follows:

For company provided housing has the mine, in consultation with stakeholders established measures for improving the standard of housing including the

upgrading of hostels, conversion of hostels to family units and promoted home ownership options for mine employees? Companies will be required to indicate what they have done to improve housing and show a plan to progress the issue overtime and is implementing the plan?

For company provided nutrition has the mine established measures for improving the nutrition of mine employees? Companies will be required to indicate what they have done to improve nutrition and to show a plan to progress the plan over time and is implementing the plan?

The assessment indicates that 26 percent of the mining companies have provided housing for the employees, while 29 percent have improved the existing standards of housing. The results further indicate that 34 percent of companies have facilitated employees' access to home ownership through various schemes. In addition, 29 percent of companies have offered nutrition to employees or have established plans to effect improved nutrition. The majority of mines have moved away from the hostel systems, as a result of which 9 and 6 percent of companies have achieved upgrading of hostels as well as conversion of hostels to family units, respectively. The mining industry has made reasonable progress towards the creation of descent housing and living conditions for mine workers through the various schemes. However, despite the reduction of the number of occupants from 16 to 4 persons per unit, this occupancy rate remains unacceptably high. Accordingly, inspection of most hostels further revealed unhygienic living conditions that hostel dwellers are subjected to. The upgrading as well as the conversion of existing hostels into family units remains unacceptably low.

Less than a third of the mining companies make nutritional provision for their employees. Inspections have revealed that nutrition is typically outsourced to service providers with inadequate expertise, characterised by former employees of the mining companies. The assessment also revealed a conspicuous absence of adequate facilities for employees to prepare their own meals.

Further, the assessment found that most mining companies have resorted to giving workers "living out allowances". The unintended consequence of the aforementioned is the proliferation of informal settlements. It is common knowledge that informal settlements in South Africa often provide a conduit or cesspool of crime, substance and alcohol abuse, and the spread of diseases.

The housing and living conditions standard gazetted in April 2009 was developed by the Department of Mineral Resources (DMR) in consultation with industry stakeholders and the Department of Housing (Housing Act No. 107 of 1997). This policy sets out various standards and guidelines to enable industry to accelerate the attainment of requisite levels of humane living conditions for mining sector employees, consistent with international best practices.

3.6 *Procurement*

While political freedom has been achieved in South Africa, economic freedom remains elusive to the majority of its citizens. South Africa continues to display two economies that are divided along racial lines. Procurement of capital goods involving huge sums of capital funds managed and dispensed by the mining industry continues to be dominated by non HDSA companies. The procurement element of the Charter is a deliberate intervention by stakeholders to create new avenues for HDSA supplier participation in the mainstream economy, to bridge the divide between the two economies, as espoused in the Broad Based Black Economic Empowerment Act No. 53 of 2003. The mining stakeholders adopted this element of the Charter and agreed to the following measures:

Has the mining company given HDSA's preferred supplier status?

Has the mining company identified current level of procurement from HDSA companies in terms of capital goods, consumables and services?

Has the mining company indicated commitment to a progression of procurement from HDSA company over a three (3) to five (5) year time frame in terms of capital

goods, consumables and services and to what extent has the commitment been implemented?

The assessment illustrates that 89 percent of companies have not given HDSA companies preferred supplier status, while 80percent have not indicated commitment to the progression of procurement from HDSA companies over a 3-5 year time-frame. The current reported level of procurement from HDSA companies averages a mere 37 percent of companies, although companies could not always ascertain the ownership and management control status of their HDSA suppliers.

Procurement of capital goods, consumables and services managed and dispensed by the mining companies continues to be skewed in favour of their preferred untransformed suppliers to the detriment of HDSA companies.

HDSA companies largely benefit from procurement contracts for the provision of consumables and non-core services such as providing cleaning facilities, toilet paper and other trivial activities.

The value of HDSA procurement expenditure as a percentage of total procurement remains below 3 percent, consistent with the insignificant provisions of preferred supplier status to HDSA companies. There is no evidence that stakeholders have identified levels of procurement from the HDSA companies and developing HDSA procurement capacity as per their undertaking at the time of adopting the Charter. This demonstrates lack of commitment by mining companies to advance the procurement element of the Mining Charter. The pervasive resistance by the industry to meaningfully engage the services of HDSA companies continues to delay the achievement of broader economic freedom.

3.7 Beneficiation

Mineral value addition is a deliberate government intervention to facilitate a paradigm shift from a resource based to knowledge based economy. This intervention is premised on the comparative advantage assumed by the country from its mere endowment with mineral resources to developing a competitive advantage which should meaningfully contribute to the accelerated economic

growth. Recognising the significant opportunity presented to South Africa by introducing mineral beneficiation programmes, stakeholders embraced the introduction of this element and agreed on the following measures:

Has the mining company identified its current level of beneficiation?

Has the mining company established its baseline level of beneficiation and indicated the extent that this will have to be grown in order to qualify for an offset?

Although the above measures have not been achieved, there has been pockets of local beneficiation of the country's mineral resources, albeit in an uncoordinated manner. To create an enabling environment to effect coordinated beneficiation in South Africa, Government has introduced the Precious Metals Act No. 37 of 2005 and the Diamonds Amendment Act No.29 of 2005, which led to the establishment of the South African Diamond and Precious Metals Regulator (SADPMR) and the State Diamond Trader (SDT). Further, the development of the beneficiation strategy has sought to create a broader framework to promote increased local value addition, consistent with other programmes of government such as the National Industrial Policy Framework.

The review of the Mining Charter presents an ideal opportunity to strengthen the beneficiation element of the Charter, which should be aligned to the country's mineral beneficiation strategy. South Africa should not permit continued exportation of mineral resources for beneficiation elsewhere, to the detriment of local skills development, creation of decent jobs, increased Gross Domestic Product (GDP) value addition per capita and contribution to economic growth.

3.8 Consultation, Monitoring, Evaluation and Reporting

Recognising that the achievement of the objectives of the Charter requires an ongoing process of consultation, monitoring, evaluation and reporting, stakeholders agreed on mechanisms to ensure that the objectives of the Charter are achieved. Mining companies further undertook to report on an annual basis, as

per the provisions of section 28(2)(c) and section 29 of the MPDRA. The following measure was agreed upon by stakeholders:

Has the company reported on an annual basis its progress towards achieving its commitments in its annual report?

Assessment shows that 37 percent of companies have audited reports, while only 11 percent purport to have submitted their annual progress report to the DMR.

It is apparent that a large proportion of mining companies with audit reports has not subjected the Mining Charter compliance data to an independent audit framework. Accordingly, there is absence of coordinated mechanisms within the Department of Mineral Resources (DMR) to effectively monitor and evaluate progress against the Mining Charter targets on an annual basis. There is also lack of adherence by stakeholders to the provisions of section 28(2)(c) and section 29 of the MPRDA, as well as stringent enforcement systems.

The amount provided for in section 99 of the MPRDA as a penalty for non compliance with the provisions of section 28(2)(c) and section 29 of the MPRDA is preposterously inadequate.

3.9 Ownership and Joint Ventures

The perpetual marginalisation of the majority of South Africans, facilitated by the exclusionary policies of the apartheid regime, prevented black people from owning the means of production and from meaningful participation in the mainstream economy. As a result, the majority of South Africans still provide a source of cheap labour. This necessitated a deliberate intervention to redress this situation, in line with clause (3) of the Freedom Charter, which states that: "*The National wealth of our country, the heritage of South Africans shall be restored to the people. The mineral wealth beneath the soil... shall be transferred to the ownership of the people as a whole*". It is through the prism of this perennial document that the ownership element of the Mining Charter was adopted by all stakeholders to

facilitate the transfer of ownership to HDSAs. Stakeholders adopted the following to measure compliance with this element:

Has the mining company achieved HDSA participation in terms of ownership for equity or attributable units of production of 15percent in HDSA hands within 5 years and 26percent in 10 years?

Upon the adoption of the Mining Charter, stakeholders made the following undertaking: *"The industry agreed to assist HDSA companies in securing finance to fund participation in an amount of R100 billion within the first 5 years. Participants agreed that beyond R100 billion - industry commitment in pursuance of the 26 percent target, on a willing seller willing buyer basis, at fair market value, where the mining companies are not at risk, HDSA participation will be increased"*.

The assessment revealed that the current net asset value of the South African mining industry averages R2 trillion, indicating that the 15 percent HDSA ownership threshold requires no less than R300 billion to accomplish (in 2009 terms). The industry's stated commitment of R100 billion to facilitate HDSA ownership represents 5 percent of the current net asset value of the mining industry, which falls far short of the agreed 15 percent empowerment target envisaged within 5 years. However, the assessment further recognises the limitations of the absolute value of commitment as well as the compounded annual growth of the industry's net value, which ought to have been factored in at the time of the commitment.

Analysis of the available data shows that aggregated BEE ownership of the mining industry has, at best, reached 9 percent. There are several empowerment vehicles that constitute BEE ownership, viz.: Women in Mining, Employee Share Ownership Schemes (ESOPS), Community Trusts, Anchor Partners and Special Purpose Vehicles (SPV). Regrettably, the reported level of BEE ownership is concentrated in the hands of anchor partners and SPV's, representing a handful of black beneficiaries, contrary to the spirit and aspiration of both the Freedom Charter and the Mining Charter.

The underlying empowerment funding model has resulted in the actual ownership of mining assets intended for transformation purposes being tied in loan agreements. Accordingly, the net value of a large proportion of empowerment deals is negative, due to high interest rates on the loan and moderate dividend flows, compounded by the recent implosion of the global financial markets. The rapacious tendencies of the capital markets have consistently thwarted the intended progress towards attaining the goals of transformation, as embedded in the Charter.

The assessment shows that the structure of most empowerment deals is insidiously effected at operational (mining rights) levels, which allows for ring-fencing of transformation at holding company level. Such undesirable practices perpetuate a culture and focus on regulatory compliance at the expense of fundamental transformation of the mining industry, including albeit not limited to deracialising the corporate profiles and ownership of mining companies.

The assessment also points to a structural malaise in BEE deals focussed solely on economic interest, which is not representative of the true ownership transfer of mining assets to HDSA's. As a result of these structural weaknesses, the BEE companies end up in an invidious financial position, as evidenced by the swift mass exodus of these companies, which coincided with the global financial crisis.

The realisation of the benefits of BEE deal-flows to HDSA beneficiaries is delayed by elusive structuring of these deals. The nature of most BEE deals is such that the repayment terms for the HDSA continue beyond the Life of Mine (LOM). There are often onerous conditions attached to agreements to discourage HDSA participation. A majority of empowerment deals are structured with a lifespan ending 2014, contrary to the object of this element, which sought to achieve these targets as a baseline of transformation. Some companies have used what they call the “**pool and share**” method, which is their own creation and features nowhere in the Charter. Through this method, established mining companies enter into joint ventures with black owned companies and each party brings resources into the deal based on the close proximity of their operations “geographically”.

The profits are shared on the basis of who has what percentage of the reserves brought into the deal. Effectively, the BBEE ownership in such an arrangement is based on how much reserves each party brings into the deal. In essence such companies are not empowered and should not claim credit on the basis of attributable units of production since they did not give up any of their reserves for the benefit of black owned company and their racial profile remains unaltered.

Lack of HDSA representation at empowering companies' boards limits their decision making authority and leaves them at the mercy of empowering companies. Consequently, HDSA companies are generally excluded from major decisions relating to investment/divestment and key policies that determine the future direction of the company.

The prevalence of fronting is both an insult and an indictment to the broader objectives of the Mining Charter. This unscrupulous practice sets back the transformation agenda of South Africa and must be condemned in the strongest terms possible. The surreptitious nature of fronting remains a scourge to South Africa's transformation agenda.

4. IMPACT OF THE MINING CHARTER ON ECONOMIC GROWTH AND EMPLOYMENT

The promulgation of the MPRDA and the implementation the Mining Charter in 2004, replaced the preceding mining regulatory framework which had locked mineral rights in private individuals (including juristic persons). The private individuals were characterized by the previously advantaged minority of South Africans and thwarted momentous prospects of foreign investment flows into the sector. The new regulatory framework vested the custodianship of mineral rights to the State.

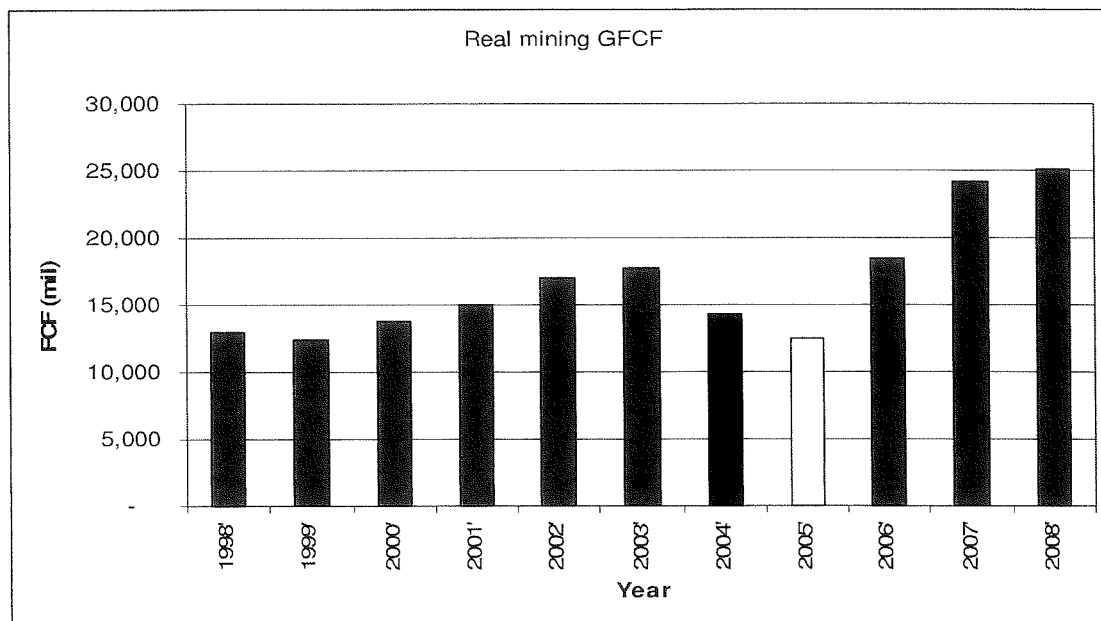
The implementation of the Charter also coincided with a protracted declining trend in employment, which tracked the contraction in gold output. The 1986 official statistics of employment in the mining sector was 829 000, marking the beginning of the contraction in employment, which reached a trough of 449 000 in 2004, indicative of a cumulative job losses of 46 percent over this period. The implementation of the Mining Charter enabled diversification of the mining industry in South Africa in terms of a number of commodities mined, volumes produced, revenue generation for the country, especially export earnings which kept the country's balance of payment relatively stable and job creation. Currently, the sector employs 6% of the country's total labour force, with steady growth in employment under the new regulatory regime peaking at 519 000 by 2008 (annual employment growth averaged 4% from 2005 to 2008). However, this number decreased to 494 000 by June 2009, due to the current global financial climate, representing a cumulative loss of 25 000 (Quarterly Employment Statistics, June 2009, StatsSA).

The Gross Fixed Capital Formation (GFCF) in the mining industry declined by respective 20 percent and 12 percent in 2004 and 2005, due to uncertainty of the introduction of the Mining Charter, regional geo-political stability presenting new

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prospects for mining in competition with South Africa and the recovery of the Rand. The GFCF grew at a much faster pace averaging 24 percent between 2005 and 2008, once the confidence in the regulatory regime was attained.

Figure 1



During the first five years of the implementation of the Mining Charter (i.e. between 2004 and June 2009), the Department of Mineral Resources received over 22 000 applications for new mining rights, mining right conversions, reconnaissance permits and prospecting/prospecting rights, corroborative of the continued investor confidence in the mining sector, created by the new regulatory framework.

The contribution of the South African mining sector to the National Gross Domestic Product (GDP) correspondingly grew from R89 Billions in 2004, to R196 Billions in 2008.

The economic and employment statistics suggest that the new South African mining regulatory framework (the MPRDA and the Mining charter) has reinforced

investor confidence in mining sector, contributory to systematic growth in economic performance and opportunities for creation of decent employment for South Africans.

5. CONCLUSIONS AND RECOMMENDATIONS

The first period of the implementation of the current Mining Charter coincided with the longest synchronised commodity boom ever experienced by the mining industry globally. The Charter was developed as a pre-cursor lever to effect sectoral transformation, aligned to the broader national transformation agenda. In developing the Mining Charter, the DME accommodated the diverse interests of various stakeholders, as they lobbied for the protection of their various constituencies.

As an agreement based on concessions by the various stakeholders, the Mining Charter is not without shortcomings. The ambiguity inherent in the current construct of the Charter elements has given rise to various interpretations, which afford the industry an opportunity to exploit intrinsic weaknesses. This has resulted in shocking levels of non compliance.

Consequently, the intended benefits flowing from the mining industry fall significantly below the expectations and aspirations of the majority of South Africans as intended by the Charter. To this extent, there is a degree of criticism levelled against the Mining Charter that in its current form, it is a blunt tool to address the broad based transformation agenda.

Although some of the elements of the Charter allude to the national objectives, there is a need to further align it to the developmental state agenda. However, this raises questions as to whether the state has utilised State Owned Enterprises for the maximum benefit of the nation and what needs to be done to ensure that such utilisation occurs.

It is therefore imperative that the Mining Charter be reviewed to ensure that it remains relevant and true to its original intent, and aligned to the Broad Based Black Economic Empowerment (BBBEE) Act No.53 of 2003 and the Codes of Good Practice championed by the DTI.

While the assessment of the Mining Charter demonstrates a measure of cumulative progress towards the attainment of its objectives as embedded in the elements, it also illuminates some deficiencies in the construct and mechanisms of implementation thereof. The juxtaposition of interpretation of the Mining Charter aligned to the score-card (measures) is blurry. Accordingly, the intent of some elements of the Charter is not adequately articulated. What follows delineates the current limitations intrinsic in the Mining Charter:

Lack of a definition chapter in the Mining Charter:

The lack of a definition section in the Charter allows for various inconsistent interpretations of the provisions of the Charter by the mining sector stakeholders.

The current definition of HDSA:

The current definition of HDSA in the Mining Charter should be aligned to the definition of HDSA's in the Broad Based Black Economic Empowerment Act No.53 of 2003. In addition, the Charter should seek to be more inclusive of vulnerable groupings. For instance, the Mining Charter is silent on the role persons with disabilities, as part of HDSA's, can play within the mining Industry. Yet ironically mining companies have contributed significantly to the increasing number of people with disabilities. In other words, if transformation as espoused in the Mining Charter has to impact in a more meaningful way, the mining sector should create meaningful opportunities for people with disabilities.

Ownership:

While the element captures the recognition by government and industry that one of the means of effecting entry of HDSA's into the mining industry and of allowing HDSA's to benefit from the exploitation of mining and mineral resources is by encouraging greater ownership of mining assets by HDSAs, it only provides the definition of participation in terms of active and passive involvement, the terms of which are not clearly defined. This provides room for ambiguity and different interpretations. For example, the DMR interpretation of ownership includes voting rights, economic interest and net value, while the industry obfuscates interpretation of ownership as HDSA's economic interest, and views net value as an additional ownership criterion. In addition, the absence of criteria for offsetting beneficiation against ownership, as well as lack of clarity on the continuing consequences of previous BEE transactions and the use of attributable units of production require specific attention.

HDSA's in Management (including Women in mining):

Mining companies often employ HDSA's in support services as opposed to core business positions. The core business positions within mining companies continue to be occupied by white South Africans (men and women) the exclusion of HDSA's. The definition of HDSA attribute requires specific attention.

Human Resources Development:

This element recognises that the South African labour market does not produce enough skills required by the mining industry for sustainable growth. However, the element currently places greater emphasis on offering opportunities to become functionally literate and numerate. The conspicuous lack Research and Development in the current Charter requires special attention.

Procurement:

While the Charter identifies procurement as an area of opportunity to contribute to sustainable development of communities, it only identifies three variables of procurement and does not commit mining companies to effectively support the economic growth of HDSA supplier companies across all three levels of procurement.

Recommendations:

The assessment of the Mining Charter has demonstrated that the Charter and its constituent elements for effecting meaningful transformation remain relevant. However, the efficacy of the Charter as an instrument of promoting transformation is blunted to a large extent by the identified shortcomings. It is therefore recommended that the Charter be reviewed to strengthen and sharpen its effectiveness in driving transformation in the industry. It is further recommended that the MPRDA be amended to ensure that non-compliance with the provisions of both the Charter and the Act is severely penalised. In addition, there needs to be greater synergy between the procurement element of the Mining Charter and the procurement element of the DTI Codes of Good Practice.

The BBBEE Act makes provision for the establishment of the BEE Advisory Council to be chaired by the State President. DMR must, in partnership with the DTI and other relevant departments, expedite the establishment of the Council to ensure that transformation issues receive attention at that level. Further, capacity should be built and adequate resources allocated within the department to promote the effective and efficient monitoring and evaluation of compliance with the provisions of the Charter and the MPRDA.



CHAMBER OF MINES OF SOUTH AFRICA

Putting South Africa First



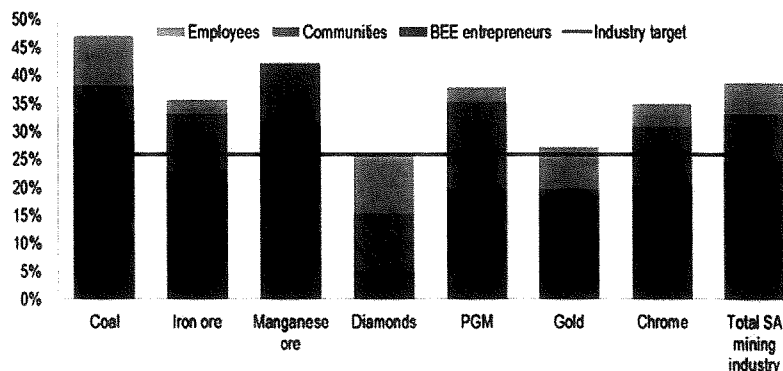
CHAMBER OF MINES CALCULATES BROAD BASED HDSA OWNERSHIP OF 38% and MEANINGFUL ECONOMIC VALUE TRANSFER OF >R159 BN

The Chamber of Mines (Chamber) and its members, release findings of a comprehensive report which demonstrates the meaningful economic participation of HDSAs in the South African mining industry as per the ownership element of the Mining Charter. It is an aggregation of company information based on DMR submissions as at 31 December 2014. Given the significance of this milestone which sets the 26% HDSA ownership target, the Chamber has engaged the services of industry experts Sizwe Ntsaluba Gobodo (SNG) auditing firm and Rand Merchant Bank (RMB) corporate finance. The analysis represents the majority of the Chamber membership and also captures a significant portion of the South African mining industry (80% – 90% based on BEE transactions, value and volumes).

Although it is a calculation at end 2014, the analysis has captured the ownership compliance in relation to asset level mining rights' compliance over the last 12 years. The results below demonstrate that the industry has met and exceeded the ownership target of 26% HDSA by 2014 and has transferred significant value to HDSAs despite the significant challenges posed by the 2008 World Financial Crisis and the subsequent bear market for commodities. In addition, meaningful economic participation of HDSAs has occurred with a broad based identifiable beneficiaries and cash flowing to HDSA beneficiaries. This demonstrates the industry's commitment to transformation and the spirit of the Mining Charter. The highlights are:

- Since the commencement of the process of transformation in the mining industry, meaningful economic empowerment participation by HDSA has been 38% on average, based on the Chamber of Mines collation. This is above the Mining Charter 26% HDSA ownership target by 2014.
- The various sectors of the South African mining industry have similarly all met or exceeded the HDSA ownership targets– PGM at 38.0%, Gold at 27.3%, Coal at 47.2%, Diamonds at 26.0%, Iron Ore at 35.7%, Manganese Ore at 42.2% and Chrome at 35.1%.
- The composition of identifiable HDSA beneficiaries in the industry that has benefited through ownership, both directly and indirectly, is 63% BEE entrepreneurs (46 BEE companies), 22% communities (6.9 million HDSAs) and 15% employees (210 thousand HDSAs).
- The DMR's interpretation of the Charter is that the definition of meaningful economic participation has to include all three beneficiary categories to be compliant (this interpretation is not shared by the Chamber). Based on the company information we have received, we found that the proportion of companies that have all three categories present, i.e. BEE entrepreneurs, communities and ESOPs in their HDSA empowerment structures represent a minimum of 41% of the SA Mining Industry.

Figure 1: Portion of ownership of mining industry transferred to HDSA controlled entities up to 2014

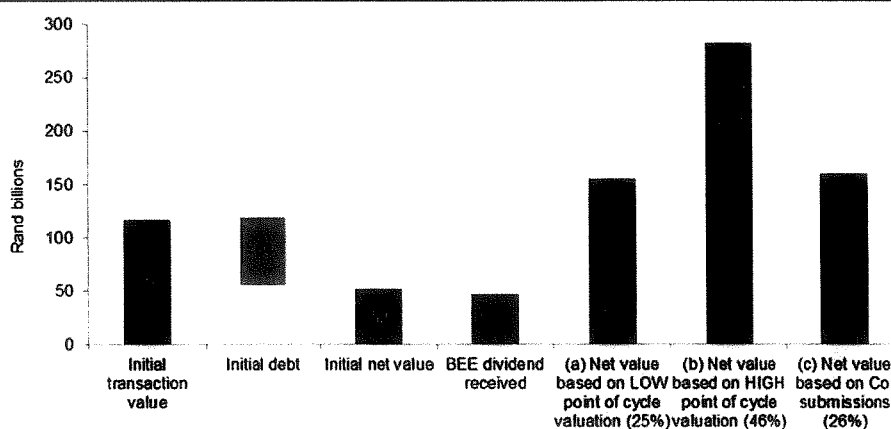


Source: SNG and Chamber of Mines analysis

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- Over the 12 year period, dividends of a minimum of R47 billion were paid to HDSA beneficiaries, representing 19.6% of the total 'company' dividends paid over the period. This is in line with the staged HDSA ownership target from 15% by 2009 to 26% by 2014 and fairly represents the average over the period. It also does not take into account profit from asset sales over the period and should be considered against a background where many shareholders during the period did not receive dividends.
- BEE transactions with an initial value of R116 billion were implemented over the period. These transactions created net value of around R159 billion (+207%) over the same period. The net value (after deducting debt from the asset values) created for HDSA controlled entities represented 26% of the value (EBITDA multiple basis) of the entire industry at December 2014.
- However, based on a through-the-cycle low and high valuation of assets, the net value created represents between R155bn (+200%) and R282bn (+444%) or 25% to 46% of the entire industry value (EBITDA multiple basis), respectively.

Figure 3: Estimation of value created (meaningful economic participation of HDSA)

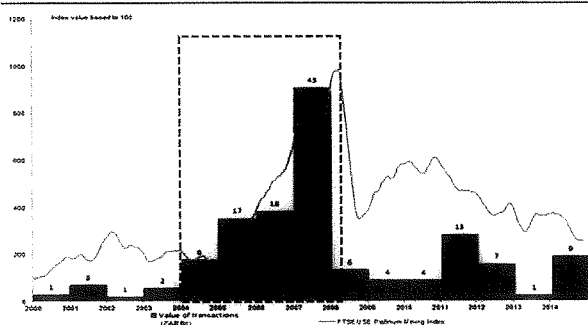


Source: SNG, RMB and Chamber of Mines analysis (Net value = Total asset value – debt outstanding + dividends; (a) and (b) valuation based on EBITDA multiple calculations)

These results have been achieved by the industry, despite the fact that measurement is occurring at a low point in the commodities cycle. Key lessons learnt include:

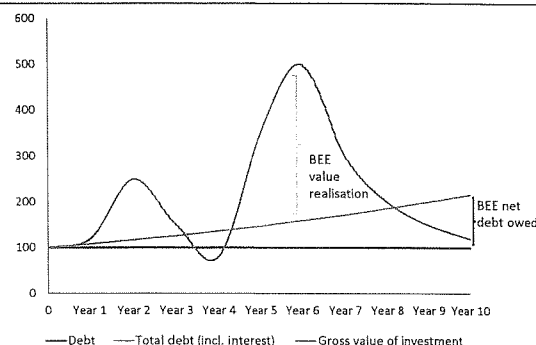
- Market volatility has impacted value creation. Underlying funding structures depended on rising commodity prices to result in value creation for beneficiaries.
- Lock-in provisions have prevented beneficiaries from unlocking value created during the peak of the cycle. Lack of diversification is an inherent risk in BEE transactions.
- Facilitation important in ensuring sustainable transaction e.g. vendor funding, free shares, minimum guaranteed cash flows. Implementing BEE transactions at the height of the commodities cycle resulted in unsustainable high debt levels.

Figure 1: Mining BEE transactions and Equity performance



Source: RMB and Dealmakers online

Figure 2: Illustrative impact of Commodity cycle on value



Source: RMB

Summarised HDSA ownership results

| | |
|--|---|
| The South African Mining Industry | The industry has achieved BEE ownership of 37.7% (22.8% BEE entrepreneurs, 10.8% communities and 4.2% ESOPs) weighted based on value of the assets. The ownership structure has benefited 60% BEE entrepreneurs, 29% communities and 11% ESOPs, and an estimated 7 million individuals. In terms of volumes weighting (Production and revenue), the industry has achieved BEE ownership level of 38.8% (24.3% BEE entrepreneurs, 9.1% communities and 5.4% ESOPs). The ownership has benefited 63% BEE entrepreneurs, 22% communities and 15% ESOPs. The industry has created net value of between R 155 320 million and R 282 018 million representing a return of between 200% and 444%. In addition, most of the sectors have not only met but also exceeded the 26% minimum compliance requirement. |
| PGM | The PGM sector has achieved BEE ownership of 39.5% (19.5% BEE entrepreneurs, 18.0% communities and 2.0% ESOPs) weighted based on value. The ownership structure has benefited 49% BEE entrepreneurs, 46% communities and 5% ESOPs, and an estimated 2 774 493 individuals. In terms of volumes weighted, the industry has achieved a BEE ownership of 38.0% (19.8% BEE entrepreneurs, 15.5% communities and 2.6% ESOPs). The ownership structure has benefited 52% BEE entrepreneurs, 41% communities and 7% ESOPs. The PGM sector has a total net value of between R 43 442 million and R 65 987 million representing a change of between 109% and 212%. |
| Gold | The Gold sector has achieved BEE ownership of 28.8% (18.6% BEE entrepreneurs, 0.9% communities and 9.2% ESOPs) weighted based on value. The ownership structure has benefited 65% BEE entrepreneurs, 3% communities and 32% ESOPs, and an estimated 135 109 individuals. In terms of volumes weighted, the industry has achieved a BEE ownership of 27.3% (18.3% BEE entrepreneurs, 1.6% communities and 7.5% ESOPs). The ownership structure has benefited 67% BEE entrepreneurs, 6% communities and 27% ESOPs. The Gold sector has a net value of between R 7 182 million and R 32 267 million representing a change of between -31% and 209%. |
| Coal | The Coal sector has achieved BEE ownership of 43.9% (32.0% BEE entrepreneurs, 5.3% communities and 6.3% ESOPs) weighted based on value. The ownership structure has benefited 74% BEE entrepreneurs, 12% communities and 14% ESOPs, and an estimated 1 753 087 individuals. In terms of volumes weighted, the industry has achieved a BEE ownership of 47.2% (32.0% BEE entrepreneurs, 6.2% communities and 9.0% ESOPs). The ownership structure has benefited 68% BEE entrepreneurs, 13% communities and 19% ESOPs. The Coal sector has a net value of between R24 000 million and R 49 512 million representing a change of between 189% and 497%. |
| Diamonds | The Diamond sector has achieved BEE ownership of 26.0% (4.4% BEE entrepreneurs, 11.6% communities and 10.0% ESOPs) weighted based on value. The ownership structure has benefited 17% BEE entrepreneurs, 45% communities and 38% ESOPs, and an estimated 114 653 individuals. In terms of volume weighted, the industry has achieved a BEE ownership of 26.0% (5.1% BEE entrepreneurs, 10.2% communities and 10.7% ESOPs). The ownership structure has benefited 20% BEE entrepreneurs, 39% communities and 41% ESOPs. The Diamond sector has a net value of between R 616 million and R 5 290 million representing a change of between -56% and 282%. |
| Iron ore | The Iron Ore sector has achieved BEE ownership of 38.2% (24.0% BEE entrepreneurs, 12.0% communities and 2.2% ESOPs) weighted based on value. The ownership structure has benefited 63% BEE entrepreneurs, 31% communities and 6% ESOPs, and an estimated 1 482 163 individuals. In terms of volume weighted, the industry has achieved a BEE ownership of 35.7% (22.9% BEE entrepreneurs, 10.3% communities and 2.5% ESOPs). The ownership structure has benefited 64% BEE entrepreneurs, 29% communities and 7% ESOPs. The Iron Ore sector has a net value of between R 53 220 million and R 115 330 million representing a change of between 433% and 1054%. |
| Manganese ore | The Manganese Ore sector has achieved BEE ownership of 50.1% (33.3% BEE Entrepreneurs, 16.3% Communities and 0.0% ESOPs) weighted based on value. The ownership structure has benefited 67% BEE entrepreneurs, 33% communities and 0% ESOPs, and an estimated 411 512 individuals. In terms of volume weighted, the industry has achieved a BEE ownership of 42.2% (31.2% BEE entrepreneurs, 11.0% communities and 0.0% ESOPs). The ownership structure has benefited 74% BEE entrepreneurs, 26% communities and 0% ESOPs. The Manganese Ore sector has a net value of between R -436 million and R 8 389 million representing a change of between -100% and 100%. |
| Chrome | The Chrome sector has achieved BEE ownership of 28.1% (15.9% BEE entrepreneurs, 7.0% communities and 5.2% ESOPs) weighted based on value. The ownership structure has benefited 57% BEE entrepreneurs, 25% communities and 18% ESOPs and an estimated 454 594 individuals. In terms of volume weighted, the industry has achieved a BEE ownership of 35.1% (20.3% BEE entrepreneurs, 10.6% communities and 4.2% ESOPs). The ownership structure has benefited 58% BEE entrepreneurs, 30% communities and 12% ESOPs. The Chrome sector has a net value of between R 1 824 million and R 5 242 million representing a change of between 204% and 774%. |

Chamber of mines of South Africa Assessment of Mining Charter 2014 targets

| Per the Mining Charter Scorecard | | DMR published assessment | | | Chamber assessment | | Broad alignment with DMR (Yes/No) |
|--|---|---------------------------|------------|-----------------------|---|---|--|
| Element (Scorecard weight) | Description | Target | Unweighted | Weighted ¹ | (i) Comparison to target (ii) % of submissions that has met target | (i) Comparison to target (ii) % of submissions that has met target | |
| Ownership (Y/N) | Min HDSA ownership % | 26% | (i) 30.6% | (i) 32.5% | (i) 38% ³ | (i) 38% | No - significant differences in definitional interpretation |
| | Percentage of companies achieving 26% | 100% | (ii) 79% | (ii) 90% | (ii) 100% | (ii) 100% | |
| | Percentage of companies with BEE, community & ESOP | (not agreed) | (iii) 6.3% | (iii) 20% | (iii) 41% | (iii) 41% | |
| Housing and living conditions (Y/N) | Percentage reduction of occupancy rate towards 2014 target | 100% | | | (i) - | (i) - | No |
| | Percentage conversion of hostels into family units | 100% | | (i) 55% | (ii) 73% | (ii) 73% | |
| Procurement and enterprise development (15%) | Capital goods (5%) | 40% | (i) 39.6% | (i) 82.1% | (i) 72% | (i) 72% | Yes (on weighted data) |
| | % of companies meeting the target | | (ii) 33.2% | (ii) 64.9% | (ii) 63% | (ii) 63% | |
| | Services (5%) | 70% | (i) 60% | (i) 85.2% | (i) 72% | (i) 72% | |
| | % of companies meeting the target | | (ii) 60% | (ii) 85.2% | (ii) 20% | (ii) 20% | |
| | Consumable goods (2%) | 50% | (i) 3.3% | (i) 14.9% | (i) 50.4% | (i) 50.4% | |
| Employment equity (16%) | Annual spend on procurement from MNCs (3%) | 0.5% of procurement | | | | | Yes (on weighted data) |
| | % of companies meeting the target | | | | | | |
| Human resource development (25%) | Top Management (Board) (3%) | 40% | | | | | Yes - but DMR still critical of white males dominating at strategic levels of industry |
| | Senior Management (Exco) (4%) | 40% | | | (i) 41.9% | (i) 41.9% | |
| | Middle Management (3%) | 40% | | | (i) 50.9% | (i) 50.9% | |
| | Junior Management (1%) | 40% | | | (i) 54% | (i) 54% | |
| | Core skills (5%) | 40% | | | (i) 75.5% | (i) 75.5% | |
| Mine community development (15%) | HRD expenditure as % of total annual payroll | 5% | (i) 38.1% | (i) 56.9% | (i) 5.5% | (i) 5.5% | Yes - timing issues to be addressed |
| | % of companies achieving the target | | (ii) 36% | (ii) 48.6% | (ii) 100% | (ii) 100% | |
| | Implement approved community projects | Up to date implementation | (i) 36% | (i) 48.6% | (i) 70.6% | (i) 70.6% | |
| | % of companies meeting target | | (ii) 44.5% | (ii) 56.9% | (ii) 100% | (ii) 100% | |
| | Implementation of approved EMPs (12%) | 100% | (i) 44.5% | (i) 56.9% | (i) 90.6% | (i) 90.6% | |
| Sustainable development and growth (29%) | % of companies meeting target | | (ii) 44.5% | (ii) 56.9% | (ii) 100% | (ii) 100% | No - DMR wants occupational health elements to be improved |
| | Implement the tripartite action plan on health and safety (12%) | 100% | (i) 2.8% | (i) 1.6% | (i) 86.2% | (i) 86.2% | |
| | % of companies meeting the target | | (ii) 2.8% | (ii) 1.6% | (ii) 84.2% | (ii) 84.2% | |
| | Percentage of samples in SA facilities (5%) | 100% | (i) 65.5% | (i) 84.2% | (i) 84.6% | (i) 84.6% | |
| | % of companies meeting the target | | (ii) 65.5% | (ii) 84.2% | (ii) 84.6% | (ii) 84.6% | |



CHAMBER OF MINES OF SOUTH AFRICA
Finding South Africa First



Source: Chamber of mines, Department of Mineral Resources

Note 1: Weighting based on DMR employment figures

Note 2: Weighting based on Chamber employment figures, except for ownership which is based on volumes and mineral sales

Note 3: Based on Independent Chamber Ownership Collation report

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STAKEHOLDERS' DECLARATION ON STRATEGY FOR THE SUSTAINABLE GROWTH AND MEANINGFUL TRANSFORMATION OF SOUTH AFRICA'S MINING INDUSTRY

Mining Stakeholders include:

1. The Department of Mineral Resources
2. National Union of Mineworkers
3. Chamber of Mines of South Africa
4. South African Mineral Development Association
5. Solidarity
6. UASA - The Union

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STAKEHOLDERS' DECLARATION ON STRATEGY FOR THE SUSTAINABLE GROWTH AND MEANINGFUL
TRANSFORMATION OF SOUTH AFRICA'S MINING INDUSTRY

PREAMBLE

This declaration lays a foundation for a strategy to position South Africa's mining industry on a trajectory of sustainable growth and meaningful transformation. The strategy emphasises the complementary nature and interdependence of competitiveness and transformation. This declaration further acknowledges the vital contributory role of the mining industry to national socio-economic development as well as the necessity to use country's mineral base as a catalyst to enhance diversification of the economy that corresponds with the industrialisation priorities of government.

Considering the intrinsic value of mining which encompasses the sustainable development potential of the sector, stakeholders are fully cognisant of the constraints that limit the realisation of this potential and they therefore reaffirm their commitment to working together to successfully and holistically implement the provisions of the strategy. South Africa is a land endowed with incredible possibilities and through collaborative efforts of relevant stakeholders it is contended that much more can be achieved. In accordance with the harmony of the zebra colours, this declaration symbolises the spirit of common purpose by the stakeholders.

In order to ensure the sustainable growth and meaningful transformation of the mining industry, stakeholders acknowledge and commit to mitigate various constraints that are evident in infrastructure inadequacies, the paucity of requisite skills, the regulatory framework, as well as low levels of exploration and research and development. In addition, stakeholders recognise the transformation backlog in the industry, the unsatisfactory pace of which has fuelled socio-economic developmental disparities, influenced workplace inequity, and aggravated the plight of mining areas. Meaningful economic HDSA participation has also been detrimentally affected. In response, the stakeholders are committed to integrating transformation priorities with measures to promote the globally competitive growth of the sector. Having regard to the national government's order of priorities and inspired by the development potential of the mining industry, stakeholders further commit to develop the mining industry in resonance with government's socio-economic development priorities.

STAKEHOLDERS' DECLARATION ON STRATEGY FOR THE SUSTAINABLE GROWTH AND MEANINGFUL TRANSFORMATION OF SOUTH AFRICA'S MINING INDUSTRY

COMMITMENT 1

Objectives

Inspired by the values associated with transparency and integrity, this declaration provides the basis for stakeholder commitment to creating an environment that is conducive to supporting the sustainable growth and meaningful transformation of South Africa's mining industry, with the following aims:

- To promote investment, enhance competitiveness and drive transformation objectives;
- To mitigate constraints limiting sustainable growth and meaningful transformation;
- To emphasise the mutual reinforcement of competitiveness and transformation;
- To commit to effective implementation of the strategy.

COMMITMENT 2

Infrastructure

Recognising that infrastructure is one of the key drivers of the competitiveness with a material impact on its potential growth, and further recognising that shortages of critical infrastructure such as rail, ports, electricity and water supply can act as constraints to growth, the parties commit to the following:

- Establishment of an "Integrated Long Term Infrastructure Planning Mechanism" for the mining sector;
- Evaluation of short to long-term infrastructure requirements underpinning the envisaged growth of mining industry through a process of engagement between industry and government;
- Identification of areas that are industry and/or government responsibilities, including shared responsibilities;
- Engagement with relevant national processes committed to long-term integrated planning process with specific emphasis on the mining industry's infrastructural needs.

COMMITMENT 3

Innovation in mining

Taking into account the importance of mining innovation through research and technology development, cost and management efficiency as well as productivity in driving meaningful growth and transformation, parties agree to work towards attainment of a research driven and technology based competitive edge, and henceforth commit to the following:

- Assess the current research and development landscape in the mining industry;
- Resuscitate a research and development culture in the mining industry;
- Strengthen partnerships with research institutions both locally and internationally.

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STAKEHOLDERS' DECLARATION ON STRATEGY FOR THE SUSTAINABLE GROWTH AND MEANINGFUL
TRANSFORMATION OF SOUTH AFRICA'S MINING INDUSTRY

COMMITMENT 4

Sustainable Development

Acknowledging the importance of balancing economic benefits with social and environmental concerns without compromising the ability of future generations to meet their needs, parties commit to:

- Develop and implement a National Action Plan for the management of acid mine drainage;
- Adopt a regional approach in dealing with integrated and cumulative environmental impacts resultant from mining;
- Embark on research and development initiatives directed towards the sustainability of mine closure and mining environmental legacies;
- Establish a multi-stakeholder forum on derelict and ownerless mines;
- Implement Mine Health and Safety Tripartite Action Plans;
- Establish a task team to develop mechanisms of accelerating exploration investment;
- Strengthen linkages of mining with other industries, such as infrastructure, upstream and downstream value addition, technology, services and manufacturing, to ensure sustainable mining 'beyond a hole in the ground';
- Work towards the development and effective implementation of a 'Mining Vision 2030' informed by sustainable development principles;
- Adopt an integrated development approach through pooling of resources.

COMMITMENT 5

Beneficiation

Recognizing the importance of translating our comparative advantage in mineral resources endowment into competitive advantage to fuel further industrialisation and the need to increase value addition to our minerals before they are exported, parties commit to:

- Support local beneficiation in order to unlock the intrinsic value of South Africa's minerals;
- Consider establishing a national beneficiation agency to drive downstream, upstream and side-stream beneficiation as well as all industries associated with mining;
- Enlist the support of strategic international partners to facilitate skills and technology transfer for the benefit of local beneficiation.

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STAKEHOLDERS' DECLARATION ON STRATEGY FOR THE SUSTAINABLE GROWTH AND MEANINGFUL
TRANSFORMATION OF SOUTH AFRICA'S MINING INDUSTRY

COMMITMENT 6

Regulatory Framework

Noting that an internationally competitive regulatory framework is a key instrument to promote sustainable growth and meaningful transformation of the mining industry and that negative perceptions about the regulatory framework have adverse impact on the promotion of foreign investment, parties commit to:

- Strengthen the MPRDA architecture to improve its efficiency and effectiveness by 2011;
- Strengthen enforcement, monitoring and evaluation of the regulatory framework;
- Streamline administrative processes to eliminate inconsistent application of the overall mineral regulatory regime;
- Harmonise the mineral regulatory regime with other related legislation impacting on the mining industry;
- Finalise the review of the Mining Charter by August 2010;
- Messaging of a positive regulatory framework to promote South Africa's ranking as an investment destination of choice;
- Explore an option of a single authority regulating all environmental issues;
- Transparent and results yielding compliance;
- Promote greater cooperation and coordination between the DMR, its agencies and other governing bodies.

COMMITMENT 7

Human Resources Development

Recognising the current shortage of requisite skills and that human resource development constitutes an integral part of competitiveness and social transformation of the workplace and knowledge based industry, parties commit to the following:

- Conduct at least two skills audits by 2014 and assess institutional and organisational absorptive capacity by no later than December 2010;
- Invest a percentage of annual payroll in all skills development activities, but excluding the mandatory skills levy, as follows:
 - Target for 2010 = 3%;
 - Target for 2011 = 3.5%;
 - Target for 2012 = 4%;
 - Target for 2013 = 4.5%;
 - Target for 2014 = 5%;
- Ensure that mechanisms for directing the mandatory skills levy are in place, efficient and effective.

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STAKEHOLDERS' DECLARATION ON STRATEGY FOR THE SUSTAINABLE GROWTH AND MEANINGFUL
TRANSFORMATION OF SOUTH AFRICA'S MINING INDUSTRY

COMMITMENT 8

Employment Equity

Acknowledging that diversity and equitable representation in the workplace remain catalyst for social cohesion, parties commit to the following:

- Create a conducive environment that promotes and encourages diversity in order to increase and retain requisite skills;
- Demographic representation of HDSA with a minimum target of 40% by 2014 in each of the following occupational categories:
 - Top Management (Board);
 - Senior Management (Exco);
 - Core & Critical Skills;
 - Middle Management;
 - Junior Management.

COMMITMENT 9

Mine Community Development

Recognising that mine communities form an integral part of mining development, hence a realisation that there has to be meaningful contribution towards community development, both in terms of size and impact, in keeping with the principles of the social license to operate. Parties henceforth commit to attain the following:

- Develop guidelines and adhere to community consultation processes;
- Develop a partnership approach towards mine community¹ development and consider establishment of regional (social) development funds for effective implementation of social and labour plans;
- Implement and monitor social labour plan undertakings.

COMMITMENT 10

Housing and living conditions

Noting that mining operations are, in most cases, located in remote areas with often less-than salubrious facilities for the workforce, parties commit to restore human dignity of employees in line with the Constitution of the Republic of South Africa, as follows:

- Attain the occupancy rate of one person per room by 2014;
- Upgrade or convert hostels into family units by 2014;
- Promote home ownership options and provide balanced nutrition.

¹ Mine community includes both host community and major labour sending areas.

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STAKEHOLDERS' DECLARATION ON STRATEGY FOR THE SUSTAINABLE GROWTH AND MEANINGFUL
TRANSFORMATION OF SOUTH AFRICA'S MINING INDUSTRY

COMMITMENT 11

Procurement

Realising that procurement provides an important market opportunity for goods and services and that lack of access to market is a major impediment to growth and expansion of enterprises, parties commit to:

- Adhere to fundamental principles of enterprise development, irrespective of the mining company's turnover;
- Develop mechanisms for multinational suppliers of capital goods to the mining industry, which are operating in South Africa to contribute towards social development.

COMMITMENT 12

Ownership and funding

Realising that equity ownership provides an effective means of incorporating HDSAs into the mainstream economy and that ownership can afford HDSAs an opportunity to influence the direction of a business, parties commit to the following:

- A minimum target of 26% ownership by 2014 to enable meaningful economic participation of HDSA.
- Meaningful economic participation includes, inter alia, the following key attributes:
 - BEE transactions shall be concluded with clearly identifiable beneficiaries in the form of BEE entrepreneurs, workers and communities;
 - Barring any unfavourable market conditions, some of the cash flow should accrue to the BEE partner throughout the term of the investment, and for this purpose, stakeholders will engage the financing entities in order to structure the BEE financing in a manner where a percentage of the accrued cash-flow is used to service the funding of the structure, while the remaining amount is paid to the BEE beneficiaries. Accordingly, BEE entities are enabled to leverage equity in proportion to vested interest over the life of the transaction in order to facilitate sustainable growth of BEE entities.
 - BEE shall have full shareholder rights such as being entitled to full participation at annual general meetings and exercising of voting rights, regardless of the legal form of the instruments used;
 - Ownership shall vest within the agreed timeframes of the BEE structure, taking into account the prevailing market conditions.

STAKEHOLDERS' DECLARATION ON STRATEGY FOR THE SUSTAINABLE GROWTH AND MEANINGFUL
TRANSFORMATION OF SOUTH AFRICA'S MINING INDUSTRY

COMMITMENT 13

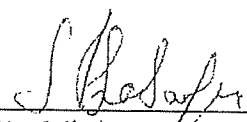
Monitoring and Evaluation


Realising that monitoring and evaluation (M&E) plays a vital role in assessing the effectiveness of a strategy in terms of achieving its intended objectives and that M&E results can highlight existing gaps and inconsistencies, parties commit to:

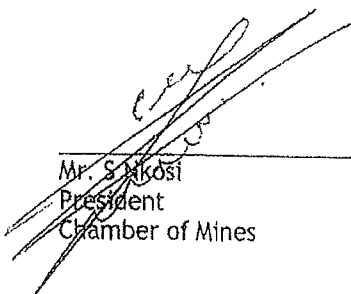
- Adhere to effective implementation of strategy;
- Comply with annual progress reporting requirements;
- Monitor and take into account the impact of constraints beyond the stakeholders' control which may result in not achieving set targets.


STAKEHOLDERS' DECLARATION ON STRATEGY FOR THE SUSTAINABLE GROWTH AND MEANINGFUL
TRANSFORMATION OF SOUTH AFRICA'S MINING INDUSTRY


Mining stakeholders, as represented by the Department of Mineral Resources (DMR); organised labour, including National Union of Mine Workers; Solidarity and UASA, as well as organised business, including Chamber of Mines and South African Mining Development Association, convene on 30th June 2010 to affirm their commitment towards attainment of sustainable growth and meaningful transformation of South Africa's mining industry.

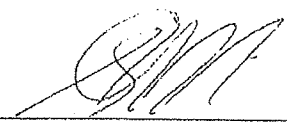

Ms. S Shabangu MP
Minister
Department of Mineral Resources


Mr. S Zokwana
President
National Union of Mine Workers


Mr. S Miso
President
Chamber of Mines


Mr. L Grobler
COO
UASA - The Union


Mr. N Moloi
Chairman
SAMDA


Mr. S Scott
President
Solidarity

Signed at PRETORIA on the 30th day of JUNE 2010.

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